

Submission on Copper Withdrawal Code Review

4 May 2023

C H ● R U S

Submission Summary

1. Thank you for the opportunity to comment on the Copper Withdrawal Code (**Code**) review.
2. Chorus has over two years' experience in applying the Commerce Commission's (**Commission**) Code to our copper withdrawal programme. Since March 2021, we have notified more than 21,700 consumers and withdrawn approximately 16,000 copper services.¹
3. The s 69AA purpose statement for Part 2AA of the Telecommunications Act 2001 (**Act**) reflects dual purposes: to offer consumer protections, and to facilitate the deregulation and withdrawal of copper. Thus, the efficacy of this Code ultimately comes down to whether we can decommission copper cabinets, which are the minimum units that let us realise any benefits from withdrawal and ultimately pass those benefits on to consumers. A single service remaining on a single cabinet can prevent this – and as we work towards withdrawing copper exchanges, a single service can prevent the withdrawal of an entire exchange.
4. Continuing to operate copper services not only ties up resources better allocated to our fibre network, it also prevents us from meeting our Scope 1 and 2 emissions targets as the copper network is a heavy consumer of electricity.²
5. We are about a fifth of the way through our copper withdrawal programme. To date, our programme has involved approximately 1040 copper cabinets: we have completed the Code process for ~600 cabinets and successfully withdrawn ~380 cabinets, while ~220 remain in service. While we've made reasonable progress, the economic and environmental benefits of copper withdrawal cannot be fully observed unless all cabinets in a withdrawal area can be decommissioned.
6. Our proposed Code changes are informed by our experience working with other industry participants and impacted consumers – and the impediments we've experienced. Overall, the industry has successfully collaborated to implement the copper withdrawal process envisaged under the Code, which is prescriptive and works well for "standard" circumstances, but changes are needed to properly facilitate withdrawal and improve the process and clarity of information for consumers. These changes include:
 - a. Improving the overall process via greater flexibility and clearer communication – if adopted, our proposed changes would benefit all consumers impacted by the copper withdrawal programme
 - b. Ensuring withdrawal is not prevented by a third party – approximately a third of our copper cabinets have involved a fibre order that required permission or consent from a third party, and we expect this ratio to increase over time as the programme scales up.

¹ As of 1 May 2023. These figures include closed and open batches.

² Electricity use makes up 92% of Chorus' Scope 1 and 2 emissions. Our Emissions Reduction Plan focusses on energy efficiency, reducing energy use across our network and extending our use of solar as a renewable electricity source. The shutdown of large parts of our copper network, as end users migrate to the newer fibre network, will reduce our electricity needs and related emissions by about 25%. See p 42 Chorus' sustainability report 2022, "Connecting Aotearoa so that we can all live, learn, work and play".

7. Our proposals drive changes to better reflect the purpose statement in the Act. That purpose statement has two relevant elements and the Code needs to implement the minimum requirements in schedule 2AA in a way that better facilitates withdrawal. Copper is very near the end of its life, and we have built a superior replacement ahead of applying the Code: we need to be able to withdraw copper services and allow consumers, and ultimately New Zealand, to benefit from moving to newer technologies.
8. Our **recommended** Code changes are:
 - **Amend the notice process to improve clarity of outcome for consumers** – The process for informing consumers could be improved via small but meaningful changes as follows:
 - Adjust the notice requirements so that the Final Notice is the actual final notice and confirms the outcome for consumers
 - Shorten the duration between each notice during the notice period, to better serve as a reminder and drive urgency i.e., so that they are closer in duration and not (approximately) 3 months apart in a 6 month notice period
 - Amend the definition of “notice period” to clarify that the end of notice period is not the same date as when copper withdrawal will take place.
 - **Allow for notices to be sent to an alternative postal address** – This could be facilitated by amending the Code so that (where relevant) Chorus can post notices to an alternative address. E.g., PO Box or a business’ headquarters.
 - **Allow for flexibility with communication channels** – The Code should better support consumers’ needs by allowing for notices in electronic form. I.e., consumers could use electronic applications or more easily share the notice with others (e.g., landlords and family members).
 - **Add an ability to ‘pause’ in response to an extreme or unforeseen event** – This allows us to be flexible and responsive to external events by permitting the process to be ‘paused’ and extending the timeframe for impacted consumers to move off copper.
 - **Removing the ability for third parties to prevent copper withdrawal** – Permit the withdrawal of copper services after providing a reasonable timeframe for a third party consent or landlord permission to install fibre.

Proposed Code Changes

9. Chorus' recommended Code changes are outlined below, grouped under the Commission's "minimum requirements of the Code" headings outlined in the paper. We have included new proposals as well as expanded on our existing proposals.³

Requirement 1: End-users understand Chorus' process for withdrawal of the copper service, and how this will affect them

Amend the notice process to improve clarity of outcome for consumers

10. We recommend adjusting and simplifying the notification process to help consumers better understand when and what is happening to their copper services, what to expect and when withdrawal is likely to take place. We support the principle that consumers should be given reasonable notice, and we agree that providing three notices meets the requirement in the Act that consumers be given reasonable notice. However, we have found that the fourth notice requirement and the cadence between notices, together with the definition of "notice period", is confusing and may inhibit consumers taking necessary action to obtain an alternative service.
11. In our view amending the Code as set out below will improve consumers' understanding of what is happening with their copper service, which in turn should help drive consumer responses:
 - a. Shortening the duration between each notice (new proposal),
 - b. Amending the definition of "notice period" and "proposed date of withdrawal" to clarify when copper withdrawal will take place (new proposal),
 - c. Removing the requirement for "Confirmation" and "Continuation" notices (reducing the number of notices from 4 to 3), and
 - d. Amending the Final Notice content to communicate the "outcome" to consumers in that notice, rather than after the notice period ends. At present, the Final Notice is not actually the final notice – the final notice comes after the end of the notice period.
12. We explain our rationale for (a) and (b) below. While we expanded on proposals (c) and (d) in Appendix 1 of the Commission's paper, we have provided further commentary about the unintended impacts of the Continuation notice and why we think making the final notice the last notice will improve consumer understanding.

Shortening the duration between each notice

13. The Code requires three notices to be sent during the notice period, a First Notice that marks the start of the process, a Further Notice 3 months before the end of notice period, and a Final Notice 20 working days before the end of the notice period. While we support the requirement to provide three notices, our experience is that

³ The proposed changes outlined in the Appendices of the Commission's consultation paper.

consumers forget and/or don't understand the urgency of an impending change to their copper service. We have anecdotal evidence that suggests some consumers feel that their copper disconnection was "too soon" following their notice, notwithstanding that they would have received multiple notices before their disconnection. This suggests that the timeframe between each notice may cause consumers to forget they have received earlier notices or lose track of where they are in the process.

14. From a practical perspective, the Code's fixed date and timing of each notice can be difficult depending on the time of year. For instance, there is no flexibility built in as it requires the Further Notice "at 3 months" and the Final Notice "at 20 working days". This can be particularly tricky over the Christmas period. Having more flexibility around the notice date would help ensure consumer-centric timeframes. For example, rather than sending a notice due on 29 December (when consumers may be less likely to be home), we could send the notice a week before Christmas or in the new year to help ensure consumers receive the notice when they're more likely to be responsive.
15. We **recommend** amending the Code so that:
 - a. The **Further Notice** must be provided no earlier than 1 month after the date of the First Notice and no later than 2 months after the date of the First Notice, and
 - b. The **Final Notice** must be provided no earlier than 2 months before the end of notice period and no later than 1 month before the end of notice period.
16. Overall, these changes should help drive more urgency and serve as better "reminders" for consumers to act sooner and ensure continuity of service (i.e., it will minimise the risk of consumers experiencing a period of no connectivity due to failure to act).
17. Additionally, where consumers have ordered fibre, having a longer time between the Final Notice and end of notice period means a smoother transition for consumers and industry members who are required to comply with the Code (i.e., Chorus and other Regulated Fibre Service Providers). Under the current Code if a consumer orders fibre after the Final Notice and the install isn't complete in 20 working days Chorus must send a Continuation Notice explaining that their copper cannot be withdrawn. This sometimes results in the consumer cancelling the fibre order (notwithstanding that our notice indicates that their copper will remain only until their fibre order is complete). This is an unintended consequence that adds complexity, typically occurring with consumers whose install process is more difficult (e.g., requiring third party consent or in a slightly less urban area) or where field services require more time to complete it.

Amend the definition of "notice period" to clarify that the end of notice period is not the same date as when copper withdrawal will take place

18. The Code requires Chorus to include the proposed date of withdrawal in its notices to impacted consumers (clause 25.1) as well as an explanation of the Code process and timeframes. We agree with this information requirement. However, the relevant definitions appear to inadvertently conflate the "notice period" ending with the "proposed date of withdrawal". This is because rather than the end of notice period being at least 6 months from the date of the First Notice, it is defined as the

“proposed date of withdrawal of the copper service”. In principle, the withdrawal date must follow the end of the notice period.

19. This confusion arises because Chorus cannot withdraw copper until the notice period has lapsed – and we have satisfied ourselves that our Code obligations have been met. Additionally, consumers who receive a Confirmation Notice will receive a different withdrawal date again, resulting in confusing and inconsistent messaging (if the requirement for a Confirmation Notice remains).
20. We think a more accurate and clear definition is:
 - a. “Notice period” means the period between the date the First Notice is provided to an end-user ~~and the proposed date of withdrawal of the copper service delivered to an end-user~~, and a date at least 6 months from the date of the First Notice.

Remove the requirement for “Confirmation” and “Continuation” notices, and amend the content of the “Final Notice”

21. As outlined in the Code review paper, we think the overall process would be improved if the Final Notice was the final notice – rather than the third of four notices where a Confirmation or Continuation Notice is actually the final notice. The Confirmation and Continuation notices change the overall message given to consumers, particularly where a consumer receiving one of these notices has a fibre install in progress (e.g., a late order or a slower install).
22. For instance, a consumer could have a fibre order in progress but not complete and receive a Continuation Notice that is required to say, “Chorus has not met its Code obligations and therefore your copper services cannot be withdrawn”. This can lead to the consumer cancelling the order. Another possible scenario is where a consumer places a fibre order after the end of notice period and then receives a Confirmation Notice to confirm that their copper is about to be withdrawn because they have not moved off copper. Neither in our view provides extra clarity and can inadvertently prevent fibre installs progressing – resulting in a number of copper services and cabinets remaining, which could have been avoided.
23. To illustrate, in a recent batch that started with around 2,000 copper services:
 - a. By the end of notice period, 70% moved off copper, and
 - b. Of the 30% remaining:
 - i. Confirmation Notices were sent to 22% – meaning either consumers had not placed a fibre order, it had been cancelled during the notice period, or in some cases that fibre order was completed shortly after the notice period ended but the notice was already in-flight.
 - ii. Continuation Notices were sent to 8% - for various reasons, which includes late and / or challenging fibre orders, such as those facing third party issues. Typically, we see ~10% of the Continuation Notices lead to a fibre connection cancellation.
 - c. Four months later, 67 copper services remained (recipients of Continuation Notices). This prevented over a quarter of the cabinets from being withdrawn (35 out of 125 cabinets).

24. It is reasonable to infer that if a consumer receives a Continuation Notice, their incentive to move off copper changes, even if they had a fibre order in progress. We think more consumer-centric, and less process/compliance, focused notice content would help facilitate and support the transition off copper. This could be achieved through informing consumers what is going to happen to their service, given their action or inaction to place a fibre order, rather than where in the compliance journey Chorus is.
25. We **recommend** amending the Final Notice to communicate the “outcome” at that point in time, rather than after the notice period ends. That is, to outline that copper will be disconnected by the proposed withdrawal date, and if:
 - a. They have taken no action: their copper services will be withdrawn at X date; or
 - b. They have a fibre install / order in progress: their copper will be withdrawn once this is complete (rather than at the proposed withdrawal date); or
 - c. There are other circumstances specific to the household that apply, copper may be withdrawn at a later date confirmed with you or your RSP.

Requirement 2: End-users have access to information about fibre services available

Allow for flexibility in the delivery and accessibility of notices

26. The Code prescribes that notices must be delivered by post to the household/premise. We agree that this is a reasonable starting point but many consumers regard email as their main communication. Through our copper withdrawal programme, we have learned that consumers would benefit from flexibility to cater for specific needs and scenarios.
27. We **recommend** amending the Code to allow:
 - a. **Notices to be delivered to an alternative postal address** – for example, when we know (or are told) that an alternative address (such as a PO Box or alternative residential address for the homeowner) would serve a better alternative for communication, we should be able to send a notice to that alternative address. This would also help avoid returns and increase the likelihood that the notice is delivered to the relevant address/location, given we observe approximately 6% returned notices that we then follow up with courier.
 - b. **Flexibility with communication channels** - for example where post or courier is not a viable mode of communication/delivery, and/or an electronic version of the notice is preferred (e.g., visually impaired consumers may wish to use a reader/writer app, while some consumers may require translation tools). An electronic version of the notice would also help consumers to share notices with others (e.g., friends, family, landlords, body corporates or providers of ancillary services) much more efficiently.
28. Allowing flexibility for alternative addresses and communication channels will help ensure impacted consumers are more likely to receive and comprehend notices – and thereby more likely to take appropriate action to move off copper. It also

supports inclusive practices and accessibility needs which some consumers may face due to the solely physical form of the notices.

Requirement 3: End-users have reasonable time to prepare for a proposed withdrawal of their copper service

Add a 'pause' in response to an extreme or unforeseen event

29. We recommend that a 'pause' mechanism is formally included in the Code. Alongside our rationale and examples provided in the Code review paper, the weather events of early 2023 further demonstrated that there is a gap in the Code, and a need for industry to respond to unforeseen events. Allowing for the notice period to essentially 'freeze' in time is consistent with the objective of consumer protection and helps ensure consumers are given a more reasonable time to migrate off copper. That is, a pause would not change the minimum length of time for consumers to migrate, it allows Chorus to 'add time' during the notice period. Overall, we consider this change would improve the experience for impacted consumers.
30. A 'pause' mechanism will also help the industry to respond and adapt to unforeseen/unplanned events. The importance of having this mechanism will increase as the effects of climate change become more frequent.
31. We **recommend** that a pause mechanism include the following features:
 - a. Chorus must be satisfied that the withdrawal process requires pausing for some or all consumers in response to an extreme and/or unforeseen event (the clearest examples being weather events or states of emergency, although it might be counter-productive to specify an exhaustive list).
 - b. Chorus will advise the Commission when it has undertaken a 'pause' but in the interest of time this would not be a request for approval. That is, it would not be appropriate or in the best interests of consumers to require the Commission to formally approve a pause ex-ante. Rather, it would make more sense for the Commission to be updated by Chorus during and after the period.
 - c. Chorus will update impacted consumers about the pause – including when it commences and when it is lifted, and what this means for their notice period. We note that our ability to communicate during certain events may be challenging and the industry may need flexibility around this, so we do not propose to prescribe this detail in the Code.
 - d. A requirement that, at a minimum, the duration of the 'pause' is added to the notice period length so that consumers are not worse off from a copper withdrawal perspective.
32. The 'pause' applied during the Auckland floods and cyclone Gabrielle was carried out in consultation with the Commission. RSPs were notified of this decision and assisted in communicating this 'pause' to their customers. We believe the 'pause' in response to these unforeseen events was an appropriate response and hopefully helped alleviate stress for consumers.

33. The two 'pauses' we have applied to date should be viewed as a workable trial that demonstrates this mechanism can be successfully implemented.

Requirement 4: End-users have a connection to a fibre service installed (if they wish to move to a fibre service), and the fibre service provides similar functionality to the copper service

As well as consumer protection, the Act provides for copper deregulation to facilitate withdrawal

34. The current Code lets third parties prevent copper withdrawal. Where someone wanting fibre, whose install is impeded by their neighbour or landlord withholding consent, takes reasonable steps available to them to resolve the issue then we may (if the issue isn't resolved) remain unable to either install fibre or withdraw copper, on an ongoing basis.
35. The minimum Code requirements in Schedule 2A of the Act should be interpreted considering both relevant elements of the s 69AA purpose: to offer consumer protections, but also to facilitate the deregulation and withdrawal of copper.
36. The key minimum requirement here is that an end-user *be able to* have fibre installed. We meet that requirement where we receive an order and work with relevant parties to progress a fibre install. The Commission considers this requires an actual install, reflecting its view that consumer protection is the more important purpose and on the basis that end-users prevented from getting fibre will have certainty they will be able to continue to access a fixed-line service.⁴ But setting the threshold at an actual install, such that consumers may in some circumstances keep their old fixed-line service as a backstop, is an unreasonable practical barrier to withdrawal. It is also inconsistent with the s 69AA purpose in that the minimum requirement set is preventing the Code from achieving the statutory purpose of providing for deregulation and withdrawal.
37. The impact of this 'deadlock' is significant as even one service remaining on a cabinet or exchange prevents decommissioning that cabinet or exchange.
38. It is very likely there will be an alternative to copper available to that consumer, even if that alternative is not fibre. It is disproportionate to protect the consumer "from" copper withdrawal in these instances given the suitability of these alternatives for many consumers (which is recognised in the Code). As for offering certainty in some cases that a fixed-line service will remain available, the Act does not invite the Commission to distinguish between alternative services on the basis of whether they involve a physical 'fixed-line'. There is no consumer protection or economic rationale for such a distinction.
39. Further, the Code does not currently place enough onus on consumers and third parties to resolve installation issues, because copper can remain as a backstop. This weakens a consumer's incentive and ability to resolve these issues. A result that consumers are prevented from, rather than supported in, moving to a fibre service that they want cannot be considered effective consumer protection.

⁴ Commerce Commission *Copper Withdrawal Code: Decisions and Reasons Paper*, 10 December 2020: see [153]-[154] and [257]-[261].

40. We propose a more balanced and practical approach that is more consistent with the purpose statement in s 69AA.

Limiting withdrawal to a failure to take “reasonable steps” is too narrow and does not work

41. There are a lot of situations where third party involvement is needed – to date, for approximately 1 in 3 cabinets. This means we frequently encounter situations where, in order to move from copper to fibre, permission or consent is required from a third party. We expect this ratio to increase over time as we undertake more complex withdrawals.⁵
42. At any real scale, these can be a major impediment to the Code working to facilitate withdrawal and our ability to decommission copper assets. Our experience is that the limited exception of determining whether there has been a consumer failure to take “reasonable steps” is too difficult to apply given the wide range of permutations of these third-party circumstances and contexts.
43. The “failure to take reasonable steps” threshold is both too high and too difficult to assess (let alone to provide consumers with advance certainty as to what is expected). For example, two situations that outwardly look the same may actually be different in terms of what is reasonable. Sometimes it is reasonable for a tenant to not contact their landlord and sometimes it is not: tenants sometimes provide or omit context on why they don’t feel comfortable making a formal request of their landlord or challenging a response. In some situations (e.g., in the shared driveway context) we cannot give detail on which neighbours are withholding consents, meaning consumers end up either needing to approach their neighbours or raise a formal dispute, without full information. In such contexts it is not easy to assess what constitutes a failure to take reasonable steps.
44. In these situations, the consumer wants fibre but can be blocked or rebuffed on the basis that copper can remain as a backstop, which is a poor outcome. Certainty that copper is going to be withdrawn helps to force the hand of a landlord or a third party resistant to a fibre installation.

A more balanced approach where third parties are involved

45. We **recommend** amending the Code to enable copper to be withdrawn where a consumer is informed there’s a third-party constraint on their fibre installation and informed of what steps are available to them, but the dispute remains unresolved after a reasonable period (e.g., where a third party does not respond or continues to impede the installation). We consider three months is sufficient time to identify and resolve a dispute.
46. The current (narrow) ability to withdraw only where a consumer chooses not to take steps available to resolve an issue would fall within this broader, amended exception. Our recommendation acknowledges that impacted consumers need time to resolve issues and disputes, and that it is important they are given clear information about their options. However, it also reflects that copper should not be required to remain due to issues between private parties being at an impasse.

⁵ Also see paragraph 23 above for an example of a recent batch where 67 copper services remained at the end of the notice period, which prevented the withdrawal of over a quarter of the cabinets for that batch.

Alternatives are readily available

47. The Code needs to strike a balance between protecting consumers who cannot get fibre installed and facilitating withdrawal. One relevant factor in how far the Code goes to protect consumers is what their other options are – although this is not taken into account in the context of third party constraints at the moment, as currently we can be prevented from copper withdrawal regardless of whether non-fibre alternatives are readily available. While we consider fibre is the best option, where it is not able to be installed other technologies like fixed wireless and satellite provide an acceptable alternative. Coverage maps indicate each is increasingly ubiquitous, although sometimes the RSP lacks an incentive to highlight these alternatives in an upfront way where it would not be the provider.
48. The Code already recognises that these alternatives to fibre are a viable option, and some consumers notified of withdrawal do opt to voluntarily move to them from copper. Our recommendation would incentivise and enable a more robust exploration of alternative services as between RSPs, consumers, landlords and neighbouring landowners, which does not always happen today where at least the RSP and consumer have background on the Code and know copper can only be withdrawn in certain limited circumstances.
49. Put another way, this proposal would better facilitate actual withdrawal against the backdrop of private parties' rights under the Utilities Disputes Limited resolution mechanism for land access, and the Residential Tenancies Act mechanism for landlord approval. In lowering a practical barrier to withdrawal, it would also better reflect the statutory purpose of enabling deregulation and withdrawal, by confirming that Chorus should not be required to keep these cabinets running indefinitely for reasons outside its control.