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By online form

Utilities Disputes Submission on the Draft Copper Withdrawal Code

Utilities Disputes welcomes the opportunity to submit to the Commerce Commission on the Draft Copper Withdrawal Code.

We believe a dispute resolution scheme operated by Utilities Disputes would be more appropriate for handling disputes around the withdrawal of Chorus' legacy copper network.

Our submission addresses the advantages of utilising the experience Utilities Disputes has in carrying out this work.

Background

Background of Utilities Disputes

Utilities Disputes is a not-for-profit company that provides independent resolution for complaints and disputes companies have not been able to resolve with complainants (usually their customers). Utilities Disputes currently operates three dispute resolution schemes: The Government approved Energy Complaints Scheme and Broadband Shared Property Access Disputes (BSPAD) Scheme, and the voluntary Water Complaints Scheme.

Utilities Disputes is governed by an independent Board. The Board has also set up Advisory Committees for its Energy and BSPAD Schemes, made up of industry and consumer representatives. This maintains consumer and industry feedback to our operations.

Background of fibre installation

The fibre rollout started as a public-private partnership in 2008, with a goal of reaching 75% of New Zealanders. This was later updated to a goal of 80% in 2015¹, and to 87% in 2017². Rapid fibre connectivity is a bipartisan policy objective.

In 2016, Parliament passed legislation to grant fibre installation companies ('network operators') a right to access shared property when installing fibre³. This was to streamline installation for the 17% of properties where access to shared property, such as driveways, was necessary for installation, and to avoid delays being caused by unresolved neighbour disputes or unanswered queries. The BSPAD

¹ <https://www.scoop.co.nz/stories/PA1503/S00151/govt-launches-next-stage-of-broadband-rollout.htm>

² <https://www.beehive.govt.nz/release/nz-top-10-connected-nation-stage-one-ultra-fast-broadband-roll-out-completed>

³ <https://www.beehive.govt.nz/release/law-changes-introduced-streamline-ufb-rollout>

Scheme was set up to handle disputes about the right of access. Utilities Disputes was appointed as the provider of the scheme in 2017.⁴

The BSPAD Scheme is governed by subpart 3 part 4 of the Telecommunications Act 2001. Network operators are granted a right of access. To use the right of access, they must first notify all affected parties of the work. An affected party has 15 working days to lodge an objection under specific grounds. The scheme operator, Utilities Disputes, has 5 working days to determine whether the objection is within jurisdiction. If the objection is not under one of the specified grounds, it will not be within jurisdiction. Many objections are resolved at the jurisdiction stage.

If a dispute is accepted for consideration, Utilities Disputes attempts to facilitate a mutually agreeable resolution of the dispute between the network operator and the objector within 10 working days or issue a determination within 32 working days. Objections are made free of charge. Network operators pay for the cost of the scheme. The fibre requester does not participate in the process.

Background of the Draft Copper Withdrawal Code

The Commerce Commission is seeking feedback on its draft copper withdrawal code. The purpose of the Code is to protect end-users of certain copper services where Chorus seeks to withdraw those services. The draft code sets minimum requirements that Chorus, the provider of NZ's copper telecommunications network, must meet before it will be able to stop providing copper services such as landlines and ADSL or VDSL broadband, to a consumer including that equivalent services must be provided via fibre.

Submission

In our view, a dispute resolution scheme run by Utilities Disputes is more appropriate for facilitating the decommissioning of copper than the proposed Industry Dispute Resolution Scheme. The reasons for our view are set out in our submission below highlighting benefits for both the consumer and the industry for consideration by the Commerce Commission.

Why a dispute resolution scheme run by Utilities Disputes is more appropriate

Independence – Utilities Disputes is not-for-profit and governed by a fully independent Board. Membership of its Energy Complaints Scheme is mandatory, and membership of its BSPAD scheme is mandatory for all wishing to exercise the statutory right of access. The Industry Disputes Resolution Scheme proposed in the Code is for profit, is governed by an industry controlled Board with membership of its scheme being voluntary.

Experience – Utilities Disputes is a mature dispute resolution service that has provided best-practice dispute resolution in the utilities sector in New Zealand for 19 years. Utilities Disputes maintains an experienced senior management team supported by skilled and experienced staff.

Utilities Disputes has experience with objections to fibre installation from managing the BSPAD Scheme since 2017. The grounds for objection under the BSPAD Scheme, are similar to issues that will likely arise under the Copper Withdrawal Code. Utilities Disputes has broad experience in dealing with complaints regarding damage to property and infrastructure. Utilities Disputes

⁴ <https://www.beehive.govt.nz/release/new-consenting-regime-speed-ufb-access>

envisages that in dealing with complex issues such as those surrounding the withdrawal of copper it will be able to resolve disputes efficiently and effectively drawing on its BSPAD experience.

Key attributes of Utilities Disputes conciliation staff:

- **Dispute resolution skills**, including the ability to facilitate the swift resolution of disputes, are vital to the conciliator role. Members of our operational team train to become accredited mediators through the Resolution Institute. Utilities Disputes has 13 accredited mediators including accredited Resolution Institute assessors. Other staff members are working towards accreditation as mediators.
- **Intellectual reasoning** is necessary. Our conciliators are expected to work quickly. Conciliators must understand processes, contracts, and operations within the water and telecommunications sector, as well as the ability to explain these concepts clearly to resolve disputes. Six of Utilities Disputes' operations staff have law degrees.

Consistency – Utilities Disputes has a centralised decision-maker, the Commissioner, where a dispute is not able to be resolved by the parties. While Utilities Disputes' decisions do not set a precedent, a centralised decision-maker enables and promotes consistency. Conversely, many Industry Dispute Resolution Schemes neither set precedent nor have a centralised decision-maker.

Accessibility – Utilities Disputes accepts objections via phone, text, post, email, online chat and forms and fax. Objections can be worded in any format and need not be in writing which facilitates accessibility. Discussions are rarely carried out face to face. Where Utilities Disputes assists parties to voluntarily reach an agreement, it usually does so via a teleconference or a videoconference. Information can be submitted any time while a dispute is active.

Utilities Disputes is a market leader and demonstrates: thought leadership in the industry, considerations of accessibility for the future, and ease of use through innovative technologies like online dispute resolution and instant chat-functionality on our website.

Familiarity – All major fibre network operators are members of Utilities Disputes' BSPAD Scheme. This includes Chorus, Enable, and Ultrafast Fibre. These organisations are familiar with Utilities Disputes' processes and we have an established working relationship. Utilities Disputes is promoted by network operators as the dispute resolution scheme for fibre installation disputes across shared property.

The Copper Withdrawal Code could function in a similar nature as the BSPAD scheme run by Utilities Disputes. This would allow for the process to hit the ground running. Additionally, this approach allows copper removal to take place when fibre installations are carried, with both fibre installations and copper removal disputes being resolved in the same process rather than potentially involving two separate dispute resolution schemes.

Chorus' standard methods and polices – Chorus uses a number of different methods to install fibre from the street to the property. If existing copper phone lines are delivered via an aerial cable or an underground duct, it is likely that the new fibre cable will be installed in a similar manner. As mentioned in Chorus' policy statement in some cases it may be necessary to remove the copper line to physically install the fibre on premises. This might be because of the 'visual pollution' requirements or physical constraints in the ducted lead in. In a scenario where fibre is being installed across shared property through an underground duct and copper was to be removed, it would make

sense for Utilities Disputes to handle any disputes both under the BSPAD scheme and the Copper Withdrawal Code.

Early resolution – Utilities Disputes provides two opportunities for early resolution in its BSPAD Scheme. The first opportunity is at the point of determining jurisdiction, within 5 working days of receiving the objection. If the objection does not fit into one of the prescribed legislative categories, Utilities Disputes declines jurisdiction and the installation goes ahead. The second opportunity is during the next ten working days, in which one of Utilities Disputes' accredited mediators attempts to facilitate agreement between the parties. If unsuccessful it moves to the Commissioner for a decision. We believe this process is effective and efficient, and can lessen a consumer's frustration and voice by being addressed in a timely manner.

Benchmarks and Principles

Utilities Disputes' General Rules require it to ensure its schemes are known in the community and meet the underlying principles of the Australian Benchmarks for Industry-Based Customer Dispute Resolution (Australian Benchmarks) These benchmarks are recognised as the industry standard and best practice in New Zealand and are also referenced in legislation:

- Accessibility
- Independence
- Fairness
- Accountability
- Efficiency
- Effectiveness

Utilities Disputes is actively engaging with the Government Centre for Dispute Resolution (GCDR) which is currently developing new benchmarks for dispute resolution in New Zealand. Benchmarks address matters of accessibility, affordability and timeliness. Work is underway by GCDR to introduce new standards consistent with Treaty of Waitangi principles. Utilities Disputes is taking active steps to ensure its processes will be consistent with these new standards when they are introduced.

Other Comments

Ageing Technology – The Draft Copper Withdrawal Code will need to be cognizant of geographic locations which have pockets of vulnerable people, particularly elderly people, who own ageing technology. Examples of this include analogue burglar alarms running off copper. Some devices are of an age where they cannot be upgraded to have fibre connectivity, leaving the resident unprotected. The same applies to medical devices, where the copper line is used to 'phone out' if a resident needs urgent help. Geographic Information System mapping of locations would need to be thoroughly carried out before copper is decommissioned in these vulnerable segments of the community.

Next steps

We are available to speak to this submission in person or by video link as appropriate.

If we can be of further assistance at this stage, please contact Hamish Clareburt directly at h.clareburt@utilitiesdisputes.co.nz.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mary Ollivier', with a long horizontal flourish extending to the right.

Mary Ollivier
Chief Executive Officer
Utilities Disputes