

## TIO Determination – 14 August 2018

### (De-identified for publication)

This document sets out my Decision on a complaint from the Representative on behalf of the small business consumer (the Company) about the Provider.

#### 1 Decision

My Decision is the Provider must pay the Company \$6,232.00 by the close of business on **Friday 17 August 2018**. This is because:

- In the contract between the parties, the Provider agreed to pay the Company this amount
- The contract between the parties did not prevent the Company porting a landline service away from the Provider

#### 2 Background

The Company entered into a contract with the Provider on 4 March 2016. The contract was for a phone system and network services including two lines and unlimited ADSL.

The Order Specification form contains a section headed *PAYOUT* which says the Provider will payout settlement of a previous rental agreement upon receipt of evidence from the previous finance company/telephone company. The payout figure on the Order Specification form for the Company is \$6,232.00.

#### 3 The Company's complaint and the Provider's response

##### 3.1 The complaint

The Company's complaint is the Provider has not paid \$6,232.00 payout amount agreed, and so has not complied with its contractual obligations.

The previous rental agreement for equipment was billed to the Company on its monthly bill from another telecommunications service provider, on behalf of a third party finance company. To prevent debt collection action, the Company has continued to pay the monthly finance repayment of \$205.04 invoiced on the Company's bill from the other telecommunications service provider.

The Order Specification form requires the Company to provide evidence of the debt from the finance company together with an invoice to the Provider for the payout amount. The Representative has provided me with evidence she has done this. The Provider has acknowledged receipt but has not made the payment.

### 3.2 The Provider's response

The Provider initially refused to make the payment because: *A condition of the payout is that the Representative keeps both numbers with the Provider.* The Provider noted the Representative had ported one of the numbers away from the Provider.

On 1 June 2018 the Provider asked for the Company's bank details so the payment could be made. The Provider has not made the payment.

## 4 Reasons

### 4.1 The contract required the Provider to pay the Company \$6,232

I am satisfied the contract between the parties required the Provider to pay the Company \$6,323. The amount was to be paid once the Company provided the required documentation.

The Representative has provided a copy of a Tax Invoice from the third party finance company to the Company dated 20 June 2016 which states Payout to purchase all the equipment... Total Payable \$6,472.14.

The Company has continued to make the payments to the third party finance company, via the monthly invoice from the other service provider it receives in order to avoid debt collection activity because the Provider did not make the payment.

### 4.2 The contract did not prevent the Company porting a landline away from the Provider

I am satisfied the contract between the parties did not prevent the Company porting a landline away from the Provider.

Under the heading:

*PROVIDER EQUIPMENT AND NETWORK PLAN,*

The contract says equipment rental is \$300 per month for 60 months, and the monthly landline plan is \$137 per month for 24 months. The contract is dated 4 March 2016.

The Company transferred the first landline away from the Provider on 16 March 2018, which is more than 24 months after the date of the contract.

The Representative has continued to pay the agreed amount for the equipment rental, which has a term of 60 months.

Judi Jones

**Telecommunications Industry Ombudsman**