

Determination**Date:** November 2006**Subject:** liability for charges for calls to an Internet point of presence number after relocation of a service**Decision accepted by complainant****Circumstances of the complaint**

This complaint is about liability for long distance charges totalling \$790.09 relating to calls made to an Internet Service Provider's (ISP's) point of presence number after the complainant moved residences.

The main issue in dispute is where responsibility lies, in the circumstances of this complaint, for the complainant's failure, when she moved residence, to change her dial-in point of presence number to a local call number. The complainant, an aged pensioner, had been using the dial up internet service in question for 16 months prior to contacting the ISP to advise that she was moving house.

Before relocating, the complainant claims that she accessed the internet on her dial up service by using the dial-in number. From this location, calls made to this number attracted a local call charge. When she moved (50 kms away), calls made to the same number began to attract STD charges. The complainant was not made aware of the unusually high charges for some time because she was on a quarterly billing cycle and did not receive her first invoice after moving until March 2006.

The complainant claims that she called the ISP on 21 November 2005 to make a payment towards her account and at this time, also advised the service provider that she would soon be moving but did not know her new phone number. She claims she was told to contact the ISP again, once she had her new phone number. In support of this claim, in the customer care records provided by the ISP there is a note made on 21 November 2005, which states in its entirety, 'Paid \$24.95 via Ccard, is moving soon so I said you just need to let us know your new details when you move.' The complainant claims she followed the ISP's advice, and sent an email on 8 December advising of her new address details and of a change to her phone number. A copy of this email is also contained in the ISP's customer care records, which indicates the email stated in its entirety,

*'I would like to advise you that I will be moving on Friday 16 December, 2005. The new phone number as of that date will be ***** and my address will be *****. Please email your confirmation of these details Regards.'*

The complainant did not receive a response from the ISP in relation to this email. More recently, the complainant has provided details of a second call made to the ISP on 22 December 2005. In this respect, she has provided a copy of her telephone service provider's call records that indicate the call was made at 9.17am and lasted for just over four minutes. Whilst she cannot definitively say she discussed her new contact details at this point, she believes it is likely this issue would have been discussed given she had moved just a few days prior.

The complainant claims that she first noticed she had been charged at long distance rates for calls to the ISP's point of presence number when she received her telephone service provider's invoice on 22 March 2006. On this invoice 236 calls to the point of presence number had been charged at long distance rates, versus a local call rate of \$0.17. She has calculated that she should have paid \$40.12 for these calls, but was charged \$675.24. On the complainant's next invoice an additional 55 calls to the point of presence number had also been charged at long distance rates. She has calculated that she should have paid \$9.35 for these calls but was charged \$164.32. In total the complainant disputes \$839.56 less an amount of \$49.47 in recognition of the charges that would have been incurred for if her calls had been made to a local point of presence dial-in number. She claims that the ISP provided her with a local point of presence number when dialling from her new premises on 31 March 2006, this is evidenced by invoices supplied by the complainant, showing that a \$0.17 call rate was resumed when dialling the point of presence number from this date.

The Complainant's position

The complainant claims that she should not be held liable for any calls made to the ISP's point of presence number, which have been charged at a long distance rate. She bases her claim on the following:

- a month prior to moving, she called the ISP and during the call advised that she would soon be moving but did not know her new telephone number. She claims she was only advised to let the ISP know of her new details once she had moved.
- The ISP provided no further advice at this time in relation to how much detail she was to provide or in relation to whether she had to make further queries as to how moving may cause her internet service to change.
- in line with the ISP's advice, she sent an email on 8 December 2005 to the ISP advising of her new address and phone number details. She believes that this is all she was told was required of her.
- she also made a call to the ISP on 22 December, and believes she would have mentioned that she had moved just a few days prior.
- the ISP was presented with three opportunities to advise or remind her to ensure that her point of presence number continued to attract local call rates once she had moved, but failed to act.
- she requested a response from the ISP to confirm receipt of her email of 8 December 2005, however she claims no response to her email was received, and
- she believes that as a consumer, she should not be expected to share the same level of knowledge about how her internet connection works or may be affected by moving as her internet service provider.

The Internet Service Provider's perspective

The ISP claims that the complainant is liable for the full amount of long distance charges she has incurred when dialling its point of presence number. It bases its claim on the following:

- its terms and conditions state that it does not bear any responsibility for any call charges whether local, long distance or international that its Customers incur when using or attempting to access the service. Further, the terms and conditions state that it is the Customer's responsibility to ensure that the number they dial to connect to the ISP is a local number.
- it has fulfilled the obligation set out in the TIO's position statement relating to the provision of a local point of presence number, and advises that at the time an account is set up, each customer is read scripting which states,

'This number should allow you to dial in to our service for the cost of a local call. To be completely sure you must contact your telephone carrier and verify that it is a local call from your phone. You should be aware that [we] will not be held liable for your call charges in the event that you are charged STD or timed rates'

- the complainant did not take enough care or the adequate steps during the process of moving, and she ought to have been aware that her services would need to be reviewed once she had moved.
- it strongly feels that the complainant did not contact the 'correct people' within the organisation. She was advised to call the ISP's support department once she had moved, but by her own admission was too busy to follow up on this particular issue.
- the email sent on 8 December 2005 was received by the ISP's accounts department and as a matter of course the complainant's billing details were changed. The ISP does not believe that any further action was required at this point, so none was taken.
- the accounts department would not have known or needed to know the product the complainant was using, and therefore would not need to know how a change in address details may affect the workings of the service, and
- its records show that the call made by the complainant to the ISP on 22 December was only to make a payment, and lasted for less than a minute.

The TIO's assessment

The TIO's assessment of liability in the circumstances of this complaint involves weighing a number of competing considerations. In doing so the TIO takes into account the law, what is good industry practice and what it considers fair and reasonable in the circumstances.

(a) Point of presence number- general principle

As a general rule, the TIO considers that an ISP is obligated to ensure that its customers are aware of the need to use a local dial-in number. Where there is evidence that an ISP misled a customer or failed to provide adequate warnings and/or advice, the TIO will expect the ISP to reimburse the complainant for some or all of the disputed calls, depending on the circumstances of the complaint and the evidence available.

(b) Consideration of circumstances of this complaint

The complainant claims she took steps to advise the ISP that she was moving on three separate occasions. The TIO is satisfied that the complainant did attempt to advise the company she was moving on at least two occasions, once verbally and once in writing. Both of these occasions occurred prior to the date on which she claims she moved. The circumstances in which these two contacts took place are set out above.

In relation to the third occasion, the ISP initially claimed that the complainant had been advised to make contact once had moved, but that she had not done so. When subsequently presented with the complainant's own call records that she had indeed called the ISP on 22 December 2005, soon after she had moved, the ISP submitted that the reason for this call was to make a payment and not to discuss the change of address. It should be noted that the failure by the ISP to record this call in its customer care record, is contrary to good industry practice. The TIO cannot determine with certainty the content of the discussion between the complainant and the ISP on 22 December 2005. The TIO has considered the ISP's claim that the call would have lasted for around one minute and was made just so the complainant could make a payment, however, given that no customer care record was made against this call, the TIO believes on the balance of probabilities it is likely that the complainant would have also discussed her new address details at this time. In any event, while relevant, this determination does not turn on what was said during this call.

The complainant claims she did not take steps, beyond advising the ISP of her new address and phone number, because she did not know she had to. The TIO is of the view that this belief was understandable, given that the complainant was an aged pensioner, and unfamiliar with precisely how her internet connection works.

The TIO believes that the complainant's action in sending an email to the ISP informing it of her change of address and phone number was a proper means by which to communicate with the ISP.

The TIO has considered the ISP's argument that relevant information was provided to the complainant in its verbal scripting when an account is set up, advising of the importance of selecting a local call dial-in number. The TIO does not believe that this warning is sufficient in this instance. The complainant claims the account was set up 16 months prior to her contacting the ISP to advise she was moving, so a considerable period of time had elapsed since she had been made aware of the ISP's position in relation to this issue. The TIO would not reasonably expect the complainant to remember the specific details of what she was advised when she set up her internet account, given the time that had elapsed. The TIO does not believe this warning is sufficient to absolve the ISP of its obligation to provide advice to the complainant in response to either her call made on 21 November or her email on 8 December 2005.

Based on its own customer care records, and consistent with the complainant's account, the ISP did not ask for anything more than the complainant's new address details when she initially advised of her intention to move. Further, the ISP's customer care notes suggest that it may have positively contributed to the complainant believing that there was nothing more that she needed to do when she moved other than notify the ISP of her new address. In this respect, the ISP's customer care notes say, '...is moving soon so I said you *just* need to let us know your new details when you move' (our emphasis).

Based on the information presented, the TIO is of the view that the ISP was presented with a number of opportunities to advise or remind the complainant to ensure her point of presence dial in number remained at a local rate once she had moved, but that it did not do so.

Determination

Having considered the information provided, and taking into consideration the law, good industry practice and what is fair and reasonable in the circumstances, the TIO is of the view that both the complainant and respondent should bear some responsibility for the complainant's failure to change her dial-in point of presence number to a local number, when she moved residence.

In addition to the matters outlined above, I have taken into consideration the following, in coming to this view:

- there is no legislation or industry regulation requiring telecommunications service providers to provide advice or warning to its customers to ensure that their point of presence dial in numbers attract a local rate. However, the TIO believes that service providers should do it as a matter of good industry practice. The TIO's position statement regarding non-local ('national' or 'long-distance') dial-in number complaints is silent as to when this obligation is expected. In a general sense it is expected that a company will provide adequate advice when a dial up account is set up, however the TIO does not consider the obligation to be limited to this situation alone.
- the ISP may not have had the means to monitor the complainant's landline account, and therefore may not have had the opportunity to notify the complainant of the unusual usage on her account.
- the charges are payable to a company separate to this dispute, a telephone service provider.
- the TIO's decision to direct the ISP to pay 75% is not a precise measure of responsibility, but is indicative of the competing factors that have been considered in this matter, and
- of primacy amongst these factors is that the ISP was provided with a number of opportunities to advise or remind the complainant to check that her point of presence dial-in number remained at a local call rate charge once she had

moved. The ISP's own customer care notes indicate that insufficient advice accompanied or followed from the customer's notification of a change to her address details. Further it is likely that if the ISP had provided adequate advice to the complainant when she notified it of her intention to move, this advice would have prevented the generation of the charges in dispute. By failing to do so, the ISP contributed to the eventual quantum in dispute.

I hereby determine that the ISP should bear responsibility for 75% of the charges in dispute \$790.09 (\$592.97).

In order to give this determination effect, the ISP should pay the complainant the amount of \$592.97.

This action should be completed within 28 days of the TIO providing the ISP with a completed TIO release form signed by the complainant.

**Simon Cleary
Deputy Ombudsman**

November 2006