

Copper Withdrawal Code Decisions and Reasons Paper

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Date of publication: 10 December 2020



Associated documents

Publication date	Reference	Title
26 November 2018	n/a	Copper Withdrawal Code – Letter requesting views on scope
01 August 2019	ISBN 978-1-869457-13-6	Copper Withdrawal Code – Framework paper for the New Zealand Telecommunications Forum
01 August 2019	ISBN 978-1-869457-15-0	Copper Withdrawal Code Process Update
20 May 2020	ISBN 978-1-869458-19-5	Draft Copper Withdrawal Code
20 May 2020	ISBN 978-1-869458-20-1	Draft Copper Withdrawal Code: Decision and Reasons Paper
20 May 2020	2020-au2078	New Zealand Gazette Notices “Notification of the Commerce Commission’s Draft Copper Withdrawal Code”
06 August 2020	n/a	Draft Copper Withdrawal Code – Consumer feedback summary
10 December 2020	ISBN 978-1-869458-57-7	Copper Withdrawal Code
10 December 2020	2020-au5653	New Zealand Gazette Notices “Notification of the Commerce Commission’s Copper Withdrawal Code”

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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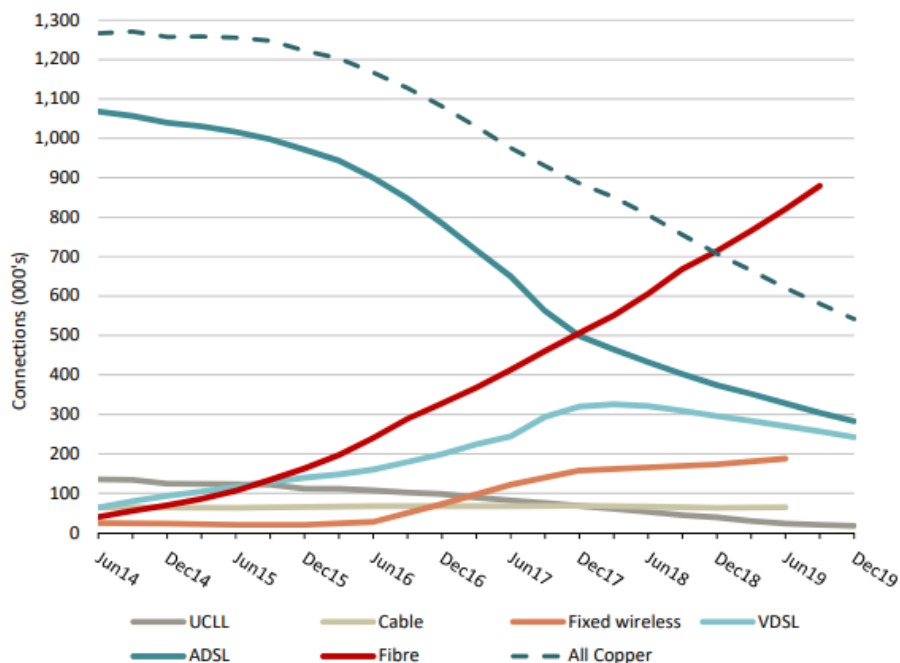
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Executive Summary

- X1 For many years Chorus has been required by regulation to supply wholesale copper phone and broadband services. Retail service providers (RSPs) use these services as inputs to the phone and broadband services they provide to their customers.
- X2 These copper services are supplied over Chorus’s copper network. The copper network has existed in New Zealand for over 100 years.
- X3 New Zealand is, however, moving to a new telecommunications technology. Over the last decade, fibre networks have been rolled out across New Zealand as part of the Ultra-Fast Broadband (UFB) initiative. About 83% of New Zealanders – 1.5 million households and businesses – can now access fibre.¹ This is expected to grow to about 87% of New Zealanders by the end of 2022.
- X4 Many New Zealanders have been choosing to switch their phone and broadband service from Chorus’s older copper network to new fibre networks. In 2019, fibre connections overtook copper connections for the first time.² Figure 1 below shows the changes in fixed line broadband connections by technology over time.

Figure 1: Fixed line broadband connections by technology



Source: Commerce Commission, Annual Telecommunications Monitoring Report (March 2020)

¹ CIP Quarterly Connectivity Update 1 April to 30 June 2020. <https://www.mbie.govt.nz/science-and-technology/it-communications-and-broadband/fast-broadband/quarterly-updates-on-broadband-deployment/>

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

- X5 Spark has also announced that it is withdrawing retail copper services in a small number of areas, and indications are that it will do so in more areas over time.³ However, unlike the wholesale copper services that Chorus supplies, RSPs like Spark are under no obligation to offer retail copper services.
- X6 In 2017, the Government decided that Chorus should be able to stop supplying regulated copper services in areas where fibre is available.⁴ The Government noted that “fibre is the technology of the future” and that Chorus had agreed to “ultimately replace its urban copper network with UFB”. The Government expected that “in time [Chorus] will seek to withdraw copper services where fibre is available”.
- X7 To give effect to its decision, the Telecommunications Act 2001 (Act) was amended in November 2018. The amendments mean that the regulation of copper services will be removed in areas where fibre is available.
- X8 The Act gives us a role to determine areas where fibre is available, and these areas are called specified fibre areas (SFAs). To date, we have determined SFAs covering approximately 1.5 million households and businesses mainly in major towns and cities across New Zealand. While fibre is expected to be available to most premises in New Zealand, it is unlikely that it will be rolled out in some rural areas in the near future.
- X9 In SFAs, Chorus will have the option to stop supplying regulated copper phone and broadband services. However, where Chorus seeks to stop supplying an end-user’s copper service – rather than the end-user choosing to disconnect the service – it will need to first comply with the Copper Withdrawal Code (CWC).
- X10 The CWC is a set of consumer protection requirements that must be satisfied before Chorus is permitted to withdraw a regulated copper service.
- X11 The Act requires the Commerce Commission to make the CWC. This paper (Reasons Paper) gives our final decisions and reasoning for the CWC that is published alongside this Reasons Paper.
- X12 The CWC ensures that, where Chorus wants to withdraw a regulated copper service, eligible end-users:
- X12.1 must be given notice of the proposed withdrawal of the copper service, so that they have time to prepare and consider their options;

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

⁴ Cabinet paper - Review of the Telecommunications Act 2001: Final Decisions on Fixed Line Services, Mobile Regulation and Consumer Protection, (May 2017), at para 63 of Appendix 1.

- X12.2 must receive information about the copper withdrawal process, to help them make informed choices; and
- X12.3 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 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.
- X13 We recognise that some consumers are nervous about the withdrawal of copper services. We hope the CWC goes some way to ease these concerns, as under the CWC Chorus can only stop supplying copper services where households can access the similar services over the fibre network. In areas where fibre is not currently available Chorus must continue to supply the copper network service.
- X14 The CWC will come into force on 1 March 2021. From that date, Chorus will be able to start providing notices to end-users of the proposed withdrawal of their copper services.⁵ The earliest that Chorus will be able to withdraw a copper service is 1 August 2021 (unless the end-user chooses to permanently disconnect their copper service). This is because it is a requirement of the CWC that the Commission's 111 Contact Code be in force before Chorus may stop supplying a regulated copper service. We published the Commission 111 Contact Code on 17 November 2020 and, while most of it comes into force on 1 February 2021, it will only fully be in force on 1 August 2021.
- X15 Finally, we note that the CWC provides protections for end-users who are receiving a regulated copper service. This is a large majority of end-users receiving copper services. However, some end-users will currently be on what Chorus regards as commercial copper services. Commercial copper services are often referred to as "commercial variants" of regulated services. We understand that the bulk of these commercial variants are voice services and are ultimately supplied largely to customers of Spark.
- X16 Chorus is not required by regulation to supply commercial copper services and is therefore permitted to withdraw those services without needing to comply with the CWC. However, Chorus has committed to us that it intends to adopt a process that is substantively similar for copper withdrawal for end-users on commercial variants,

⁵ In areas where Chorus is the local fibre company. In areas which are served by other fibre service providers, Chorus must first provide a notice to the relevant fibre service provider and will be permitted to start doing that on 1 April 2021. Chorus may then provide end-users notice of the proposed withdrawal of copper services one month after that notice.

until at least 31 December 2021.⁶ This will help to ensure these end-users receive similar protections to those on regulated copper services.

⁶ Chorus “Letter to Commerce Commission on Specified Fibre Areas – continued application of Standard Term Determinations and treatment of copper services under the Copper Withdrawal Code” – (27 November 2020).

Chapter 1 – Introduction

Purpose of 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 the 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. On 20 May 2020, we published our paper “[Copper Withdrawal Code – Draft Decisions and Reasons Paper](#)” (Draft Reasons Paper) and a “[Draft Copper Withdrawal Code](#)” (draft CWC).⁷ We sought feedback from interested parties, with submissions received by 17 July 2020 and cross-submissions on 7 August 2020.
4. Having considered the submissions and cross-submissions, this final Decisions and Reasons Paper (Reasons Paper) sets out our decisions and reasons for the CWC. The final CWC has been published alongside this Reasons Paper.
5. We would like to thank all those who participated in the process, including telecommunications service providers, consumers and other stakeholders. Submissions received were an essential part of our process and have helped us to make a CWC that meets its purpose.
6. We are particularly grateful to the community, voluntary and consumer advocacy organisations who reached out to their members about the CWC and encouraged their members to give feedback. We appreciate the personal insights and experiences shared with us by so many New Zealanders of what matters to them and why.

Structure of Reasons Paper

7. This Reasons Paper has the following structure:
 - 7.1 **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;
 - 7.2 **Chapter 3 – Legal framework** discusses the legal framework relevant to the CWC;

⁷ <https://comcom.govt.nz/regulated-industries/telecommunications/regulated-services/consumer-protections-for-copper-withdrawal/copper-withdrawal-code>.

- 7.3 **Chapter 4 – Overview of the copper withdrawal process** provides an overview of the key steps and obligations in the Act and CWC that govern the copper withdrawal process; and
- 7.4 **Chapter 5 – Decisions and Reasons for the CWC** provides our reasoning for the content of the CWC, including minimum requirements.

Our process

8. We summarise the process we have followed to make the CWC in Table 1 below.

Table 1 – Summary of process

Date	Key step
26 November 2018	We published a letter requesting views on the scope of the CWC (scope letter). The letter asked for submissions on the minimum requirements set out in Schedule 2A of the Act. ⁸
14 February 2019	We received seven submissions in response to our scope letter. ⁹
27 March 2019	We received four cross-submissions in response to our scope letter. ¹⁰
1 August 2019	We requested an industry-led response from the New Zealand Telecommunications Forum (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. ¹¹ We also published a process update which set out our process to date and a revised timeline for completing the CWC. ¹²
2 September 2019	The TCF provided their response to our framework paper. ¹³ We refer to this document as the 'TCF Response'.
20 May 2020	Draft Reasons Paper and draft CWC published.

⁸ Commerce Commission "[Copper Withdrawal Code – Letter requesting views on scope of code](#)" (26 November 2018).

⁹ 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>

¹⁰ 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>

¹¹ 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

¹² 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>

¹³ 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

2 April 2020	We extended the timeframes for submitting on the Draft Reasons Paper and draft CWC because of the impact of Covid-19.
17 July 2020	We received 27 submissions and 151 responses via our online consumer feedback form on the Draft Reasons Paper and draft CWC. ¹⁴
7 August 2020	We received seven cross-submissions on the Draft Reasons Paper and draft CWC. ¹⁵

¹⁴ Copies of these submissions are accessible via the Copper Withdrawal Code project page on the Commission's website via the following link: <https://comcom.govt.nz/regulated-industries/telecommunications/regulated-services/consumer-protections-for-copper-withdrawal/copper-withdrawal-code>.

¹⁵ Copies of these submissions are accessible via the Copper Withdrawal Code project page on the Commission's website via the following link: <https://comcom.govt.nz/regulated-industries/telecommunications/regulated-services/consumer-protections-for-copper-withdrawal/copper-withdrawal-code>.

Chapter 2 – Context for the CWC

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

9. 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.¹⁶
10. 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”¹⁷ 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 an RSP), and must do so on the price and non-price terms set out in the STD.
11. 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).¹⁸

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

12. As use of the copper network declines, and fibre networks are rolled out as part of the Government’s UFB initiative, fibre connections have grown. About 83% of New Zealanders now have access to fibre-to-the-premises, and that number is expected to grow to 87% by the end of 2022.¹⁹ In 2019, fibre broadband connections overtook copper broadband connections for the first time.²⁰
13. At the same time, the number 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.²¹

¹⁶ 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.

¹⁷ 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.

¹⁸ Commerce Commission “Annual Telecommunications Monitoring Report – 2019” (12 March 2020 – Version 2) page 7.

¹⁹ CIP Quarterly Connectivity Update 1 April to 30 June 2020. <https://www.mbie.govt.nz/science-and-technology/it-communications-and-broadband/fast-broadband/quarterly-updates-on-broadband-deployment/>

²⁰ Commerce Commission “Annual Telecommunications Monitoring Report – 2019” (12 March 2020 – Version 2) page 7.

²¹ Commerce Commission “Annual Telecommunications Monitoring Report – 2019” (12 March 2020 – Version 2) page 8.

Changes to the telecommunications regulatory framework

14. 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's copper network. The amendments to the Act:

14.1 created a new utility-style regulatory regime for fibre under Part 6 of the Act, consisting of price-quality regulation and information disclosure regulation. We published our core decisions on the key regulatory rules, requirements and processes (known as input methodologies) for the new fibre regime in October and November 2020.²² Our focus is now on using the input methodologies framework to set the price-quality and information disclosure regulation that applies to regulated fibre service providers. Our work to develop the new fibre regulatory regime can be found on [our website](#).²³

14.2 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 Reasons Paper.

15. 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.

16. A 2017 Cabinet Paper setting out final decisions on proposed amendments to the Act summarised key policy decisions on the CWC:²⁴

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;

²² Our decisions on the fibre input methodologies can be found on this webpage:

<https://comcom.govt.nz/regulated-industries/telecommunications/projects/fibre-input-methodologies>.

²³ <https://comcom.govt.nz/regulated-industries/telecommunications/projects/fibre-price-quality-path-and-information-disclosure>

²⁴ 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>.

- 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
- anchor products are available on the UFB network.²⁵

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

Our role to make the CWC

18. Schedule 2A provides that the Commission, or the TCF if requested to do so by the Commission, must prepare the CWC.²⁶ We have previously decided that we would make the CWC, rather than requesting the TCF to make it.²⁷

19. Schedule 2A requires the Commission to prepare the CWC by 1 January 2022.²⁸

20. 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 Table 1, the TCF provided its response to us on 2 September 2019.

21. The TCF is also undertaking other work that is related to the copper withdrawal process:

21.1 In April 2020 the TCF approved the Fibre Installation Code. The purpose of this code is to deliver a good customer experience by the New Zealand telecommunications industry when installing a new fibre connection at a customer's premises. The code defines a nationally consistent fibre installation standard and sets out clear expectations for customers during the installation process.²⁹

²⁵ We discuss what an anchor service is at paragraphs 2788-**Error! Reference source not found.**4 of this Reasons Paper.

²⁶ Telecommunications Act 2001, Schedule 2A, clause 1(1).

²⁷ Commerce Commission, "[Copper Withdrawal Code – Letter requesting views on scope of code](#)", (26 November 2018).

²⁸ 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.

²⁹ TCF, "Fibre Installation Code" (2 April 2020). See <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/fibre-installation-code/>.

- 21.2 The TCF is currently working on 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.³⁰
22. 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 the TCF codes to be consistent with (and support compliance with) the CWC, Commission 111 Contact Code and the regulation of fibre under Part 6 of the Act.

Chorus's plans for copper withdrawal

23. Subject to the rules around copper withdrawal in the Act and the CWC, it is ultimately Chorus's decision when and where to withdraw copper services.
24. In its submission, Chorus outlined its intended approach to copper withdrawal:³¹

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...

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...

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.

Consumer concern about copper withdrawal

25. During the process to make the CWC, we have heard from many consumers who are concerned more generally about the prospect of having copper services withdrawn. For these consumers, the copper network is viewed as a reliable and proven technology and is one that they are accustomed to using.
26. The deregulation of copper services and the CWC envisages that Chorus will withdraw copper services in many parts of New Zealand. As the cabinet paper approving policy decisions in relation to the new fibre regulatory regime noted, "the copper network is near the end of its life and is ultimately being replaced by the UFB

³⁰ <https://www.tcf.org.nz/industry/workstreams/current-projects/copper-migration-code/>

³¹ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) paras 18-22.

network, with the exception of rural areas where UFB is not currently being rolled out”.³²

27. We acknowledge consumers’ concerns. However, the choices the Government has made means that copper withdrawal will happen in the coming years. The CWC is about providing protections to consumers during that copper withdrawal process. As we explain later, a key part of the CWC is about ensuring that consumers get the right information to understand the process and the new technologies available to them. We hope this, together with the other protections in the CWC, eases consumer concerns.

Our wider role in the transition away from copper

28. 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. As fibre networks grow, we will declare more areas as SFAs. We declared additional SFAs in our annual SFA assessment on 11 November 2020. A map of the areas can be found on [our website here](#).
29. We have also developed the Commission 111 Contact Code, which we were required to do by the 2018 amendments to the Act. The purpose of the Commission 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 Commission 111 Contact Code must be in force before Chorus is permitted to withdraw a copper service.³³ We published the Commission 111 Contact Code and Decisions and Reasons Paper on 17 November 2020, and it comes fully into force on 1 August 2021. The Commission 111 Contact Code can be found on [our website](#).

Review of the CWC

30. The Act allows us to amend or revoke the CWC if we consider that the CWC no longer meets all the requirements set out in the Act.³⁴
31. While our view is that the CWC we have published alongside this Reasons Paper meets all the requirements, we intend to closely monitor its operation. As part of our monitoring, we encourage telecommunications service providers, consumers and other stakeholders to contact us with feedback on the operation of the CWC.

³² Cabinet Economic Growth and Infrastructure Committee “Review of the Telecommunications Act 2001: Final Policy Decision for Fixed Line Communications Services” (May 2017) para 29, available at <https://www.mbie.govt.nz/dmsdocument/1118-review-telecommunications-act-2001-final-policy-decision-cabinet-paper-pdf>.

³³ Schedule 2A, clause 1(3)(g) of the Act.

³⁴ Schedule 2A, clause 4(1) of the Act.

32. We intend to review the operation of the CWC in the second half of 2021. If our review suggests that the CWC is not meeting all the requirements in the Act, we may review and make amendments to the CWC as needed, following the process required in the Act.³⁵

Chapter 3 – Legal Framework

33. In this chapter we set out the relevant legal framework from the Act by providing an overview of:
- 33.1 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’s unbundled copper local loop (UCLL) service and Chorus’s unbundled copper local loop network backhaul (distribution cabinet to telephone exchange) (UCLL Backhaul) service as designated access services from Schedule 1 of the Act. In this Reasons Paper, we use the term “copper service” to refer to CFLAS and UCLL/UCLL Backhaul, unless the context requires otherwise;
 - 33.2 Schedule 2A, which contains the key provisions relating to the CWC; and
 - 33.3 the Act’s provisions relating to enforcement of the CWC.
34. We address the submissions we received on the legal framework in our Draft Reasons Paper in this chapter.
35. The provisions of the Act relating to the CWC are set out in Attachment A to this Reasons Paper.

Part 2AA – deregulating CFLAS

36. 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’s unbundled bitstream access service (UBA) (a wholesale broadband service) and Chorus’s unbundled copper low frequency service (UCLF) (a wholesale voice service).
37. Section 69AA provides that the purpose of Part 2AA is to:
- 37.1 deregulate CFLAS in areas where FFLAS are available;
 - 37.2 provide protections for end-users of CFLAS and certain other designated services in deregulated areas; and
 - 37.3 provide for the Commission to investigate whether the regulation of CFLAS and certain other designated services should be altered.

³⁵ Schedule 2A, clause 4(2) provides that the same procedure that applies to making the Code in clauses 2 and 3 must be followed to make an amendment or a revocation.

38. 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 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

39. 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:

39.1 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.³⁶ 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;³⁷

39.2 Section 69AB(2) requires the Commission to declare any areas where a specified fibre service is available to be SFAs.

40. 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.

40.1 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”;

40.2 For UCLF, it is a “condition” of the supply of the UCLF service that “Chorus’s 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”.

41. 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.³⁸

Ongoing regulation of CFLAS in areas where FFLAS is not available

42. 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 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).

³⁷ Commerce Commission “Determining Specified Fibre Areas – Framework and Initial Approach” (31 October 2019) para 90.

³⁸ 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.

- 42.1 Subsection (5) clarifies that the UBA and UCLF STDs continue to apply to those services;
- 42.2 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;
- 42.3 However, subsection (6) provides a mechanism to update the prices in the STDs based on an annual CPI adjustment.
43. 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 2025.³⁹

UCLL/UCLL Backhaul also cease to be designated access services

44. UCLL and UCLL Backhaul also cease to be designated access services from 1 January 2020, although this is provided for separately from Part 2AA.
45. The 2018 amendments to the Act directly removed UCLL and UCLL Backhaul from Schedule 1, with this amendment effective from 1 January 2020.⁴⁰ This means these services ceased to be designated access services from that date, irrespective of whether FFLAS is available.
46. We note that the numbers of end-users receiving these services are small relative to those receiving a CFLAS. As at 30 September 2020, there were only about 14,000 UCLL connections.⁴¹

Withdrawal of CFLAS and UCLL/UCLL Backhaul

47. 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.
48. 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).

³⁹ See section 69AH of the Act.

⁴⁰ Telecommunications (New Regulatory Framework) Amendment Act 2018, section 13.

⁴¹ See 'Chorus Q1 FY21 Connections Update' (9 October 2020) page 8. Available at: <https://company.chorus.co.nz/investor-news>.

49. Since the CFLAS and UCLL/UCLL Backhaul STDs have no expiry date,⁴² and those services have not been omitted from Schedule 1 via the operation of section 66(b),⁴³ the STDs continue to be in force.
50. 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.
51. 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).

52. 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

⁴² Section 30Q of the Act provides that STDs must not include an expiry date.

⁴³ 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.

- (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).

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

53.1 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 47-49 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;

53.2 Second, subsection (1) describes the service to which the permission in subsection (2) applies;

53.3 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.

54. As is clear from the language of sections 69AC and 69AD, subsection (2) applies only to “the service referred to in subsection (1)”.⁴⁴ 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.

The scope of the subsection (1) service

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

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

	Section 69AC(1)	Section 69AD(1)
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

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

Subparagraph (a)

57. Subparagraphs (a) of sections 69AC(1) and 69AD(1) are effectively the same, with only the names of the copper service being different.
58. 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

⁴⁴ 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)’, section 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).

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.

59. 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:
- 59.1 an access seeker has, under section 30S(1) of the Act, requested Chorus to supply the service on the terms specified in the STD;
 - 59.2 under the STD, the access seeker has made an order for a particular instance of supply in respect of an end-user; and
 - 59.3 Chorus is, pursuant to the STD, supplying the service to the access seeker in respect of an end-user.
60. 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 47-49 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)

61. 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:
- 61.1 In relation to section 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”;
 - 61.2 In relation to section 69AD(1)(b), that is “when the service was a designated access service”.

Subparagraph (c)

62. 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:
- 62.1 In relation to section 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”;

- 62.2 In relation to section 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

63. 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:
- 63.1 Chorus is required to supply to an access seeker under the relevant STD;
- 63.2 Chorus started supplying when the service was a designated access service; and
- 63.3 ceases to be a designated access service.
64. In the Draft Reasons Paper, we noted that Chorus and the RSPs had differing views 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.
65. Our view in the Draft Reasons Paper was that the scope of the subsection (1) service does not extend to wholesale copper services that are not supplied under an STD.⁴⁵
66. Submissions on this issue again reflected the differing views of Chorus and the RSPs:
- 66.1 Chorus said that it supports “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”;⁴⁶
- 66.2 Vodafone submitted that it is “concerned that different treatment of retail customers could lead to confusion, and process complexity for RSPs, which increases the risk of error”.⁴⁷ Vodafone said that “[k]eeping some retail customers outside of the scope of the code may also mean some are not protected in the way intended by Parliament. They may have copper withdrawn without sufficient notice, or they may be left stranded with no copper and no other service is available”.⁴⁸ Vodafone suggested two options to extend the scope of the CWC to cover unregulated services:⁴⁹

⁴⁵ Commerce Commission “Copper Withdrawal Code – Draft decisions and reasons paper” (20 May 2020) para 61.

⁴⁶ Chorus “Submission on draft Copper Withdrawal Code” (17 July 2020) para 29.

⁴⁷ Vodafone “Vodafone New Zealand submission on Draft Copper Withdrawal Code” (17 July 2020) page 4.

⁴⁸ Vodafone “Vodafone New Zealand submission on Draft Copper Withdrawal Code” (17 July 2020) page 4.

⁴⁹ Vodafone “Vodafone New Zealand submission on Draft Copper Withdrawal Code” (17 July 2020) page 5.

- 66.2.1 Using clause 4 of Schedule 2A, which empowers the Commission to include in the CWC any other provisions that the Commission considers are necessary or desirable; or
- 66.2.2 Addressing the matter through the making of a retail service quality code, as Vodafone suggested the difference in treatment for end-users on regulated and non-regulated copper services has retail implications;
- 66.3 Spark noted that Chorus had provided a list of copper services that Chorus considers are unregulated. Spark said that Chorus’s baseband product – which is a copper voice service – is the most significant of the unregulated services.⁵⁰ Spark submitted that “retail customers – almost without exception – will be unaware of which wholesale copper product their voice service is connected via (i.e. baseband copper, UCLL, or baseband IP). It goes without saying, then, that it would be confusing for retail customers, and unnecessarily complex for RSPs, if there were to be a different process for customers who happen to be using baseband inputs rather than UCLL”.⁵¹
67. Our 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 limited in scope to services supplied pursuant to an STD.
68. 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.
69. 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.⁵² However, there are a significant number of end-users on a voice service (called “baseband”) which Chorus considers is a commercial copper service. Spark told us that all of its customers on copper landline voice-only services are on the baseband service. Spark said that it suspects many of these customers “will be older and less technically literate customers who would benefit most from the” CWC process.⁵³
70. Given the likely profile of these customers (as described by Spark), we consider it important from a consumer protection perspective that end-users on commercial

⁵⁰ Spark “Copper Withdrawal Contact Code – Spark Submission” (17 July 2020) para 5, 6.

⁵¹ Spark “Copper Withdrawal Contact Code – Spark Submission” (17 July 2020) para 7.

⁵² Email from Julian Kersey (Manager - Regulatory and 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).

⁵³ Spark “Copper Withdrawal Contact Code – Spark Submission” (17 July 2020) para 6.

copper services do not face a significantly different process to those end-users on regulated copper services. Chorus's commitment to adopt a process that is substantively similar for copper withdrawal for end-users on commercial variants, until at least 31 December 2021, will help to ensure these end-users receive similar protections.⁵⁴

Who is the 'end-user' of the subsection (1) service?

71. Understanding who is the end-user of the subsection (1) service is necessary as the end-user is the person:
 - 71.1 to whom the minimum requirements in the CWC apply; and
 - 71.2 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).
72. The term "end-user" is defined in the Act as follows:⁵⁵

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.
73. 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])".⁵⁶
74. Accordingly, our view is that the end-user is the ultimate consumer of the copper service. In the context of the copper services that are within the scope of 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.⁵⁷
75. Chorus submitted that it agrees "with the fundamental point that end-user means the ultimate recipient of a copper service".⁵⁸ However, it said that there is some ambiguity in the draft CWC as to whether each person at a premises is a separate end-user. It therefore recommended the definition of "end-user" is limited to the retail customer.
76. Chorus also suggested that "end-user" needs to be defined in relation to a specific premises. This is because a person "may be an end-user in relation to more than one

⁵⁴ Chorus "Letter to Commerce Commission on Specified Fibre Areas – continued application of Standard Term Determinations and treatment of copper services under the Copper Withdrawal Code" – (27 November 2020).

⁵⁵ Section 5 of the Act.

⁵⁶ See, for example, Definitions of the "STD for Chorus' Unbundled Bitstream Access Service - UBA General Terms" (13 December 2007) section 3.

⁵⁷ The end-user also includes any other users of the service (such as members of the customer's household).

⁵⁸ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) paras 108-110.

premises (for example if the person owns a primary residence and a holiday home)”⁵⁹.

77. We agree that Chorus’s suggested amendments to the definition of end-user would helpfully clarify the concept of “end-user” in the CWC. We have therefore amended the definition of end-user in the CWC broadly in line with Chorus’s suggestion.

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

78. 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 terms of the relevant STD.⁶⁰ This would mean that, among other things, Chorus could choose to charge a higher price than that required by the relevant STD.⁶¹
79. 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.⁶²
80. Chorus’s submission on the Draft Reasons Paper reiterated its position that “once deregulated, copper services are no longer regulated by STDs and Chorus is free to supply such services on commercial terms”.⁶³
81. 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:
- 81.1 As noted above in paragraphs 47-49, the CFLAS and UCLL/UCLL Backhaul STDs continue to be in force;
- 81.2 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;

⁵⁹ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 111.

⁶⁰ Chorus "Submission on Determining Specified Fibre Areas: Process and Issues Paper dated 26 November 2018" (15 February 2019) para 17.

⁶¹ 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>.

⁶² 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).

⁶³ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 32.

81.3 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).

82. We note that, despite Chorus holding a different view, it has committed to the Commission to supply UBA and UCLF in SFAs on STD terms for existing users from the date the CWC comes into force until 31 December 2021.⁶⁴

CWC – Schedule 2A

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

84. 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).

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

86. 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

⁶⁴ Chorus “Letter to Commerce Commission on Specified Fibre Areas – continued application of Standard Term Determinations and treatment of copper services under the Copper Withdrawal Code” – (27 November 2020).

- (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.

87. In relation to the last requirement – “any other prescribed matters must be complied with” – the Act gives no explicit direction in relation to “prescribed matters”. 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 we consider to be reasonably required to ensure the effective operation of the CWC.

88. We discuss the minimum requirements in Schedule 2A in Chapter 5 of this Reasons Paper.

89. Schedule 2A also prescribes a process for developing and approving the CWC. Among other things, we are required to consult on a draft CWC 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

90. 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”.

Enforcement by the Commission

91. Section 156B sets out the enforcement actions that the Commission may take in respect of a breach, including:

91.1 issuing a civil infringement notice. The pecuniary penalty applicable under a civil infringement notice is \$2000;⁶⁵

91.2 applying to the High Court for a pecuniary penalty (a maximum of \$300,000);
or

⁶⁵ Telecommunications (Civil Infringement Notice) Regulations 2007.

- 91.3 accepting an enforceable undertaking.⁶⁶
92. In addition, the Commission may apply to the High Court for an order under:
- 92.1 section 156MC, under which the High 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
- 92.2 section 156MD, under which the High Court may grant an injunction restraining the person from engaging in conduct that constitutes or would constitute a breach of the CWC.
93. 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.
94. We may also apply our enforcement criteria to the extent it is constituent with the statutory criteria.⁶⁷
95. The Commission also has other enforcement tools available to it, including compliance advice letters and warnings.
96. We will monitor compliance with the CWC and, where we identify likely breaches of the CWC, we will consider our enforcement options applying the factors in section 156C. We are prepared to use the full range of enforcement tools available to us as may be appropriate in the circumstances. Compliance with the CWC is important given the potentially significant impact non-compliance would have on consumers.

Enforcement by end-users

97. End-users also have the option to take action in relation to 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.
98. As we explain later in this Reasons Paper, end-users may also refer a dispute under the CWC to an industry dispute resolution scheme. However, our power to take enforcement action in relation to breaches of the CWC is separate to an end-user's right of dispute. If we identify likely breaches of the CWC, and we consider that an enforcement response is warranted, we will take action. This includes our ability to

⁶⁶ 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.

⁶⁷ The Commission's enforcement criteria can be found at: <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-criteria>.

serve civil infringement notices, which require a pecuniary penalty of \$2000 to be paid.

Chapter 4 – Overview of copper withdrawal process

99. In this chapter, we provide an overview of the copper withdrawal process, including the circumstances where the CWC applies.
100. Both the Act and the 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 final decisions and reasons on the CWC into context. These are discussed in Chapter 5.
101. We address the submissions we received on the overview of the copper withdrawal process in our Draft Reasons Paper in this chapter.

Copper service ceases to be a designated access service

102. The first step in the copper withdrawal process is when a copper service ceases to be a designated access service:
 - 102.1 For CFLAS, this is when an SFA is declared. CFLAS ceases to be a designated access service only in SFAs;
 - 102.2 For UCLL/UCLL Backhaul, this is 1 January 2020.
103. 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:
 - 103.1 Chorus complies with the requirements of the CWC in relation to stopping the supply of the service; or
 - 103.2 The end-user chooses to have the service disconnected (other than a temporary disconnection).
104. 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

105. 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?

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

107. 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

108. 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 168 below), an end-user will have chosen to disconnect the service where the end-user:

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

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

108.1.2 where the end-user switches to another retail telecommunications service which does not use a wholesale copper service as an input,⁶⁸ and as part of the switching terminates the retail service that uses a copper service as an input; or

108.1.3 moves out of the premises to which the copper service was being supplied.

109. 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.⁶⁹ 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's premises, intact (a "soft disconnection").⁷⁰

110. 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 significant gap in service.

111. 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

⁶⁸ Other retail telecommunications services include fibre, fixed wireless and hybrid-fibre coaxial cable (HFC cable).

⁶⁹ 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 2007) page 47.

⁷⁰ 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.

be permitted to stop supplying the copper service under subparagraph (2)(b) of 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 128-145.

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

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

113. Where Chorus has given an end-user notice of the proposed withdrawal of the copper service (a "First Notice", as we discuss below), our view is that an end-user will have chosen to have the service disconnected where the end-user:

113.1 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. Where an end-user seeks to switch to a retail fibre service, under the CWC the end-user must have a connection to the fibre service installed (among other minimum requirements); or

113.2 moves out of the premises to which the copper service was being supplied.

114. If the end-user:

114.1 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;

114.2 seeks to switch to a retail fibre service, Chorus must comply with 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 Reasons Paper;

114.3 moves out of the premises to which the copper service was being supplied, Chorus will be permitted to stop supplying the service once the RSP requests termination of the service at the premises.

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

115. 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.

116. First, an end-user who switches RSP, but retains a retail service with the new RSP that relies on a regulated 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.⁷¹ 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).

117. 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 transfer rather than a disconnection.

Summary

118. Table 3 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

	Before notice of copper withdrawal	After notice of copper withdrawal
End-user: <ul style="list-style-type: none"> • chooses to switch to a new service other than fibre or terminates the service without switching to a new service; or • moves out of the premises to which the copper service was being supplied 	End-user has chosen to disconnect	End-user has chosen to disconnect
End-user chooses to switch to a fibre service	End-user has chosen to disconnect	All applicable minimum requirements in CWC must be met for Chorus to stop supplying the copper service

What is a temporary disconnection?

119. 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.
120. 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.

⁷¹ 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 2007) page 25.

Positions in the draft CWC

121. Our position in the draft CWC was 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:
- 121.1 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); and
 - 121.2 disconnections while a premises is being renovated, and the physical connection needs to be temporarily removed or moved.⁷²

Submissions

122. The TCF submitted that “the definition of temporary disconnection is ambiguous for both the industry and end-users and this has the potential to result in disputes. Temporary disconnections are normally managed by the RSP, in line with their own customer policies, and are not something which is necessarily notified to Chorus”.⁷³ Chorus also submitted that the definition needs to be tightly defined to remove ambiguity.⁷⁴
123. The TCF proposed that “for the purposes of the Code, where the Notice process has commenced, a copper service reconnection request may be made any time within 20 working days of a disconnection notice. This approach treats every disconnection as temporary for a maximum period of 20 working days”.⁷⁵
124. Chorus proposed that the definition be amended to 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”.⁷⁶

Our decision and reasons

125. We have amended the definition of temporary disconnection. The CWC provides that “temporary disconnection” means:

a connection that is ceased for a limited period of time, where:

- (a) at the time the connection was ceased the end-user’s retail service provider notifies Chorus that the connection is only ceasing for a limited period of time; and
- (b) no later than 20 working days after the time the connection was ceased Chorus receives from the end-user’s retail service provider an order for the reactivation of the connection.

⁷² See <https://sp.chorus.co.nz/product-update/temporary-disconnection-overhead-service-lead>.

⁷³ NZ Telecommunications Forum "Submission on draft Copper Withdrawal Code" (17 July 2020), para 2.4.

⁷⁴ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 38.

⁷⁵ NZ Telecommunications Forum "Submission on draft Copper Withdrawal Code" (17 July 2020), para 2.5.

⁷⁶ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 41.

126. This amended definition provides further clarity by setting clear rules for when a disconnection is to be regarded as temporary. It requires the relevant RSP to notify Chorus that the connection is ceasing only for a limited period of time, and places a maximum time limit on the length of that disconnection (ie, any disconnection for longer than 20 working days cannot be a temporary disconnection).
127. Our view is that this clarification removes ambiguity for industry, while also allowing flexibility for situations where the end-user may require a temporary disconnection to their copper services, for example, renovations.

Withdrawal where CWC has been complied with

128. 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.
129. The CWC is comprised of four main parts:
 - 129.1 Minimum requirements in relation to all end-users to whom Chorus seeks to stop supplying copper services;
 - 129.2 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);
 - 129.3 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; and
 - 129.4 Other provisions, relating to dispute resolution and information disclosure and record keeping.
130. We give an overview of these four parts in the following sections, before discussing them in greater detail in Chapter 5 below.

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

131. At a high level, there are three minimum requirements in relation to all end-users that Chorus seeks to stop supplying copper services.
132. First, Chorus will be required to provide a number of notices of the proposed withdrawal of a copper service to all end-users:⁷⁷
 - 132.1 Chorus must give the end-user at least six months' notice of the proposed withdrawal of a copper service; and

⁷⁷ As we discuss in paragraphs 170-195 below, Chorus will also be required to provide RSPs and RFSPs with a notice of proposed withdrawal.

- 132.2 Chorus must give notice of the proposed date of withdrawal to end-users on two further occasions – once at three months before the proposed date of withdrawal and the other at 20 working days.
133. Second, Chorus must:
- 133.1 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; and
- 133.2 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’s website).
134. Third, the Commission’s 111 Contact Code must be in force.

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

135. The 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.
136. The key requirements are:
- 136.1 The end-user must have a connection to the fibre service installed at no cost to the end-user irrespective of whether the connection is standard or non-standard. 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. However, this requirement will not need to be met if the end-user does not reasonably cooperate with the installation process or if the end-user does not take reasonable steps available to them to resolve a third-party issue;
- 136.2 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;
- 136.3 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 278-**Error! Reference source not found.** of this Reasons Paper.
137. If the requirements above are not satisfied (eg, because a connection to a fibre service has been unable to be installed due to a third-party property access dispute or other third-party dispute), or because Chorus decides to continue supplying the copper service, Chorus must provide a “Continuation Notice” to the end-user

confirming that it is required to continue to supply the copper service. Chorus must also provide the Continuation Notice to the end-user's RSP and the RFSP.⁷⁸

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

138. There will be some end-users who, having received 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.
139. Our view is that, for these end-users, the only further minimum requirement is that Chorus will be required only to provide a Confirmation Notice to the end-user at the end of the six-month notice period. A Confirmation Notice confirms that Chorus is no longer required to supply the copper service. Chorus will also be required to provide a Confirmation Notice to the end-user's RSP and the RFSP. Once Chorus has satisfied this minimum requirement, it will be permitted to stop supplying the copper service.
140. 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 CWC

141. The 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.
142. 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.

No further minimum requirements in relation to end-users who choose to have their copper service disconnected

143. There are no further 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).
144. This is a change from the draft CWC, which included a minimum requirement 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. We have removed this minimum requirement in response to Chorus's submission that such a notice is not necessary since the end-user will already have been provided with information regarding the outcome of disconnection.⁷⁹ We agree with this submission.

⁷⁸ We intend to monitor the extent to which the requirements are unable to be satisfied due to third-party issues and, if necessary, will take steps to address this issue in our first review of the CWC.

⁷⁹ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 89.

145. As such, Chorus will be permitted to withdraw a copper service from an end-user once the end-user has chosen to have the service disconnected (assuming all other relevant minimum requirements have been met).

Chapter 5 – Decisions and Reasons for the CWC

146. 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 CWC.
147. In this chapter, we set out our decisions for the minimum requirements and other provisions. We outline the positions in the draft CWC, what we heard from submissions and consumer feedback and give reasons for our decisions.
148. This chapter has the following structure:

Section	Subsections
Purpose of the CWC	
Commencement date	
Minimum requirements in relation to all end-users	<ul style="list-style-type: none"> • Requirement to give notice of the proposed withdrawal of a copper service • Requirement to provide information to end-users and to make information generally available to the public • Requirement for Commission 111 Contact Code to be in force
Minimum requirements in relation to end-users who order a retail fibre service	<ul style="list-style-type: none"> • Requirement for connection to be installed • Requirement for similar functionality provided by fibre service • Anchor service requirement • Requirement to send Continuation Notices
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"> • Requirement to send Confirmation Notices
Other provisions	<ul style="list-style-type: none"> • Dispute resolution for the CWC • Requirement to disclose information and keep records

Purpose of the CWC

149. 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.

Positions in the draft CWC

150. The draft CWC included the following purpose statement:

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 the end-user’s copper service, such that the end-user–

- understands Chorus’s process for withdrawal of a copper service, and how this will affect the end-user;
- has 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; and
- can receive a connection to a fibre service (if they wish to move to a fibre service), and that the fibre service provides similar functionality to the copper service.

Submissions

151. Chorus submitted that the “purpose statement in the [CWC] 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 s 69AA purpose statement for Part 2AA”.⁸⁰ Chorus said that “limiting the purpose statement to a single limb of consumer protection may result in the CWC being applied in an unbalanced manner that does not reflect the wider purpose of the Act”.⁸¹
152. Chorus submitted drafting changes for the purpose statement to reflect its submissions, including adding a limb to the purpose statement that a purpose of the CWC is to deregulate CLFAS in areas where FFLAS are available.

Our decision and reasons

153. Our final decision is to retain the consumer protection focus of the CWC purpose statement.
154. Our view is that the main purpose of the CWC is to establish consumer protection requirements. This is reflected in clause (1) of Schedule 2A, which provides that the Commission must make a CWC “setting out minimum consumer protection requirements for end-users” of certain copper services. Part 2AA of the Act enables Chorus to withdraw copper services where these minimum consumer protection requirements are met.
155. However, we agree with Chorus that Part 2AA envisages the withdrawal of certain copper services as a result of those services ceasing to be designated access services. This is reflected in one of the purposes of Part 2AA being to deregulate CFLAS in areas where FFLAS are available.
156. In making our decisions on the CWC, we have therefore taken into account the desirability of the CWC enabling Chorus to withdraw copper services, subject to the consumer protections provided by the CWC. In particular, we have been mindful in designing the CWC not to impose unreasonable barriers to Chorus satisfying the requirements in the CWC. Our view is the CWC appropriately provides protections

⁸⁰ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 23.

⁸¹ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 27.

for end-users during the copper withdrawal process, while reasonably enabling Chorus to withdraw copper services.

157. Chorus also made two other specific drafting changes in its submission:

157.1 The first was to change the wording in the second bullet point of the purpose statement from “have access to information with which to make an informed choice about the telecommunications services they can switch to” to “have access to information about the fibre service available”. Chorus submitted the requirement to provide information about non-fibre telecommunications services goes beyond the scope of Schedule 2A;⁸² and

157.2 The second was to change the wording in the fourth bullet point from “can receive a connection to a fibre service (if they wish to move to a fibre service)” to “is able to have a fibre service installed”. Chorus submitted that this wording is more appropriate as it mirrors the wording in Schedule 2A.⁸³

158. We accept Chorus’s submission on these specific changes and have amended the purpose of the CWC accordingly.

Commencement date

159. Schedule 2A provides that the CWC must be prepared before the “implementation date”.⁸⁴ The implementation date is 1 January 2022.

160. In our Draft Reasons Paper, we indicated that the CWC would be published and come into force in September 2020.

161. Submissions discussed the commencement date of the CWC in general terms, with Chorus seeking to have the CWC in force in the near future, while Vodafone suggested there is no urgency in the withdrawal process starting.^{85, 86}

162. We have decided that the CWC will come into force on 1 March 2021. A commencement date of 1 March 2021 will give parties sufficient time to assess the CWC before it comes into force.

163. From 1 March 2021 onwards, Chorus will be able to begin satisfying the requirements in the CWC. For instance, in areas where Chorus is the local fibre company, it will be able to give end-users’ notice of the proposed withdrawal of

⁸² Chorus "Submission on draft Copper Withdrawal Code – Appendix proposed drafting changes" (17 July 2020) para 2.

⁸³ Chorus "Submission on draft Copper Withdrawal Code – Appendix proposed drafting changes" (17 July 2020) para 2.

⁸⁴ The implementation date is date on which the fibre regulatory regime under Part 6 of the Act is implemented.

⁸⁵ Chorus "Cross-Submission on draft copper Withdrawal Code" (7 August 2020) para 8,9.

⁸⁶ Vodafone "Submission on Draft 111 Contact Code" (17 July 2020) page 3.

copper services from 1 March 2021 onwards.⁸⁷ However, the earliest Chorus will be permitted to withdraw a copper service under the CWC will be 1 August 2021, when the Commission 111 Contact Code comes fully into force (unless the end-user chooses to permanently disconnect their copper service).

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

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

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

164.2 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; and

164.3 The Commission 111 Contact Code must be in force.

Requirement to give notice of proposed withdrawal of copper service

165. Schedule 2A 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:

165.1 the end-user;

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

165.3 the RFSP for the end-user's premises, which will be one of the other local fibre companies (LFCs) or any other fibre provider.⁸⁸

166. Below we set out our positions in the draft CWC for this minimum requirement, submissions received, and our final decisions and reasoning.

Positions in the draft CWC

167. The draft CWC required Chorus to give a number of notices to end-users, property owners, RSPs and RFSPs.

⁸⁷ In areas which are served by other fibre service providers, Chorus must first provide a notice to the relevant fibre service provider before it can give notice to an end-user of the proposed withdrawal of a copper service. The earliest Chorus and will be permitted to start providing notices to other fibre service providers doing that is 1 March 2021.on 1 April 2021. Chorus may then provide end-users notice of the proposed withdrawal of copper services one month after that notice (ie, 1 April 2021).

⁸⁸ There are a number of other fibre service providers including Unison.

Notices to end-users

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

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

168.2 at three months before the proposed date of withdrawal (**Further Notice**), only if the end-user's copper service is still being supplied; and

168.3 at 20 working days before the proposed date of withdrawal (**Final Notice**), only if the end-user's copper service is still being supplied.

Notice to property owners

169. The draft CWC also included 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.

Notices to access seekers and RFSPs

170. The draft CWC required Chorus to give notice of the proposed withdrawal of a copper service to:

170.1 the RFSP (**RFSP Notice**), no later than one month before Chorus gives the First Notice to the end-user; and

170.2 the RSP (**RSP Notice**⁸⁹), at the same time as the First Notice to the end-user.

Method of delivery

171. In terms of the delivery of notices, the draft CWC:

171.1 specified that notices to end-users or property owners must be delivered, at a minimum, by posted mail; and

171.2 did not prescribe how RFSP Notices or RSP Notices must be delivered.

Submissions

172. Submissions were generally supportive of our draft decision to require Chorus to give end-users notices at three different intervals (ie, the First Notice, Further Notice and Final Notice):

172.1 Consumer feedback generally supported the six-month notice period, although some thought a longer period would be better. Many consumers

⁸⁹ This was called the Access Seeker Notice in the draft CWC. However, we refer to it in this Reasons Paper as the RSP Notice.

said that the notices should come from their RSP, as they have their contact information;

172.2 Chorus supported the requirement to give end-users at least six months' notice of withdrawal, with further notices at three months and 20 working days before the proposed date of withdrawal.⁹⁰ Chorus also supported the draft decision that Chorus be required to provide these notices, rather than the relevant RSP;

172.3 The TCF submitted that it "generally supports the Commission's construct or framework under the Code that requires Chorus to provide reasonable notice to end-users, retail service providers and the relevant fibre retail service provider".⁹¹

173. Some submissions strongly objected to our draft decision to require Chorus to give the First Notice to the property owner:

173.1 Chorus stated that it did not support this requirement, submitting that:⁹²

173.1.1 it has no way of knowing whether the end-user is the property owner;

173.1.2 it has no reliable way of contacting the property owner separately from the end-user. Chorus noted that, based on its experience under the property access regime under the Act, "it is extremely difficult to access reliable contact information for property owners"; and

173.1.3 Parliament specifically addressed the issue of which parties should be given notice, and did not include property owners;

173.2 Chorus suggested that the notices to end-users should include a comment that the end-user should inform the property owner about the proposed copper service withdrawal (where relevant);

173.3 The TCF submitted that providing notices to property owners "is fraught for a number of reasons". The TCF noted that the industry does not know whether an end-user is a tenant or property owner, and that accessing property owner information is difficult.⁹³

174. However, Spark and the Auckland District Law Society noted that it is important that property owners are informed about activity on their properties.⁹⁴ Spark did, however, say that reaching property owners is a challenge.

⁹⁰ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 63.

⁹¹ NZ Telecommunications Forum "Submission on draft Copper Withdrawal Code" (17 July 2020) para 4.1

⁹² Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 87, 88.

⁹³ NZ Telecommunications Forum "Submission on draft Copper Withdrawal Code" (17 July 2020) para 4.8-4.9.

⁹⁴ Spark "Copper Withdrawal Contact Code – Spark Submission" (17 July 2020) para 15; ADLS Technology and Law Committee "Submission on draft Copper Withdrawal Code" (6 July 2020) para 3.5.

175. We also received submissions on the RSP Notice and RFSP Notice:

175.1 RSPs generally objected to the draft decision that the RSP Notice be provided to the RSP at the same time as the First Notice is provided to the end-user:

175.1.1 Vodafone noted that it “will know about planned withdrawal at the same time as our customers. That means our front line staff may not have had sufficient training, we may not have enough staff to answer calls or process orders, we may not get appropriate messages to our customers about the change until well after the process begins or we may not have enough modems to allow withdrawal to happen”. Vodafone submitted that Chorus should be required to provide RSPs “with at least two years of forecasts of the size and location of planned copper withdrawal”, and the RSP Notice at least two months prior to the end-user receiving a First Notice;⁹⁵

175.1.2 Spark also submitted that Chorus should provide forecasts of copper withdrawal (a rolling 12 month forecast) and give the RSP Notice at least three months (and preferably six months) before the end-user receives the First Notice;⁹⁶

175.1.3 Chorus disagreed with these RSPs’ submissions, noting that it has strong incentives to work with RSPs to facilitate withdrawal projects.⁹⁷ Chorus also noted that withdrawal is likely to be centred around individual cabinets (which serve around 200 lines each), rather than large geographic areas.⁹⁸

176. Finally, Chorus submitted that the CWC should permit it to deliver end-user notices via email or letter-drop, as well as by posted mail. Chorus noted that mail will not always be practicable or the preferred method by which an end-user receives communications.⁹⁹ Most consumer respondents felt that notice by the post was not sufficient, and that a follow up phone call or face-to-face interaction is needed. One submission from an individual consumer noted that mail is “not good enough, especially when taking away a lifeline”. Disabled Persons Assembly NZ noted that “some disabled people may not be able to either access hard copy letters or fully understand them”, and suggested that “Chorus makes at least two attempts to talk to a resident or homeowner where withdrawal of the copper service is planned”.¹⁰⁰

Our decisions and reasons

Notices to end-users

⁹⁵ Vodafone "Vodafone New Zealand submission on Draft Copper Withdrawal Code" (17 July 2020) page 3.

⁹⁶ Spark "Copper Withdrawal Contact Code – Spark Submission" (17 July 2020) para 22.

⁹⁷ Chorus "Cross-Submission on draft copper Withdrawal Code" (7 August 2020) para 11.

⁹⁸ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 18.

⁹⁹ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) paras 67-70.

¹⁰⁰ Disabled Persons Assembly NZ "Submission on draft Copper Withdrawal Code" (2 July 2020) page 2.

177. Submissions generally supported our draft decision in relation to notices to end-users. We have therefore retained the requirement for Chorus to give notice of the proposed withdrawal of the copper service to the end-user:
- 177.1 no later than six months before the proposed date of withdrawal (ie, the First Notice);
 - 177.2 at three months before the proposed date of withdrawal (ie, the Further Notice), only if the end-user's copper service is still being supplied; and
 - 177.3 at 20 working days before the proposed date of withdrawal (ie, the Final Notice), only if the end-user's copper service is still being supplied.
178. Under the CWC, Chorus is not permitted to withdraw a copper service before the proposed date of withdrawal (unless the minimum requirements relating to end-users who order a retail fibre service, or who choose to disconnect their copper service, are satisfied).
179. The requirement for Chorus to provide these notices will ensure that end-users receive fair warning of Chorus's proposal to withdraw copper services, and have sufficient time to understand the options available to them and to make a choice about an alternative service. We note that some consumers expressed a preference to receive notices from their RSP. However, the requirement in Schedule 2A is for Chorus to give these notices. In any event, it is likely that RSPs will contact their end-users as RSPs will also receive an equivalent of the First Notice.
180. We also note the feedback from some consumers that notices via mail may not be adequate. We consider that the length of the notice period, the method of giving notice and the incentives on RSPs to contact their customers means that consumers will be adequately contacted (both by Chorus and by their RSP) well in advance of copper withdrawal occurring. We do not consider that imposing additional requirements on Chorus to make attempts to talk to the consumer, or, for example door knock, is appropriate at this time.
181. The CWC provides that the notices may be addressed to the premise to which the copper service is supplied – that is, the notices do not need to be addressed to the name of the particular end-user of the service. This rule has the benefit of simplicity, as Chorus will not require any additional information in order to address its notices. It also provides for clearer lines of communication, since personalised contact with end-users will be reserved for RSPs.
182. We acknowledge that this generic addressing of the notices may reduce the chances that the end-user reads the notices. However, overall, we consider that the rules in the CWC will ensure the end-users receive adequate notice of the proposed withdrawal of a copper service. This is because:
- 182.1 Chorus must provide three notices to the end-user, which increases the likelihood that the end-user will receive notice; and

- 182.2 RSPs will have a strong incentive to contact the end-user (ie, the RSP's customer) following the First Notice, in order to move the end-user on to another service offered by the RSP.
183. In any event, we intend to monitor the operation of the CWC to understand whether end-users are receiving adequate notice of the proposed withdrawal of a copper service. If our monitoring suggests there is not adequate notice, we will consider amending the CWC.
184. As Chorus will be permitted to generically address the end-user notices, it will no longer require information from RSPs about end-users (eg, the end-user's name and contract details). This means that the requirement in the CWC that RSPs provide sufficient information to Chorus for the purpose of Chorus giving notice to the end-user is no longer needed, and we have removed this from the CWC.
185. We have also made a change to how Chorus must deliver the notices to end-users. In the draft CWC, Chorus was required to deliver the notices, at a minimum, by posted mail. The CWC provides that Chorus must, in the first instance, deliver the notices by posted mail. However, where Chorus has been unable to deliver a notice by postal operator, it must deliver the notice by a physical letter-drop to the premises. We understand that there will be some instances where delivery by physical mail-drop is possible in circumstances where delivery by postal operator is not. This should result in more end-users receiving notices of proposed copper withdrawal than if delivery by postal operator was solely relied on.
186. Finally, we have decided to remove the requirement that Chorus also provide the First Notice to the owner of the property at which the end-user resides. Following further research, we accept the submissions that information about who the property owner is (and whether that person is different to the end-user) is too difficult for Chorus to obtain to meet this requirement.
187. However, we have added a requirement to the CWC that the end-user notices must prompt end-users to contact their landlord, property owner, body corporate or bill payer to advise them of copper withdrawal and discuss provision of a fibre service. This will help to ensure that 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.

Notice to RSPs

188. The CWC retains the requirement to give notice of the proposed withdrawal of a copper service to the RSP, at the same time as the First Notice to the end-user (ie, the RSP Notice). The CWC requires RSP Notices to be provided in an easily discernible manner and form (eg, in a form that is appropriate for business-to-business communication).
189. We note RSPs' submissions that they should receive the notice of proposed withdrawal before the end-user receives it. However, providing the RSP Notice at the

same time as the First Notice gives the RSP six months to support the end-user's transition to a new telecommunications service. We consider this is sufficient.

190. We have also retained our draft decision to not require Chorus to provide copper withdrawal forecasts to RSPs. We note RSPs' concerns about the possibility of large-scale withdrawals of copper services, which could place a significant burden on RSPs. However, Chorus has communicated to the Commission and the industry that withdrawal is likely to be incremental, being centred around individual cabinets. This means that copper withdrawal volumes are likely to be around the level of business as usual migrations from copper to fibre. We also note that RSPs will have at least six months' notice for each instance of copper withdrawal, which should give them sufficient time to manage migrations to new telecommunications technologies.

Notice to RFSPs

191. We did not receive any submissions disagreeing with our draft decision that Chorus must give notice of the proposed withdrawal of a copper service to the RFSP no later than one month before Chorus gives the First Notice to the end-user. We have therefore retained this requirement in the CWC.
192. The CWC requires RFSP Notices to be provided in an easily discernible manner and form (eg, in a form that is appropriate for business-to-business communication).

Continuation Notices

193. Chorus submitted that the CWC "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)".¹⁰¹
194. We agree that this clarification would be useful. We have therefore included a requirement in the CWC that Chorus must provide a Continuation Notice to the end-user if it decides that it will continue to supply the copper service. The Continuation Notices must be provided as soon as reasonably practicable after Chorus decides to continue to supply the service (but no later than 20 working days before the expiry of the notice period). Chorus must also inform the end-user's RSP and the RFSP at the same time.

Summary of notices

195. Table 5 summarises the notices that are required to be provided and their scheduling.¹⁰²

¹⁰¹ Chorus "Submission on draft Copper withdrawal code" (17 July 2020) para 90.

¹⁰² We discuss requirements to provide Confirmation Notices and Continuation Notices in other circumstances later in this Reasons Paper.

Table 5 – Notices to be provided and their scheduling

Timeframes	Notice	End-user	RSPs	RFSP
No later than seven months prior to proposed copper withdrawal date	RFSP Notice			✓
No later than six months prior to proposed copper withdrawal date	RSP Notice		✓	
No later than six months prior to proposed copper withdrawal date	First Notice	✓		
Three months prior to proposed copper withdrawal date (if the end-user's copper service is still being supplied)	Further Notice	✓		
20 working days prior to proposed copper withdrawal date (if the end-user's copper service is still being supplied)	Final Notice	✓		
As soon as reasonably practicable after Chorus decides to continue to supply the copper service (but no later than 20 working days before the expiry of the notice period)	Continuation Notice	✓	✓	✓

Chorus's request for shorter notice periods in limited circumstances

196. Chorus submitted that there will be “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 (eg, lines companies) undertaking urgent work on shared infrastructure”.¹⁰³
197. Chorus suggested that the CWC “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”.
198. In its cross-submission, Spark said that it is “not convinced there will be many situations in which Chorus needs to urgently remove or replace its copper network”. It suggested that “Chorus will work quickly to immediately restore the status quo using existing technologies, even if just on a temporary basis”.¹⁰⁴ Spark acknowledged, however, that there may be a “small number of isolated situations where urgent, immediate replacement of technology is required due to unforeseen events”. Spark suggested that, for these exceptional situations, the CWC provide for an expedited process for copper withdrawal.
199. We have decided not to provide for shorter notice periods or an expedited process for withdrawal in the CWC. It is unclear from Chorus's submission how likely these

¹⁰³ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 66.

¹⁰⁴ Spark "Cross-Submission on draft Copper Withdrawal Code" (7 August 2020) paras 15-22.

types of events are to occur in the future and their likely frequency. Spark has indicated that it considers these events are likely to be rare. Nor is it clear that these types of events cannot be managed under the normal copper withdrawal process in the CWC. Chorus has said that it would be expensive to reinstate the copper infrastructure, although Spark has suggested that Chorus may be able to restore the status quo using existing technologies.

200. In these circumstances, we do not think there is a sound justification for providing for shorter notice periods or an expedited process. This is particularly the case where such modified processes may weaken the consumer protections offered by the CWC.
201. However, we accept that there is the possibility that events will occur in the future which significantly damage copper network infrastructure and would be expensive to remedy especially when copper services are ultimately being withdrawn. If such an event does occur, Chorus may contact the Commission to discuss how the event may be addressed in the context of the CWC. As part of this, we may consider whether it is necessary to amend the CWC on a limited basis to enable the efficient withdrawal of copper services.

Requirement to provide information

202. Schedule 2A provides that the CWC must include the following two minimum requirements relating to information that Chorus must provide to end-users:
 - 202.1 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
 - 202.2 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.
203. The CWC meets the requirements in Schedule 2A through two obligations:
 - 203.1 A requirement for Chorus to provide information to end-users; and
 - 203.2 A requirement for Chorus to make information generally available to the public.
204. We discuss these requirements below.

Chorus must provide information to end-users

Positions in the draft CWC

205. The draft CWC provided that certain information must accompany the First Notice, Further Notice and Final Notice to end-users.
206. The information to accompany the notices was as follows:
 - 206.1 notice of the proposed date of withdrawal of the copper service;

- 206.2 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;
 - 206.3 an overview of the CWC and its purpose;
 - 206.4 an outline of the copper withdrawal process for the end-user, including the number and timing of subsequent notices (ie, Further Notice; Final Notice);
 - 206.5 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:
 - 206.5.1 switching to a retail fibre service;
 - 206.5.2 switching to a retail service other than fibre;
 - 206.5.3 terminating their copper service without switching to another retail service;
 - 206.5.4 moving out of the premises to which the copper service was being supplied;
 - 206.5.5 not choosing any of the above options (ie, 'doing nothing');
 - 206.6 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 (including an explanation of the consequences if the end-user does not cooperate with the installation process);
 - 206.7 if Chorus provides fibre services in the area where the end-user resides, information about the fibre services available to the end-user;
 - 206.8 how to order a fibre service;
 - 206.9 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;
 - 206.10 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
 - 206.11 an outline of the dispute resolution options available to the end-user.
207. The draft CWC also included a requirement that the above information must accompany the First Notice to the property owner.

Submissions

208. Consumer feedback indicated that end-users want information to make informed decisions about the telecommunications service available to them after their copper service is withdrawn. This included other telecommunication services options, information on the Commission 111 Contact Code, network performance data, costs that end-users may face (outside of the installation of the connection), information on the impact of medical and property alarms, and information on dispute resolution and consumer rights.
209. Consumer feedback suggested a concern that some end-users would not be able to understand the information that is being provided to them. It was recommended that the information should include a prompt for end-users to contact their RSP if they do not understand the information. One submitter suggested that there should be information about where end-users can get additional support during the copper withdrawal process (eg, Citizens Advice Bureau).¹⁰⁵
210. Chorus submitted that the information that is required to be provided with the end-user notices “should be narrowed, with only key information required, and end-users be referred to our website for more detailed information and scenarios”.¹⁰⁶ It said that the list of information “is unreasonably long and likely to result in confusion”, and noted that “[j]ust the list of information proposed for inclusion takes up nearly a page and a half in the draft [CWC]”.
211. Chorus suggested that the key information should cover the following:
- 211.1 notice of the proposed date of withdrawal of the copper service;
 - 211.2 a brief explanation of the copper withdrawal process;
 - 211.3 the need to make alternative arrangements, such as battery backup, to maintain the fibre service in the event of a power failure; and
 - 211.4 information about the fibre services available and how to order a fibre service.
212. Chorus also disagreed with the requirement to provide information to end-users about the different retail telecommunications options available to the end-user. It said that “[a]s 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”.
213. The TCF submitted that “the breadth of information Chorus must provide in the end-user’s notice in our view will not support a good customer experience. The long list of information to be included will be overwhelming for the end-user to consider and rather should be a simple and straightforward process. The Code should allow for,

¹⁰⁵ Commerce Commission “Summary of consumer feedback on the draft Copper Withdrawal Code” (6 August 2020) Page 9.

¹⁰⁶ Chorus “Submission on draft Copper Withdrawal Code” (17 July 2020) paras 78-82.

and support, existing BAU process and experience supported by existing codes and documents such as the TCF Fibre Installation Code and the UFB Reference Offers”.¹⁰⁷

214. Vodafone submitted that it is “concerned that Chorus will attempt to use the copper withdrawal notifications as a way to unduly influence customers towards fibre rather than alternative network solutions”.¹⁰⁸ Vodafone noted that “Chorus has increasingly shown a desire to market more directly to customers”.¹⁰⁹
215. Similarly, Spark submitted that “[c]ommunications from Chorus need to be competitively neutral and limited to the withdrawal process only. If Chorus mentions that fibre is available to the customer they must also mention that other technologies, like fixed wireless broadband, are available. Chorus should not mention or promote specific retail providers or offers”.¹¹⁰
216. A joint cross-submission from Enable, Northpower and Ultrafast Fibre, submitted that “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”.¹¹¹
217. Securely (a medical and home alarm monitoring business) submitted that “[o]ften alarms are overlooked by clients when they change to fibre, until after the fibre has been installed and the alarm is no longer operational. As these alarms are sometimes life critical for clients, such as medical, panic or duress alarms, organisations, other than the individual consumer, need access to information about the copper withdrawal for planning and changing out equipment types that are operating on existing landline services and will be impacted”.¹¹²

Our decisions and reasons

218. We have largely retained our draft decisions in relation to the requirement for Chorus to provide information to end-users, subject to some changes which we discuss further below.
219. We note Chorus’s and the TCF’s submissions that we should narrow the set of information that is required to be provided. However, we consider that the information that we require Chorus to provide to end-users is important information, and is necessary to enable end-users to understand the copper withdrawal process and make decisions about alternative telecommunications services.

¹⁰⁷ NZ Telecommunications Forum "Submission on draft Copper Withdrawal Code" (17 July 2020) para 4.3.
¹⁰⁸ Vodafone "Vodafone New Zealand submission on Draft Copper Withdrawal Code" (17 July 2020) page 5.
¹⁰⁹ Vodafone "Vodafone New Zealand submission on Draft Copper Withdrawal Code" (17 July 2020) page 5.
¹¹⁰ Spark "Copper Withdrawal Contact Code – Spark Submission" (17 July 2020) para 14.
¹¹¹ Enable Networks Limited, Northpower Fibre Limited, Northpower LFC2 Limited, Ultrafast Fibre Limited "Cross-Submission on draft Copper Withdrawal Code" (6 August 2020) para 3.3.
¹¹² Securely "Submission on draft Copper Withdrawal Code" (17 July 2020) para 4.

220. We have made the following key changes to the set of information that must be provided:
- 220.1 We consider that providing information about fibre services only is consistent with the requirement in Schedule 2A to provide the end-user with information about the fibre services available to the end-user, and have provided for this in the CWC. We also note that RSPs will be able to discuss the different options available to the end-user following the First Notice;
- 220.2 We have included a requirement that Chorus must not promote or market fibre services (beyond informing the end-user of availability of fibre services at the premises) when it provides information to end-users. The notices to end-users and the information that accompanies them are intended to protect the end-user by giving them sufficient information about the copper withdrawal process. Marketing or promotion of fibre services in the notices (such as special offers or incentives to the end-user to switch to fibre or comparisons between fibre and other potential technologies) could interfere with that purpose. Chorus may choose to carry out marketing and promotion of fibre through other means, but should not do so via the notices;
- 220.3 We have added two pieces of information that Chorus must provide to end-users:
- 220.3.1A prompt for the end-user to discuss with their RSP the copper withdrawal process and their options; and
- 220.3.2A prompt for the end-user to discuss, where applicable, with their ancillary service provider (eg, an alarm service provider) what impact Chorus's proposed withdrawal of the copper service may have on their ancillary service;
- 220.4 The draft CWC required Chorus to explain the consequences of various choices available to the end-user (eg, the consequences of terminating their copper service without switching to another retail service). We have clarified in the CWC that this must be a statement that choosing any of those options will result in permanent disconnection from the copper service.

Chorus must make information generally available to the public

Positions in the draft CWC

221. The draft CWC provided 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).
222. Under the draft CWC, the information that Chorus was to make available was as follows:

- 222.1 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;
- 222.2 an overview of the CWC and its purpose;
- 222.3 how to order a fibre service;
- 222.4 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 for an end-user if the end-user does not cooperate with the installation process;
- 222.5 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; and
- 222.6 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).

Submissions

- 223. Many consumers endorsed an awareness campaign informing people how to prepare for a power cut and providing information for vulnerable consumers in relation to the Commission 111 Contact Code. Some consumers suggested that providers of medical alarms that work through a landline should be informed of the copper withdrawal process.
- 224. One consumer noted that some consumers might struggle to understand the changes that are occurring with copper withdrawal, and suggested that Chorus should consider establishing a unit to focus on helping consumers with greater needs.
- 225. Securely made a submission discussing the importance of end-users understanding how copper withdrawal may affect end-users' medical and property alarms. Securely suggested information should be made available on the areas that are to be affected by copper withdrawal and the anticipated date withdrawal will occur. It suggested that a map should be published showing the boundaries of the affected areas.
- 226. A joint submission from New Zealand Police, Fire and Emergency New Zealand, St John New Zealand and Wellington Free Ambulance suggested that the public needs to be made aware that the whole telecommunications environment is changing "and that they will need to plan and prepare for any transmission disruptions in the event of power failure". The submission said there would be value in requiring Chorus to explain to the public that "it will not be possible to reach 111 emergency services if

there is a break in the fibre between the caller and the data centre, until the fibre transmission is restored”.¹¹³

227. Chorus submitted that, while it is “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”. It noted that it has only “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 RSP”.¹¹⁴
228. Chorus also submitted that “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”. Chorus noted that it has “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”.¹¹⁵

Our decisions and reasons

229. We have largely retained our draft decisions in relation to the requirement for Chorus to make information generally available to the public, subject to three key changes.
230. First, we have added a requirement that Chorus must publish and maintain on its website a map that identifies any local geographical area (eg, a street or copper cabinet area) that is an area within which Chorus has provided a First Notice to an end-user. It must also publish an associated downloadable ESRI GIS shapefile (ie, the Environmental Systems Research Institute's data storage file format for Geographic Information System software, which stores the location, shape, and attributes of geographic features). The CWC requires that Chorus must update the map and shapefile for each subsequent First Notice within ten working days of the First Notice being given to the end-user. This new requirement responds to Securely’s submission discussed above that information should be made available on the areas that are to be affected by copper withdrawal.
231. Making this information available will enable ancillary service providers – including alarm service providers – to proactively monitor which of their customers are being affected by copper withdrawal, and to assist their customers through the process. This should reduce the chance that an end-user will fail to have their needs met as they transition to new technologies. We also consider that this requirement will not

¹¹³ New Zealand Police, Fire and Emergency New Zealand, St John New Zealand and Wellington Free Ambulance "Submission on draft Copper Withdrawal Code" (17 July 2020) at pages 1-2.

¹¹⁴ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) paras 91-92.

¹¹⁵ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) paras 93-94.

be a significant burden on Chorus, as we understand that Chorus possesses this information and is experienced in the production of similar maps and shapefiles.¹¹⁶

232. Second, we have removed the requirement that Chorus make the information available through customer service representatives over the phone. Instead, the CWC provides that Chorus must make the information available through other avenues, where appropriate and reasonable. We accept Chorus's submission that, unlike RSPs, it does not have a large customer service team that can deal with regular enquiries from end-users about copper withdrawal.
233. Third, we have amended the requirement to make the information available on Chorus's website, such that it must be provided on its website in a manner consistent with the NZ Government Web Standards.¹¹⁷ This will ensure the information is accessible. We have made this change to be consistent with the web publication requirements in the Commission 111 Contact Code.
234. We have retained the requirement for Chorus to make reasonable efforts to draw end-user's attention to the information it must make public (eg, through advertising). The provision gives some discretion to Chorus as to how it achieves this, and advertising may be one of multiple methods.
235. Finally, we note:
- 235.1 the joint submission from the emergency services organisations. We consider that these points have been addressed through the Commission 111 Contact Code, which we published on 17 November 2020; and
- 235.2 the suggestion that Chorus establish a unit to focus on helping consumers with greater needs. This is a matter for Chorus to consider.

Requirement for Commission 111 Contact Code to be in force

236. Schedule 2A provides that the CWC must include a minimum requirement that a Commission 111 Contact Code must be in force.¹¹⁸
237. We did not receive any submissions on the requirement in the draft CWC that the Commission 111 Contact Code must be in force. We have therefore retained this requirement in the CWC.
238. As we discussed earlier in this Reasons Paper at paragraph 29, 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.

¹¹⁶ For example, Chorus produces a broadband availability map on its website. See:

<https://www.chorus.co.nz/tools-support/broadband-tools/broadband-map>.

¹¹⁷ <https://www.digital.govt.nz/standards-and-guidance/nz-government-web-standards/>

¹¹⁸ Clause 1(3)(g) of Schedule 2A of the Act.

239. The Commission 111 Contact Code was published on 17 November 2020. Most provisions of the Commission 111 Contact Code come into force on 1 February 2021. However, the provisions relating to the requirement to provide appropriate means to vulnerable consumers come into force on 1 August 2021. For the purposes of the CWC, the Commission 111 Contact Code will therefore be considered to be in force on 1 August 2021. As discussed earlier in this Reasons Paper, the CWC comes into force on 1 March 2021 and this is the date from which Chorus will be able to start providing First Notices to end-users in areas where Chorus is the local fibre company.
240. There may be some instances where Chorus is permitted to withdraw a copper service under the CWC before the Commission 111 Contact Code is fully in force. For example, an end-user could choose to have their copper service disconnected after having their fibre connection installed. In these circumstances, we encourage RSPs to ensure that these end-users are aware that their new telecommunications service may not work in a power failure, and that vulnerable consumers will be entitled to receive an appropriate means to contact 111 from 1 August 2021 onwards.

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

241. In this section, we provide our decisions and reasons for the further 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:
- 241.1 a requirement for a connection to a fibre service to be installed;
 - 241.2 a requirement for the fibre service to provide similar functionality to the copper service that is to be withdrawn;
 - 241.3 a requirement for an anchor service (or commercial equivalent) to be available (if an anchor service has been declared); and
 - 241.4 a requirement to send Continuation Notices (in circumstances where Chorus is required to continue to supply a copper service).

Requirement for connection to be installed

242. Schedule 2A provides that the CWC must include a minimum requirement that an end-user must be able to:
- 242.1 access a fibre service; and
 - 242.2 have a connection to the fibre service installed:
 - 242.2.1 within a reasonable timeframe; and
 - 242.2.2 whether the connection is standard or non-standard, at no cost to the end-user.

Positions in the draft CWC

243. The draft CWC provided 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.
244. However, the draft CWC also provided 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.
245. To provide clarity, the draft CWC also provided that:
- 245.1 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;
- 245.2 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.
246. As required by Schedule 2A, the draft CWC also specified that the connection must be installed at no cost to the end-user, whether the connection is standard or non-standard.

Submissions

247. Chorus submitted that it “disagree[s] 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”.¹¹⁹
248. Chorus considered that “[t]he Commission’s use of the phrase ‘must have a connection to a fibre service installed in clause 35 [of the draft CWC] 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 [CWC]. It pushes out copper withdrawal beyond the scope of what is in Chorus’s control and will create a significant barrier to withdrawal”.¹²⁰ It noted that it frequently encounters situations where a fibre installation is impeded because of third parties, and that “[j]ust one of these situations on a cabinet we are seeking to withdraw will prevent any realisation of savings from decommissioning that particular cabinet”.¹²¹

¹¹⁹ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 42.

¹²⁰ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 44.

¹²¹ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 47.

249. Chorus proposed 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”.¹²² Chorus suggested that, alternatively, the threshold under which Chorus should be required to retain a copper service due to the objection of third parties should be set much higher, including accounting for the following:¹²³
- 249.1 the CWC should only recognise objections from genuinely unrelated third parties, ie, not from third parties who are associated with the end-user or their landlord, such as trusts and beneficiaries, and co-owners of properties;
 - 249.2 end-users must prove they have exercised all legal rights in relation to the property (for example, any easement rights); and
 - 249.3 a copper service can be withdrawn where an end-user can access an alternate telecommunications service, such as fixed wireless.
250. A joint cross-submission from Enable, Northpower Fibre and Ultrafast Fibre disagreed with Chorus’s 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”.¹²⁴ The cross-submission also proposed that Chorus be permitted to withdraw a copper service “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”.¹²⁵
251. Chorus and the TCF noted that the requirement for a connection to be installed before the copper service is withdrawn could be impractical if it was interpreted too narrowly. This is because, as a technical matter, it is often necessary to disconnect the copper service to facilitate the installation of the fibre connection.¹²⁶ Chorus and the TCF suggested amendments to the CWC to address this issue.
252. Chorus submitted that the “process by which installations would be confirmed by an end-user as outlined in the draft [CWC] at clause 37 is unnecessary and would potentially require a specific alternate process to be developed for situations where the [CWC] had been invoked. Therefore, we propose that the Commission remove

¹²² Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 51.

¹²³ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 53.

¹²⁴ Enable Networks Limited, Northpower Fibre Limited, Northpower LFC2 Limited, Ultrafast Fibre Limited "Cross-Submission on draft Copper Withdrawal Code" (6 August 2020) para 2.1.

¹²⁵ Enable Networks Limited, Northpower Fibre Limited, Northpower LFC2 Limited, Ultrafast Fibre Limited "Cross-Submission on draft Copper Withdrawal Code" (6 August 2020) para 2.3

¹²⁶ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) paras 96-97; NZ Telecommunications Forum "Submission on draft Copper Withdrawal Code" (17 July 2020) paras 6.3-6.4.

this requirement and rely on existing BAU processes to be used to confirm when a fibre installation has taken place”.¹²⁷

253. Chorus also submitted that the way the CWC is drafted might mislead end-users about the circumstances in which Chorus may charge for a fibre connection. Chorus suggested that the CWC be clear that the minimum requirement that a connection be installed at no cost is in relation to standard or non-standard connections, which are limited in the Act to aerial installations and not, for example, to underground installations.¹²⁸
254. Consumer feedback indicated that consumers understood that the fibre connection would be installed at no cost, but were concerned about other costs they may face, such as higher prices for new plans and the costs of associated equipment such as modems.
255. Chorus noted that it was comfortable with the requirement for the RFSP to make “all reasonable efforts” to install a fibre connection, but disagreed with the requirement that it make at least one site visit to the end-user’s premises. It said that “[t]urning 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 cooperate with the process to have a fibre connection installed”.¹²⁹ The joint cross-submission from Enable, Northpower Fibre and Ultrafast Fibre supported Chorus’s submission.¹³⁰
256. Finally, Chorus said that it is “concerned about the silence in the [CWC] 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 in that area, including in RFSP areas”.¹³¹ Chorus suggested that RFSPs be required to provide information to Chorus as necessary to support copper withdrawal, including providing confirmation to Chorus that the minimum requirements are able to be met for end-users in the RFSP’s area.

Our decisions and reasons

257. We have retained our decision that, if an end-user orders a retail fibre service, it is a minimum requirement that a connection to a fibre service is installed before Chorus may stop supplying the copper service. 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.

¹²⁷ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 101.

¹²⁸ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) paras 54-55.

¹²⁹ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) paras 98-99.

¹³⁰ Enable Networks Limited, Northpower Fibre Limited, Northpower LFC2 Limited, Ultrafast Fibre Limited "Cross-Submission on draft copper Withdrawal Code" (6 August 2020) para 5.1.

¹³¹ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) paras 60-61.

258. Chorus’s view is that this decision “goes well beyond the requirements in the Act of being ‘able to have’ such a service installed”.¹³² We disagree. We consider that our decision is consistent with the Act, and in particular clause 1(3)(a) of Schedule 2A.
259. Clause 1(3)(a) provides that, before Chorus is permitted to stop supplying a copper service:
- (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 timeframe; and
 - (B) whether the connection is standard or non-standard, at no cost to the end-user
260. Under Chorus’s interpretation, an end-user would be considered to be “able to have” a connection installed in circumstances where the end-user could not have a connection installed due to an impediment such a third-party property access dispute. Similarly, Chorus’s interpretation would mean that an end-user would be considered to be able to “access a fibre service” despite the end-user not being able to have a fibre connection installed. We do not consider this to be a correct reading of the Act.
261. Our view is that the requirement that a connection to a fibre service is installed before Chorus may stop supplying a copper service is consistent with clause 1(3)(a) and the consumer protection focus of the CWC. This is because the requirement will ensure that the end-user is able to access a fibre service and is able to have a connection to the fibre service installed within a reasonable timeframe. It will mean that end-users have certainty that they will be able to continue to access a fixed line service.
262. 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.
263. We also note that there are two legislative regimes in place that will likely reduce the number of instances of a fibre connection being blocked due to third-party issues:
- 263.1 There is a statutory right of property access for the purpose installing fibre connections under the Act.¹³³ The right of access is limited to shared property and lower impact installations;

¹³² Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 44.

¹³³ Subpart 3 of Part 4, Telecommunications Act.

- 263.2 The Residential Tenancies Act 1986 was amended in August 2020 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” in certain circumstances.¹³⁴ This amendment comes into force in February 2021.
264. Chorus also submitted that, should the requirement to install a fibre connection be retained, the threshold under which Chorus should be required to retain a copper service due to the objection of third parties should be set much higher. In response to this submission, we have provided in the CWC that Chorus will not need to satisfy the requirement to install fibre if the end-user does not take reasonable steps available to them to resolve the third-party issue. This would include, for example, seeking their landlord’s permission to have a fibre connection installed under section 45B of the Residential Tenancies Act 1986. This should help to reduce the instances of third parties blocking fibre installation, and recognises that end-users have a part to play in the process.
265. We note that a similar provision was included in the draft CWC, such that Chorus could withdraw a copper service if the end-user does not cooperate with the process to have a connection installed. This provision has been retained in the CWC.
266. Finally, we have made a number of smaller changes to the CWC in response to submissions, as follows:
- 266.1 We have included a provision that provides that Chorus will not be deemed to have stopped supplying a copper service to an end-user if the connection to the copper service has been ceased for the sole purpose of facilitating the installation of a connection to a fibre service. This responds to Chorus’s and TCF’s point that, as a technical matter, it is often necessary to disconnect the copper service to facilitate the installation of the fibre connection;
- 266.2 In relation to the requirement to install a connection at no cost, we have added wording to the definition of standard and non-standard connections that “for the avoidance of doubt, the connection excludes all methods of installation other than aerial installation”. We note consumers’ concerns about costs other than the installation that they may face as part of the process. While we do not regulate the retail prices of fibre or other services, the prices of certain of Chorus’s wholesale fibre services will be regulated under Part 6 of the Act from 1 January 2022 onwards;
- 266.3 We have amended the clause which details when a connection will be deemed to have been installed in response to Chorus’s submission. Based on Chorus’s suggested drafting, the clause now provides that a connection will be deemed to be installed “at the point in time the RFSP determines

¹³⁴ <https://www.beehive.govt.nz/release/rental-reforms-step-closer-introduction-residential-tenancies-amendment-bill>.

installation of the connection to the fibre service is complete, in accordance with standard business processes for such determination”;

- 266.4 The CWC provides that the requirement for a connection to be installed does not need to be satisfied if the end-user fails to cooperate with the process to have the connection installed, as long as all reasonable efforts have been made by the relevant fibre service provider to install a connection. We have removed from the definition of “all reasonable efforts” the requirement that the RFSP make at least one site visit to the end-user premises, given the safety concerns raised by Chorus and the other LFCs.
267. We have not included a requirement for RFSPs to provide information to Chorus to support copper withdrawal. Our view is that Chorus will be able to obtain the information it requires from other sources. For example, Chorus will understand that a fibre connection has been installed in an RFSP area when it receives a request to terminate the copper service. And information on the functionality offered by RFSP fibre services (including whether a commercial equivalent to an anchor service is available) should be publicly available on RFSPs’ websites.

Requirement for similar functionality provided by fibre service

268. Schedule 2A 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.
269. The term ‘legacy services’ is defined in Schedule 2A as ‘the services (if any) specified in the CWC as legacy services’.

Positions in the draft CWC

270. The draft CWC included a requirement that the minimum functionality that must be available over a fibre service is:
- 270.1 voice services; and
 - 270.2 broadband services.
271. The draft CWC also defined legacy services as services that rely on functionality provided over copper services and which are unable to be provided over a fibre service. The legacy services are:
- 271.1 pulse (decadic) dialling;
 - 271.2 incidental power provided by the access network/central exchange office; and
 - 271.3 services which operate outside of the traditional voiceband frequencies of the copper service.

Submissions

272. We did not receive any material submissions on our draft decision that the minimum functionality that must be provided over a fibre service is voice services and broadband services.
273. The TCF submitted an amended definition of “legacy services”, which it said is necessary to capture the services which are legacy services.¹³⁵ The TCF also submitted that the Commission should “provide a non-exhaustive list on its website of the types of devices (eg faxes, dial up EFTPOS machines, some types of security alarms, some types of medical alarms, voiceband modems etc) that it considers would be caught by this definition to help consumers understand what it means for them in practice”.

Our decisions and reasons

274. Given we received no material submissions on our draft decision that the CWC includes a minimum requirement that the minimum functionality that must be available over a fibre service are voice services and broadband services, we have retained the decision.
275. Following the TCF’s submission, we have amended the definition of legacy services. It now provides:

Legacy services a voice, broadband or data service that relies on functionality provided only over a copper access network, and for the avoidance of doubt includes any of the following:

- (a) a voice service or device (eg facsimile, dial-in alarm or similar) if its operation is dependent on functionality incompatible with one or more of the following:
 - a. G.711a/G.711u Voice Codec with a packetisation rate of 10ms;
 - b. New Zealand PSTN tones and cadences as set out in Telecom Network Advisory Specification TNA 102; or
 - c. Incidental power provided from an ATA Port on a regulated service providers' fibre ONT; and
- (b) a service or device that depends on one or more of the following:
 - a. frequencies above 3400Hz;
 - b. in-band call signalling and control in the 300-3400Hz voiceband other than:
 - i. DTMF (RFC2833/RFC4733);
 - ii. supervisory tones;
 - iii. Calling Line Identification (CLI);
 - iv. message waiting indication; and
 - c. out-of-band call signalling and control below 300Hz other than:
 - i. ringing;
 - ii. DC loop call control signals;
 - iii. on-hook;

¹³⁵ NZ Telecommunications Forum "Submission on draft Copper Withdrawal Code" (17 July 2020) page 4.

- iv. off-hook;
 - v. recall (switch hook flash); and
 - d. remote incidental power provided by either:
 - i. a distribution cabinet on the copper access network; or
 - ii. the central exchange office; or
 - (c) a service or device that requires the functionality of two or more 2-wire copper circuits to operate (eg, analogue 4 wire data circuit).
276. The new definition of legacy services provides further clarity for both industry and end-users. We used a modified version of the TCF's suggested definition, as its definition would have treated some services as legacy services when, in fact, those services can be supported by fibre.
277. We have decided not to accept the TCF's recommendation that we publish a non-exhaustive list of the devices we consider are captured by the legacy services definition. Our view is that the industry is the best source of this knowledge, and therefore it is best that industry maintains such a list, if they wish.

Anchor service requirement

278. Schedule 2A 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.
279. We included this requirement in the draft CWC, and defined a "commercial equivalent" as a service (not provided by Chorus) that is substantively similar or better in terms of both the price cap set for the anchor service and the minimum non-price terms (eg, download and upload speeds) to an anchor service.
280. We did not receive material submissions on this requirement and have therefore retained the requirement, and the definition of "commercial equivalent", in the CWC.
281. As we explained in our 'Fibre Input Methodologies: Main final decisions – 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.¹³⁶

¹³⁶ Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper (13 October 2020) para 2.198.6, available at https://comcom.govt.nz/_data/assets/pdf_file/0022/226507/Fibre-Input-Methodologies-Main-final-decisions-reasons-paper-13-October-2020.pdf.

282. 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 (and adjusted annually for inflation) for equivalent products:¹³⁷

282.1 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

282.2 a voice-only fibre service.

283. 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.

284. 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.

Requirement to provide Continuation Notices

Positions in the draft CWC

285. The draft CWC included 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).

286. The Confirmation Notice was required to be sent if all minimum requirements relating to end-users who have ordered a retail fibre service have been satisfied. The purpose of the Confirmation Notice was to confirm that Chorus is no longer required to supply the copper service and the reason(s) why, and was required to be sent no later than one month after all other CWC requirements have been complied with.¹³⁸

287. The Continuation Notice was required to be sent if Chorus 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 purpose of the Continuation Notice was to confirm that Chorus is required to continue providing the copper

¹³⁷ 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 25-26.

¹³⁸ 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.

service, and must be sent no later than one month after the six-month notice period has ended.

288. Where Chorus sends a Confirmation Notice or Continuation Notice, the draft CWC also required Chorus to provide a copy of the notice to the end-user's RSP and the RFSP.

Submissions

289. Chorus submitted that:

289.1 it should not be required to send Confirmation or Continuation Notices to property owners, for the same reasons that it should not be required to send the First, Further or Final Notices to property owners;¹³⁹

289.2 it should not be required to send RSPs Confirmation Notices, as RSPs will be able to see whether an end-user has a current copper service or not in their systems. Chorus also suggested that it should be permitted to provide Continuation Notices to RSPs in a form that is more suitable for business-to-business communication;¹⁴⁰

289.3 it should not be required to provide RFSPs with Confirmation or Continuation Notices. Chorus noted that, 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.¹⁴¹

290. A cross-submission from Enable, Northpower Fibre and Ultrafast Fibre disagreed with Chorus that it should not be required to provide RFSPs with Confirmation or Continuation Notices. They noted that “[w]e 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's 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”.¹⁴²

Our decisions and reasons

Continuation Notices

291. We have retained our decision to require Chorus to provide a Continuation Notice to an end-user if Chorus has failed to comply with the minimum requirements. However, we have removed the requirement for Chorus to provide the Continuation

¹³⁹ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 89(c).

¹⁴⁰ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 89(b)

¹⁴¹ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 89(d).

¹⁴² Enable Networks Limited, Northpower Fibre Limited, Northpower LFC2 Limited, Ultrafast Fibre Limited "Cross-Submission on draft Copper Withdrawal Code" (6 August 2020) para 4.1.

Notice to the property owner, as we do not consider this is reasonably practicable for reasons outlined at paragraph 186.

292. The Continuation Notice must confirm that Chorus will continue providing the copper service, and must be sent no later than one month after the six-month notice period has ended.
293. Chorus must also provide the Continuation Notice to the end-user's RSP and RFSP. However, we have provided in the CWC that Chorus may send these notices in a form appropriate for business-to-business communication.

No Confirmation Notices

294. We have decided to remove the requirement for Chorus to provide a Confirmation Notice to the end-user in circumstances where all minimum requirements relating to end-users who have ordered a retail fibre service have been met. We consider end-users will have sufficient understanding that their copper service is being withdrawn during the process of obtaining their fibre service (ie, they have ordered it to replace their copper service).
295. We have also removed the requirement to provide a Confirmation Notice to the end-user's RSP and the RFSP. RSPs should already have access to this information in their systems, while the RFSP will already know whether a fibre connection has been installed (as for the most part they will be the installer).

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

296. As we noted earlier in this Reasons Paper at paragraphs 138 to 140, 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.

Positions in the draft CWC

297. Our draft decision was 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.
298. The purpose of the Confirmation Notice was to 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.

Submissions

299. We did not receive any material submissions on our draft decision.

Our decisions and reasons

300. We have retained our decision that, where an end-user does not order a retail fibre service or choose to have their copper service disconnected, Chorus must send the end-user a Confirmation Notice. However, we have removed the requirement to provide the Confirmation Notice to the property owner.
301. We have also decided to require Chorus to provide the Confirmation Notice to the end-user's RSP and the RFSP. We consider it beneficial to end-users that the end-user's RSP and RFSP is kept informed of progress by being advised of which end-users have received Confirmation Notices.
302. Once Chorus has provided the Confirmation Notices, it will be permitted to withdraw the copper service.¹⁴³

Other provisions in the CWC

303. The 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 the Commission and end-users may take action in relation to breaches.
304. The other provisions, which we discuss in further detail below, relate to:
- 304.1 dispute resolution for the CWC; and
 - 304.2 a requirement to disclose information and keep records.

Dispute resolution for the CWC

305. The Act does not explicitly provide for a dispute resolution scheme for the CWC. This can be contrasted with the Commission 111 Contact Code, for which section 240 of the Act specifies that the dispute resolution scheme is the 'industry dispute resolution scheme'.¹⁴⁴

Positions in draft CWC

306. The draft CWC provided that disputes under the CWC may be referred to an 'industry dispute resolution scheme', as that term is defined in section 232 of the Act. The industry dispute resolution scheme is, at this time, the TDRS, as established by the TCF.

¹⁴³ In its submission, Chorus appeared to consider that it would be permitted to withdraw the copper service at the expiry of the notice period, rather than once it had satisfied the minimum requirement to provide the Confirmation Notices (see Chorus "Submission on draft Copper withdrawal code" (17 July 2020) para 102). However, Chorus is permitted to withdraw the copper service only once it has provided the Confirmation Notices.

¹⁴⁴ Section 232 of the Act, definition of 'industry dispute resolution scheme'.

307. The draft CWC also set out a number of rules about how disputes were to be resolved under an industry dispute resolution scheme, including for example that each party to the dispute must comply with the rules of the scheme.

Submissions

308. The TCF submitted that it “supports the decision that the dispute resolution scheme for the Code is the ‘industry dispute resolution scheme’, i.e. the [TDRS]”.¹⁴⁵ Likewise, Fairway Resolution (the operator of the TDRS) supported the TDRS being the dispute resolution scheme for the CWC. It noted that “the TDRS currently deals with the majority of telecommunications disputes and is well placed to deal with CWC disputes. It is in consumers best interests for TDR to deal with CWC disputes as there may be some related fibre installation complaints that arise due to the copper withdrawal and this means consumers will only need to complain to one body”.¹⁴⁶
309. However, Utilities Disputes submitted that “a dispute resolution scheme operated by Utilities Disputes would be more appropriate for handling disputes around the withdrawal of Chorus’s legacy copper network”.¹⁴⁷
310. Chorus submitted that it “is prepared to join the telecommunications dispute resolution scheme (TDRS) in a limited capacity”, although noted that, so far, it has “been unable to reach an agreed position with the RSP members of TDRS on the terms of such limited membership”.¹⁴⁸ Chorus requested “that the Commission specifically provide for the TDRS 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)”.¹⁴⁹
311. Fairway Resolution also raised the issue of Chorus being subject to the TDRS and bound by its rules and determinations. It suggested that “the CWC could include an express provision (our recommended option) holding that Chorus will be treated as if it were a full scheme member of the TDRS (as the nominated dispute resolution scheme) for the purposes of the CWC, from the date the Code comes into force”.¹⁴⁹
312. The TCF said that the draft CWC contains requirements for dispute resolution that do not align with the current TDRS process. For example, the draft CWC allowed the end-user to bring a dispute at any time after the dispute arises, whereas the TDRS scheme rules require a dispute to be referred within 12 months of the end-user’s initial discovery of the matter in dispute. Fairway Resolution made a similar submission.

¹⁴⁵ NZ Telecommunications Forum "Submission on draft Copper Withdrawal Code" (17 July 2020) paras 7.1-7.5.

¹⁴⁶ Fairway Resolution Ltd and Telecommunications Dispute Resolution "Submission on draft Copper Withdrawal Code" (15 July 2020) page 1.

¹⁴⁷ Utilities Disputes "Submission on draft Copper Withdrawal Code" (17 July 2020) page 2.

¹⁴⁸ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) paras 103-104.

¹⁴⁹ Fairway Resolution Ltd and Telecommunications Dispute Resolution "Submission on draft Copper Withdrawal Code" (15 July 2020) page 2.

Decisions and reasons

The dispute resolution scheme for the CWC is an “industry dispute resolution scheme”

313. We have retained our draft decision to provide for a dispute resolution scheme for the CWC. 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 CWC providing for a dispute resolution scheme, for the following reasons:
- 313.1 We expect that disputes over obligations and rights under the CWC are likely to arise regularly;
- 313.2 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;
- 313.3 To provide adequate protection to end-users in these circumstances, an accessible and affordable dispute resolution scheme is necessary or desirable.
314. Our final decision is that the dispute resolution scheme for the CWC is an “industry dispute resolution scheme” (as that term is defined in s 232 of the Act). We consider that dispute resolution by an industry dispute resolution scheme – which is currently the TDRS – will be more efficient since the scheme will also handle disputes under the Commission 111 Contact Code and other telecommunications disputes.

How CWC disputes will be resolved

315. As noted by Chorus and Fairway Resolution, Chorus and other parties that are not full TDRS members need to be bound by the rules and determinations of the TDRS in relation to CWC disputes.
316. To achieve this, we have included in the CWC rules that are based on sections 240-245 of the Act. These rules provide that:
- 316.1 the dispute resolution scheme for the CWC is an industry dispute resolution scheme (see section 240(1));
- 316.2 a dispute between an end-user and a telecommunications service provider about their rights and obligations under the CWC may be referred to an industry dispute resolution scheme by any of the parties to the dispute (see section 241(1));¹⁵⁰

¹⁵⁰ A telecommunications service provider includes an RSP and local fibre company (including Chorus).

- 316.3 a determination of the TDRS on a dispute is binding on each party to the dispute (whether a scheme member or not), excluding the end-user (see section 242);
- 316.4 each party to the dispute (whether a scheme member or not) must comply with the rules of the industry dispute resolution scheme (see section 245(1));
317. We consider that including these rules avoids the issues around who is a member of the TDRS, while ensuring that all relevant parties (including parties who are not scheme members) are bound by the rules of the TDRS and its determinations. End-users are not, however, bound by determinations as they have a statutory right to enforce in the High Court, which cannot be extinguished by referral of a dispute.
318. The CWC also provides that:
- 318.1 where a dispute has been referred to an industry dispute resolution scheme or Utilities Disputes (in connection with the installation of a connection to a fibre service under the CWC, as discussed below in paragraphs 325-328), or an end-user or the Commission takes an enforcement action in relation to that end-user, the notice period set out in the First Notice is paused until the matter is resolved; and
- 318.2 a dispute may be referred at any time after the dispute arises. A dispute is defined in the CWC as arising if:
- 318.2.1 one party (either the end-user or the telecommunications service provider) has communicated to the other party a disagreement in relation to the rights and obligation of one of those parties under the CWC; and
- 318.2.2 that disagreement is not resolved within five working days.
319. Providing for a five working day period following the communication of a disagreement gives the other party a limited window within which to resolve the disagreement. We consider that this period balances the need for efficient dispute resolution for CWC related disputes, while providing appropriate incentives for the resolution of disagreements
320. A breach of the rules set out above will be a breach of the CWC, and is enforceable under section 156B and/or section 156BA of the Act.

Relationship with end-user enforcement

321. 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.
322. This is a statutory right and cannot be extinguished by the end-user choosing to refer a dispute to an industry dispute resolution scheme. However, to avoid end-users “forum shopping” between the dispute resolution process and enforcement at the High Court, the CWC provides that a dispute may not be referred to an industry

dispute resolution scheme 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 an industry dispute resolution scheme 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 an industry dispute resolution scheme, the determination will cease to be binding.

Relationship with Commission enforcement

323. Our power to take enforcement action in relation to breaches of the CWC is separate to an end-user's right of dispute. If we identify possible breaches of the CWC, and we consider that an enforcement response is warranted, we will take action. This includes our ability to serve civil infringement notices which require a pecuniary penalty of \$2000 to be paid.
324. To be clear, the referral of a dispute or its determination does not necessarily mean that we will not take an enforcement action. There may be instances, for example, where a dispute involves a potential breach of the CWC or is reflective of repeat conduct in breach of the CWC, which requires deterrence.

Relationship with Utilities Disputes

325. Utilities Disputes is an independent dispute resolution service for disputes about access to shared property for fibre connection installations.¹⁵¹
326. 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.¹⁵²
327. Subpart 3 provides for a dispute resolution scheme to be established for the purpose of resolving disputes relating to the statutory rights of access.¹⁵³ Utilities Disputes has been approved as the dispute resolution scheme.
328. 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).

¹⁵¹ <https://www.utilitiesdisputes.co.nz/>

¹⁵² Section 155A of the Act.

¹⁵³ Section 155ZG of the Act.

Requirement to disclose information and keep records

Positions in draft CWC

329. The draft CWC included a requirement on Chorus to disclose the following information to the Commission each year:
- 329.1 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
 - 329.2 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).
330. The draft CWC also required Chorus to record (but not disclose) the following information:
- 330.1 any templates of notices that form the basis of notices sent to end-users, RSPs or RFSPs under the CWC, sufficient to provide a record of changes or evolution of the notices;
 - 330.2 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;
 - 330.3 all information, including documentation and communications, related to disputes arising under the CWC where Chorus is a party to the dispute.
331. Under the draft CWC, Chorus was permitted to stop recording the above information in relation to the copper service in the following circumstances:
- 331.1 if five years has elapsed since Chorus stopped supplying the copper service by complying with the CWC; or
 - 331.2 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.

Submissions

332. Chorus submitted that it supports “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”.¹⁵⁴

¹⁵⁴ Chorus "Submission on draft Copper Withdrawal Code" (17 July 2020) para 105.

333. Consumer NZ suggested that Chorus should also be required to publish on its website the information that it is required to disclose to the Commission.¹⁵⁵

Our decisions and reasons

334. Schedule 2A does not require the inclusion of information disclosure or record keeping requirements in the CWC. However, clause 1(4) of Schedule 2A provides that the CWC may contain any other provisions that we consider are necessary or desirable.
335. Submissions generally supported the inclusion of the information disclosure and record keeping requirements in the CWC. We consider that the information disclosure and record keeping requirements are necessary or desirable because they will enable us to monitor compliance with the CWC. We have therefore decided to retain the requirements in the CWC. We have not required Chorus to publish on its website the information it must disclose to us, as it contains commercially sensitive information.
336. The information disclosure requirements are proportionate, in that they help to meet the purpose of the CWC while not imposing unnecessary costs on Chorus. Further, requiring certain other information to be recorded is a proportionate means to help us to monitor compliance. We may request the information that Chorus records, either through a voluntary request or, if necessary or desirable, through our information gathering powers.
337. We have, however, made some changes from the draft decision.
338. First, we have clarified that the disclosure of information must occur no later than 30 November of each disclosure year, and the information that must be disclosed must be in respect of the previous disclosure year. A disclosure year is defined as a period of 12 months beginning on 1 July in any year and ending on 30 June in the following year.
339. Second, the requirement to disclose the total number of regulated and non-regulated copper services supplied by Chorus has been narrowed, as Chorus will not be required to break these down into the type of copper service. We note Chorus's submission that it should not be required to disclose the number of non-regulated copper services it supplies. However, we have retained this requirement as we consider it necessary to understand the wider context of copper withdrawal, which will help us to monitor whether the purpose of the CWC is being met.
340. Third, in relation to the record keeping requirements:
- 340.1 the CWC requires Chorus to keep records of any templates of notices that form the basis of notices sent to end-users only (this requirement applied in relation to RSPs and RFSPs in the draft CWC);

¹⁵⁵ Consumer NZ "Joint submission on draft Copper Withdrawal Code and draft 111 Contact Code" (17 July 2020) para 3.2.

340.2 Chorus must record two additional categories of information to assist us in monitoring compliance with the CWC:

340.2.1a record of all orders Chorus receives from an RSP to stop the supply of a copper service to a premises where an end-user resides (ie, a relinquishment order); and

340.2.2if Chorus relies on the exception relating to an end-user not cooperating with the process to have a fibre connection installed, a record of the reasonable efforts that have been made by Chorus or the RFSP to install a connection to a fibre service for the end-user.

340.3 Fourth, the CWC provides further detail on the length of time Chorus must retain records of the information.

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.