



TCF Submission

Commerce Commission's Copper Withdrawal Code

14 February 2019

A. Introduction

1. This submission is made by the New Zealand Telecommunications Forum (**TCF**) in response to the Commerce Commission's (**the Commission**) letter dated 26 November 2018 requesting submissions on the "... *interpretation of the 'minimum requirements' set out in Schedule 2A of the Act...*" in relation to the development of a Copper Withdrawal Code (**the Code**).
2. The TCF is the telecommunications sector's industry body which plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of consumers, and the sector.
3. This submission will address three matters related to the development of a Copper Withdrawal Code:
 - Commission process
 - Legislative environment; and
 - Minimum requirements of the Code.

B. Commission Process

4. The TCF supports the process proposed by the Commission to develop the Code. It notes that although the Telecommunications Act 2001 (**the Act**) provides that the

Commission may request the TCF to prepare a draft Copper Withdrawal Code¹, the Commission has chosen not to do so.

5. The TCF is well placed to prepare such a Code considering its experience developing industry self-regulatory codes on similar end-user protection issues. Consequently, the TCF has commenced development of a draft Code (**the TCF Code**) with the intention of assisting the Commission. The TCF Code will be provided to the Commission well before August 2019 as an additional submission for the Commission to consider. This timing should fit comfortably with the Commission's published timetable².
6. The submissions and cross-submissions on the minimum requirements of the Code will inform the TCF of any issues raised by other interested parties. This information will be taken into consideration when drafting the TCF Code. The TCF would like to engage with the Commission on the key issues identified from the submission process before the Commission publishes its key requirements document to ensure that the scope of the Code will be operationally achievable.
7. The purpose of the Code is to facilitate the withdrawal of copper services. It should not introduce additional processes and requirements over the top of those already in place for managing the current programme of consumer led migration. Many of these processes and requirements are set out in existing industry Codes, or are contractual requirements. The scope of the Code should include only what is required in the Act, which provides for reasonable consumer protections when copper services are being withdrawn from a Specified Fibre Area (**SFA**).
8. This submission is based on the TCF's preliminary work identifying the key elements of the Code. Many of the issues are yet to be resolved and will require detailed consideration by the industry as it works towards setting out a draft Code.

C. Legislative Environment

9. Within the legislative environment, of which this Code will be part, there are likely to be several areas of interdependency beyond the two Codes the Commission has mentioned in its letter. For example, Commission Retail Service Quality Codes, as well as a range of related industry self-regulatory codes. Various principle-based legislation such as, the Fair Trading Act 1986 and the Consumer Guarantees Act 1993, will also be relevant as they apply to the provision of telecommunications services generally, although they are not considered specifically here.
10. Two TCF Codes which will be particularly relevant are:

¹ Telecommunications Act 2001 Schedule 2A, Copper Withdrawal.

² Commerce Commission letter dated 26 November 2018 *The Copper Withdrawal Code*.

- The Fibre Installation Code (planned for release for public comment in Feb 2019), will describe industry processes for fibre installations with the intention of providing a good installation experience for end-users. The Code will also set out communication requirements between Network Operators, Retail Service Providers (**RSPs**), and end-users
 - The Copper Migration Code (under development), will differ from the Copper Withdrawal Code in that it applies to the migration of end-users from copper to fibre under specific circumstances (usually initiated by a third party). These circumstances include natural disasters where copper services have suffered substantive damage, or where a community has requested that overhead services such as electricity lines and telecommunications services are placed underground. Under these circumstances, it is not economical to rebuild and/or maintain the copper network, although if an end-user requests a copper access connection, this can be provided.
11. The TCF has a range of other important Codes which provide protection to end-users such as the Emergency Calling Code, Customer Complaints Code, and the Broadband Product Disclosure Code, among others. For a full list of TCF Codes visit the TCF website www.tcf.org.nz.
 12. In addition to these regulatory and self-regulatory codes, Chorus and the Local Fibre Companies (**LFCs**) have specific contractual obligations in relation to fibre access installations and service level agreements. This overarching environment already sets standards for fibre installations and should not be put aside with new standards introduced for the Code. The industry should be able to rely on existing business as usual processes and standards and the Code should reflect these.

D. Scope

13. The Code should not overlay additional processes and requirements to those already in place but be focussed on the specific information relating to the actual event of copper withdrawal and any necessary steps end-users should follow to upgrade their legacy services due to copper services being withdrawn.

E. Minimum Requirements of the Code

General Comment

14. TCF members agree that consumers should be migrated to fibre services as quickly as possible. The current market-led process has been effective at achieving this to date. However, at some point certain areas will reach a tipping point where it is commercially rational that Chorus is permitted to withdraw copper services, accepting that consumers need to be able to connect to a fibre service where they choose to do so. The Code is

required to achieve a delicate balance of permitting the withdrawal of copper services whilst ensuring that consumers are protected.

15. The Code is intended to be permissive. Given that copper to fibre migration is currently a core business for Chorus, LFCs and RSPs it is important that the Code does not override or add unnecessary complexity to existing processes.
16. Chorus and the LFCs must be able to continue taking fibre orders from RSPs to install fibre connections irrespective of whether the premises are within an SFA or not. The Code is not expected to apply to the ongoing process of general migration of end-users at their own request. In addition, the process of replacing a copper service after a natural disaster or a community request to underground services may be governed by the current industry processes, defined by the TCF Copper Migration Code.
17. The decision to withdraw copper services is a commercial one that is left with Chorus. The Code is not intended to set specific parameters which require copper services to be withdrawn. With the current level of migration to fibre services, it is possible that the provisions of the Code which allow Chorus to withdraw copper services in an SFA will be employed infrequently and utilised only for migrating a small number of customers after the rest have already migrated. Alternatively it might be used for a bulk migration under particular circumstances within an SFA.

Minimum requirements

18. The Act sets out the minimum requirements of the Code. The TCF has commenced consideration of these issues; there are some complexities which will take time to work through. Based on the Act and other TCF Codes, the TCF makes the following observations:

- i. When does the Code apply?

The Code will be triggered when Chorus gives formal notice of its intention to withdraw, or stop supplying, regulated copper services in a SFA, in accordance with the Code. Fibre installations outside the area for which the notice applies, or in-flight orders within the area, will be considered business as usual.

The Code should be permissive in terms of the boundaries of the area for which copper services are to be withdrawn. For example, it would not be appropriate for the Code to require that any Notice apply to the entire SFA. Such a requirement could divert resources away from other business as usual installations and create challenges for all industry participants.

- ii. Access a fibre service:

This requirement will be met if the end-user is within a SFA.

- iii. Connection within reasonable timeframe:

It is likely that the process of market-led migration to fibre services will result in the majority of end-users in a particular area being connected to fibre services prior to any decision to issue a formal notice of withdrawal. Consequently, it is possible that the remaining copper connections will be more challenging due to circumstances outside the control of the end-user or Chorus. For example, a pocket of end-users may not be able to have fibre installed because neighbours have refused to give consents for category 3 installations.

The question about the reasonableness of a time period is therefore likely to be determined by the circumstances of end-users. The policy intent is that copper services may be withdrawn when it is commercially appropriate to do so. It would be unfortunate if the withdrawal process is held to ransom by a neighbour unwilling to allow an end-user to receive a fibre connection. The approach to these circumstances will be a key issue for ensuring that copper withdrawal can occur and should be the subject of dialogue between industry and the Commission to ensure an appropriate balance is struck.

The question of reasonable timeframes for connections is something the TCF will consider further, but is likely to be something which should be defined by the circumstances, rather than hard and fast timeframes. Existing contractual arrangements should be the starting point for installation of fibre services and the migration of end-user's copper services.

iv. Fibre installed at no cost to the end-user:

The Act defines standard and non-standard installations. Where an installation is a non-standard installation Chorus will have to bear the cost of the installation. This would also be subject to the end-user accepting the proposed installation method.

v. Reasonable Notice:

The TCF is considering the period of notice which might be reasonable for a Copper Withdrawal Notice. There are a number of factors which impact on what is 'reasonable', depending on the type of operational process required by the withdrawal of copper services within a SFA. The Notice period may be dependent on the size and/or complexity of the project to allow all parties enough time to be prepared and industry appropriately resourced.

vi. Service Functionality:

This is interpreted as broadband and voice services that the end-user is consuming at the time of the copper withdrawal process but excluding legacy services. Legacy services should be listed in the Code for clarity.

Chorus' obligations are to connect the premises as it currently does for the copper network. Services connected within the premises are out of scope but will require supporting industry communications and consumer education about upgrading their services.

vii. Information provided to end-users:

There are several existing codes and obligations already in place which already meet the Act's requirements to provide certain information to end-users regarding products, services and alternative arrangements in the event of a power failure as described in section 3.

viii. Information about Fibre Services:

Chorus currently provides information to end-users about fibre services which are available, and this information can be included in information provided to end-users. In addition, end-users will be advised that they require an arrangement with a service provider in order to receive voice and broadband services.

Additional matters:

The TCF is still working through a range of issues which might impact on the workability of the Code two of which are noted below:

ix. 111 Contact Code:

The 111 Contact Code must be approved by the Commission before the Code can be enforced. Chorus may also have to take into consideration whether other industry participants have adequate time to ensure that their 111 Contact Code obligations can be completed before notice of the copper withdrawal is given.

x. Escalation Process:

The Code should describe minimum requirements for escalations and for when end-users refuse to relinquish their copper services. In such circumstances, the Telecommunications Dispute Resolution Scheme should apply.

F. Conclusion

19. The Code is intended to allow Chorus to withdraw copper services from a SFA when it considers that it is commercially rational to do so, and provides certain protections for end-users during this process. The Code should utilise current industry standards, processes and quality measures to ensure that end-users receive high quality services and a good installation experience.

20. The Code is required to strike a delicate balance between protecting end-users and ensuring that Chorus is not prevented from withdrawing copper services due to circumstances beyond the end-user, or Chorus' control.
21. The TCF is happy to answer any questions the Commission might have on the views set out in this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G. Thorn', followed by a horizontal line extending to the right.

Geoff Thorn
Chief Executive Officer
New Zealand Telecommunications Forum (TCF)