



**TCF Submission on
Commerce Commission's
Draft Copper Withdrawal Code and
Draft Decisions and Reasons Paper
July 2020**

Introduction

This submission is prepared by the NZ Telecommunications Forum (TCF) and is provided to the Commerce Commission (Commission) in response to its draft Copper Withdrawal Code (the Code) and Decisions and Reasons Paper (the Reasons Paper). The submission represents the views of the TCF Copper Withdrawal Code Working Party (the Working Party). The following TCF members were part of the Working Party; 2degrees, Chorus, Enable Networks, Spark, Trustpower, Ultrafast Fibre, Vocus and Vodafone.

The TCF has spent considerable time and effort refining, and agreeing, the business as usual process for installing fibre access connections and this is recorded in the TCF Fibre Installation Code. Coordinating the requirements of an installation process between the end-user, retail service provider, Chorus or the LFC, and the relevant technician who will turn up on-site; is a complex process. The investment the industry has made to ensure the process is smooth as possible for the end-user has resulted in a process designed to deliver an excellent experience for the end-user. Many of the requirements of the Code have the potential to cut across these business as usual processes and will add cost and complexity to the process, potentially to the detriment of the end-user experience. For this reason, the TCF encourages the Commission to, wherever possible, utilise industry best practice and business as usual processes.

The Code refers to a mixture of defined terms for the end-user and customer, access seeker and retail service provider. It is not always clear who is being referred to. We have suggested that the Code uses one definition for each of these terms.

Chorus does not have a billing relationship with the account holder at a premises, and no relationship with property owners, nor in many cases, access to information about these people. The lack of a relationship with the end-user and property owner creates complexity when issuing notices.

The TCF is well used to developing codes of practice for the industry and takes great care to ensure that they are all consistent and build on existing and well-established processes. The TCF encourages the Commission to take a principle-based approach and align to business as usual processes as much as possible.

1. Section A: Commencement Date

- 1.1 The TCF supports the ability for Chorus to use the Code to withdraw copper services. The TCF notes the dependency with the 111 Contact Code being in force and subsequent impact on the CWC.

2. Section C: Defined Terms

- 2.1 There are a number of defined terms in the Code that require review to ensure that they are clearly defined and consistently used throughout the Code. In particular, the TCF recommends the Commission review the use of the following terms:

- Customer and End-user;
- Access Seeker and Retail Service Provider;
- Relevant Fibre Service Provider; and
- Telecommunications Service Provider.

End-user and Customer

- 2.2 There are a number of inconsistencies in the Code regarding rights and obligations of customers versus end-users.
- 2.3 The TCF's view is that the end-user should be limited to the customer, that is, the person with the billing relationship with the retail service provider. The Code supports this interpretation under the dispute resolution provisions as it states that *"only a customer or a telecommunications service provider may refer a dispute under the Code to the industry dispute resolution scheme"*¹.
- 2.4 In the draft Decisions and Reasons paper the Commission's interpretation of sections 69AC(1) and 69AD(1) is that an *"identifiable customer"*² is the end-user. The TCF supports this interpretation, not just for this clause but for the entire Code. However, further into the paper the Commission states that *"the end-user also includes any other users of the service (such as members of the customer's household)"*. The TCF does not support this interpretation of end-user. Other users of the copper service, such as members of the customer's household, are beneficiaries of the customer's service and should not be considered an end-user³. The end-user must be considered to be the customer for the following reasons:

- *This is not in contradiction to the Act:* The Act refers to a person who is the *"ultimate recipient of a copper service"*. While others in a household may benefit from the copper service, it is only the person with the contractual relationship that technically receives the service and has any standing;
- *The customer is an identifiable person:* the customer can be identified by the contractual (i.e. billing) relationship between the retailer service provider (RSP) and the customer and is the primary party; and
- *The Code would be unworkable without this interpretation:* There are many clauses in the Code that can work only with the interpretation that the end-user is the customer. For example, cl. 9 requires Chorus to give an end-user reasonable notice of the proposed withdrawal of a copper service. Chorus cannot be expected to provide all members of the household with the notice. Equally, obligations at cl. 30 for RSPs to provide Chorus with end-user information can be only the customer's information details.

¹ Clause 61.1 of the Code

² Paragraph 52 of the Draft Decision and Reasons paper

³ A beneficiary of a service has no obligations (e.g. it cannot be bound to pay the bill) and the inverse applies that legally it cannot have rights extended to it by merely being a member of a household.

- 2.5 For clarity, the TCF recommends that the Code confirms that the end-user is the customer. This should resolve any related inconsistencies⁴ in the Code. Any reference in this submission to end-user is referring to the customer.

Legacy Services

- 2.1 The TCF proposes the following amendments to the definition of legacy services to ensure it captures the services which industry considers are legacy services. We think that this definition would benefit from a technical discussion with the Commission, potentially as part of or alongside the planned workshop on the Code.
- 2.2 The TCF requests that the Commission 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.

Legacy Service means voice and/or broadband services that rely on functionality provided over a copper access network, and:

- (a) Uses frequencies above 3400 Hz; or
- (b) Uses frequencies in the 300 -3400 Hz voiceband to transmit data except for:
 - a. DTMF (in band or RFC2833/RFC4733); or
 - b. Supervisory tones; or
 - c. Calling Line Identification; or
 - d. Message waiting indication; or
- (c) Uses frequencies below 300 Hz except for:
 - a. Ringing; or
 - b. DC loop call control signals:
 - On-hook; or
 - Off-hook; or
 - Recall (switch hook flash); or
- (d) Uses incidental power provided by:
 - a. a distribution cabinet on the copper access network; or
 - b. the central exchange office; or
- (e) Are not provided over a 2-wire copper circuit.

Premises

- 2.3 The definition of premises is too wide and extends the scope of the Act. The definition should be limited to where the copper service is connected (i.e. where the network infrastructure is physically terminated in the property) and not extend to land and outbuildings. Anything beyond where the network terminates in the property is the customer's responsibility (such as internal premises wiring).

Temporary disconnection

- 2.4 The Code 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.
- 2.5 In order to provide a clear definition, the TCF proposes 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

⁴ For example, cl. 57 refers to end-user but cl. 61 refers to customer.

working days of a disconnection notice. This approach treats every disconnection as temporary for a maximum period of 20 working days.

3. Section D. Application

- 3.1 The draft Code applies to those copper services based on the definitions in the Act. Chorus agrees with the Commission's position that the scope of the Code should not exceed the requirements in the Act. RSPs are concerned that not all copper services not covered under the Code and seek to ensure that all customers consuming copper services receive a consistent process.

4. Section F1. Requirement to Give Notice

- 4.1 The TCF 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.

Notice to end-users

- 4.2 The Act requires that Chorus must provide the end-user specific information about the withdrawal of copper services, that alternative arrangements to maintain fibre services in the event of a power failure should be considered like battery back-up, and with a third requirement to provide the end-user with information about the fibre services available to them. The Code should not extend these obligations.
- 4.3 The Commission, under the Act, has the facility to include any other provisions it considers necessary however, 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, 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.
- 4.4 Finally, the TCF recommends that clause 16 should be amended to replace 'at' with 'By' 20 working days before the proposed date. It is not reasonable to expect Chorus to provide information on a specific day within a process.

Notice to Retail Service Provider

- 4.5 The purpose of receiving a notice from Chorus is to ensure that the recipient is prepared for the pending withdrawal of copper services. RSPs argue that they require more 'notice' to ensure they are prepared, operationally, to support end-users switching to other technologies within a specified fibre area (SFA). Chorus supports the Commission's position that RSPs are provided with notice at the same time as end users.

Forecasting

- 4.6 The RSPs believe that as Chorus will likely be undertaking internal forecasting for a project of this significance They submit that the Code should require Chorus to provide such forecasting to them.
- 4.7 Chorus disagrees that forecasting should be a requirement in the Code.

Notice to Property Owners

- 4.8 Issuing notices to property owners is fraught for a number of reasons. Firstly, the industry has no oversight whether an end-user is a tenant or a property owner. Current industry practice is to deal with the end-user and require them to get landlord permission for fibre installation. The Code must allow for business as usual practices under the TCF Fibre Installation Code which requires that at the time an end-user orders fibre, the RSPs asks if their customer is the property owner or a tenant. If it is the latter, then the tenant

must seek landlord / property owner permission before the fibre installation proceeds. By requiring Chorus to post a First Notice to the property owner, at the same time it posts a First Notice to the end-user does not take into consideration the operational issues of identifying whether the end-user is the property owner.

- 4.9 Access to property owner contact information is not as readily available as the Commission sets out in its Reasons Paper. The feedback received from LFCs and Chorus is that there is no consistency across councils on access to rating contact information and that while LINZ holds property owner information, they do not hold property owner contact details. Operationally this will impede Chorus utilising the Code and seeking the benefits it is intended to provide.
- 4.10 Today Network Operators and RSPs endeavour to assist tenants as much as possible to enable them to enjoy improved telecommunications services. The TCF sees the current gap in the RTA and legislation as an issue that legislators will need to address to assist with the switching of end-users onto better and more sustainable telecommunication services.

Confirmation Notice

- 4.11 To be able to operationally implement the Code requirements, the TCF recommends that Chorus only provide a confirmation notice where an end-user disconnects and does not order fibre.
- 4.12 To necessitate Chorus to provide a confirmation notice when a. the end-user orders fibre or b. when the end-user moves address, is not reasonably practicable. Chorus does not have oversight of the end-user and will not receive a forwarding address when they move properties. The end-user may also have switched RSPs in the process, or opted for mobile only services. For Chorus to locate the end-user to serve a confirmation notice after the end-user has moved out of an address only to tell them the service has been disconnected at their previous address, is nonsensical and difficult to achieve.
- 4.13 The TCF therefore recommends that clauses 51 and 52 are removed from the draft Code.

5. Section F2: Requirement for RSPs to provide Chorus with information regarding the end-user

- 5.1 The TCF recommends that the Code should be specific about the information RSPs must provide Chorus upon request (cl.30). It is recommended the Code specify that Chorus can request:
- end-user name,
 - the billing contact name if end-user is a business
 - end-user physical address where service is to be withdrawn;
 - end-user contact address (if different – e.g. PO Box or via email);
 - end-user contact phone number; and
 - end-user contact email address.
- 5.2 Under cl 30, RSPs are required to provide Chorus with information on their customers, for the purpose of assisting Chorus in satisfying the requirement to give reasonable notice to that end-user. Cl 30 requires modification to ensure that requests for information are targeted appropriately, and are within appropriate timeframes:
- a. the request must relate to only those end-users affected by the withdrawal (and who will be receiving 'reasonable notice'). This aligns to the obligations under the Privacy Act 1993 and the Telecommunications Information Privacy Code 2003, where telecommunications organisations may provide end-user information only in relation to a specific purpose not as part of a wholesale request;

- b. the information must be provided by RSPs to Chorus 20 business days following the date of the request; and
- c. Chorus must notify the RSPs of the intended date of the notice to the end-user.

6. Reasonable Time to Connect

- 6.1 The Code requires that the fibre installation is completed within a reasonable timeframe⁵, and that a fibre connection must be installed before the supply of a copper service is ceased.
- 6.2 The TCF notes that 'reasonable timeframe' is not defined and is comfortable that this term is left open to common sense. The industry has no incentive to have long lead times, and has worked hard to ensure a high level of customer satisfaction with the end to end installation process. This work culminated in a TCF Fibre Installation Code which covers the entire customer journey for a fibre installation.
- 6.3 The requirement in cl 35.1 that a fibre service is installed before Chorus stops supplying the copper service creates unnecessary complexity, and is inconsistent with the industry's business as usual processes when transitioning a customer from a copper service to the new fibre service. The implicit intention of this provision is to ensure that the customer is not left without service. The TCF proposes that this requirement is modified to require that any delay between the copper service being ceased, and the fibre service is commenced, is no more than is reasonable under the circumstances. The reason for proposing such a provision is that:
 - In some cases, the duct which is utilised for the copper service is required for the fibre service. Consequently, the copper must be removed in order to install the fibre;
 - The commencement of the fibre service is dependent on the RSP. In very few cases, the fibre service, although connected, may not be commenced by the provider until the following morning; and
 - It may be more efficient for the technician to install fibre, test the line and confirm it is working and remove the copper (where relevant), during the same visit.
- 6.4 A short gap between the switch over of a new technology, particularly for residential customers, is not unreasonable. In addition, Chorus will work with business customers, as it does today, to ensure a seamless transition. For the above reasons, the TCF disagrees that cl 37 requires that the customer confirms the installation is complete, but rather BAU processes should be followed.

7. Section J: Dispute resolution

- 7.1 The TCF supports the decision that the dispute resolution scheme for the Code is the 'industry dispute resolution scheme', i.e. the Telecommunications Dispute Resolution Scheme (TDRS) established by the TCF.
- 7.2 The TCF disagrees with the requirement in cl. 26.11.3 that Chorus must inform customers of their options to make a complaint to both the TDRS and the Commission. It is a confusing message for consumers and does not support the intention of the Code that disputes are referred to the TDRS. The opportunity to complain to the Commission already exists for all customers (or traders) and should not be a specific requirement of the Code. It runs the risk of misleading customers that the Commission will provide a dispute resolution service and that the Commission will intervene. Instead the focus should be on clear consumer messaging from Chorus on where to go and how to make a complaint. The TCF recommends that cl. 26.11.3 is removed from the Code.
- 7.3 The Code outlines particular requirements for dispute resolution that do not align with the current TDRS dispute resolution process. For example, cl. 61.2 of the Code allows the customer to bring a complaint to

⁵ Cl 1(3)(a)(ii)(A) Sched 2A Telecommunications Act 2001

the TDRS at any time after the dispute arises. However, this does not align with current TDRS process which requires that a complaint must be made to the TDRS within 12 months⁶ of the customer's initial discovery of the matter being complained about. The Commission may not force changes to TDRS via the Code. It is sufficient that the Code refers to the use of the TDRS. The Commission is required to review TDRS and this is the appropriate mechanism to seek changes to the scheme⁷.

- 7.4 If there is no change to the definition of end-user to mean this person is the customer, the TCF is of the view that the dispute provisions in the Code are too wide as cl. 26.11.1 and cl. 57 refer to "*any parties*" to the dispute being able to bring a dispute to the TDRS. Only the customer, property owner and telecommunications service provider should be able to bring a dispute. A beneficiary of the service (such as members of the customer's household) should not be considered a party to the dispute. Please refer to comments above about the definition of customer.
- 7.5 The Commission may wish consider adding a clause for the avoidance of doubt to note that for the purposes of the TDRS, parties with obligations or rights under the Code can be joined as a party to a dispute under the TDRS and required to comply with any ruling from such dispute, including in relation to attribution of relevant dispute costs.

⁶ Clause 17.10 of the Customer Complaints Code

⁷ s 246 of the Act