

26 November 2018

To interested persons:

### **The Copper Withdrawal Code**

1. Following the passing of the Telecommunications (New Regulatory Framework) Amendment Act 2018 (the Amendment Act), the Commission is required to prepare a copper withdrawal code (the Code).<sup>1</sup> The purpose of the Code is to provide protections for consumers of certain copper services (such as VDSL and ADSL), should Chorus Limited (Chorus) seek to stop supplying these services.
2. Before Chorus can stop providing copper services, consumers must have access to an equivalent fibre service; that is, they must be able to buy the same services over fibre that they currently have over copper.
3. This letter sets out:
  - 3.1 minimum requirements of the Code;
  - 3.2 our request for submissions on what protections the Code should provide for end-users of copper services;
  - 3.3 the process we intend to follow; and
  - 3.4 the relationship between the Code and other provisions of the Act.

### **Scope for the minimum requirements of the Copper Withdrawal Code**

4. The Commission is required to prepare a Code that sets out the minimum consumer protection requirements for end-users of copper services (eg, broadband and voice access services).<sup>2</sup>
5. The 'minimum requirements' that the Code must include under the Act and additional optional provisions that the Code may include under the Act are set out in Attachment A.<sup>3</sup>

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<sup>1</sup> In accordance with Telecommunications Act 2001, clause 1(1) of Schedule 2A.

<sup>2</sup> These services are defined as copper fixed line access services in areas that are, or will become, specified fibre areas (Copper fixed line access services are Chorus's unbundled bitstream access and Chorus's unbundled copper low frequency service); Chorus's unbundled copper local loop network; and Chorus's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange).

<sup>3</sup> Telecommunications Act 2001, clause 1(3) and (4) of Schedule 2A.

## Submitting your views

6. We are interested in your interpretation of the 'minimum requirements' set out in Schedule 2A of the Act, including your views on whether there are additional provisions we should include in the Code that would be 'necessary or desirable' to provide protections for end-users of copper services.
7. Please send your submission to us by **5pm on Thursday, 14 February 2019**, and address your submission to:

Freyja Phillips

C/- [regulation.branch@comcom.govt.nz](mailto:regulation.branch@comcom.govt.nz)

8. We will also be seeking cross-submissions by **5pm on Wednesday, 6 March 2019**.

### *How to provide your submissions*

9. Your submission should be provided as an electronic copy in an accessible form. If you wish to provide commercially sensitive information in your submission we request that you provide, as necessary, confidential and public versions of your submission.
10. When including commercially sensitive information in your submission, we offer the following guidance:
  - 10.1 please provide a clearly labelled "confidential version" and "public version". This is because we intend to publish all public versions on our website;
  - 10.2 the responsibility for ensuring that confidential information is not included in a public version of a submission rests entirely with the party making the submission; and
  - 10.3 if the Commission considers that disclosure of information that has been provided in the confidential version may be necessary for the public interest, we will consult with the party that provided the information before any such disclosure is made.

## Our process for preparing the Code

11. The Act notes that the Code must be prepared before the implementation date.<sup>4</sup> The default implementation date is 1 January 2020, but, under the Act, it could be extended by the Minister of Broadcasting, Communications and Digital Media for up to two years.<sup>5</sup> We have requested an extension, but in any event, intend to develop the Code by the end of 2019.
12. The below table provides an indicative timeline that will be amended throughout the process as necessary. Interested persons will be advised of changes to the timeline if amendments are made via our website and regulation branch emails.

**Table 1: Indicative timeline for preparing the Code**

Description	Indicative timeframe
Invite views on the 'minimum requirements' of the Code	-
Submissions due on the 'minimum requirements' of the Code	14 February 2019
Cross-submissions due on the 'minimum requirements' of the Code	6 March 2019
Draft Code	August 2019
Consultation on the draft Code	September 2019
Final Code	End of 2019

13. We intend to work with industry bodies and consumer representative groups to prepare the Code to ensure industry can practically apply it while still meeting the 'minimum requirements' outlined in the Act.
14. Following submissions on the draft Code, and depending on the nature of submitters' views, we will assess whether to hold a technical workshop to discuss the practicalities of the Code. Further information about this workshop will be circulated to interested persons after we publish our draft Code.

## Relationship with other provisions of the Act

15. The Code has an interdependency with two other areas of the Act which are explained below:
  - 15.1 Specified fibre areas; and
  - 15.2 Commission 111 Contact Code.

<sup>4</sup> Telecommunications Act 2001, clause 1(2) of Schedule 2A. Implementation date refers to the date in which the Code must be implemented.

<sup>5</sup> Telecommunications Act 2001, clause 9 of Schedule 1AA.

*Specified fibre areas*

16. The assessment and notification of specified fibre areas is needed to enable Chorus to withdraw its supply of copper fixed line access services to end-users within areas declared as specified fibre areas.<sup>6</sup> It is, however, not the only pre-requisite. Before Chorus can withdraw supply of a copper service, it must also comply with the consumer protection requirements set out in the Code.<sup>7</sup>
17. The Commission is developing the specified fibre areas process separately. We have also published our specified fibre areas process and issues paper today (26 November 2018).<sup>8</sup> The purpose of that process and issues paper is to outline and consult on our proposed approach to assessing specified fibre areas.

*Commission 111 contact code*

18. Before Chorus is permitted to stop supplying a copper service, a Commission 111 contact code must be in force.<sup>9</sup> The purpose of the code is to ensure that vulnerable consumers, or persons on their behalf, retain reasonable access to 111 emergency services in the event of a power failure.<sup>10</sup>
19. We will be updating interested persons on our intended process for developing the Commission 111 contact code before the end of the year.
20. The development of this 111 contact code does not cover the content of the assessment and notification of specified fibre areas, regulation of fibre fixed line access services, or any other new provisions under the Amendment Act. Issues arising from these provisions will be dealt with by separate processes.



Dr Stephen Gale  
Telecommunications Commissioner

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<sup>6</sup> Telecommunications Act 2001, s 69AC(1)(c).

<sup>7</sup> Telecommunications Act 2001, s 69AC(2)(a) and s 69AD(2)(a). Chorus may withdraw supply of a copper service to an end-user (without complying with the Code) if that end-user chooses to have the service disconnected (other than a temporary disconnection). See Telecommunications Act 2001, s 69AC(2)(b) and s 69AD(2)(b).

<sup>8</sup> Commerce Commission “Determining specified fibre areas: Process and issues paper” (23 November 2018).

<sup>9</sup> Telecommunications Act, clause 1(3)(g) of Schedule 2A.

<sup>10</sup> Telecommunications Act, s 232A(1).

## Attachment A 'Minimum requirements' and optional additional provisions of copper withdrawal code

21. Below are the 'minimum requirements' and optional additional provisions of the Code as provided in schedule 2A(1)(3) and (4) of the Act.
- (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 223, the anchor service (or a commercial equivalent) must be available at the end-user's premises; and
  - (fa) a Commission 111 contact code must be in force; and
  - (g) 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.