

TIO Decision – 3 October 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 is to pay the Company \$20,258.80 by the close of business on Wednesday 24 October 2018. This is because I am satisfied:

- The Company is entitled to a Customer Service Guarantee (CSG) payment of \$23,328.80, however
 - The Provider has already provided credits to the value of \$3,070 which should be deducted from the CSG payment.
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2 Background

This decision relates to the Company's account with the Provider.

3 The complaint and the Provider's response

The Company's complaint is about the agreement with the Provider for voice telephony lines and the provision of voice telephone services.

3.1 Agreement about voice telephony lines

On 4 May 2016, the Provider attended the Company's former premises and discussed the Provider's services with the Representative. On the same day, the Representative signed agreements with the Provider for the Company to be provided with the Provider's services. The application for services requested five landline services including:

- The connection and transfer of service number A (main phone line),
- The connection and transfer of service number B (fax to email line), and
- The connection of three new PSTN services.

Only four of the services were to be for voice telephony purposes.

The Representative says he told the Provider the Company was moving to new premises and it required copper PSTN¹ lines because he knew internet based voice services did not work in the area. The Representative says he requested connection of the lines for 22 May 2016 (as the Company planned to move into the new office premises on 21 May 2016). The Representative says the Provider told him it could get the lines working “straight away”. As other providers he spoke to could not get the lines working until 17 June 2016, he chose to sign up with the Provider.

The Provider disputes it told the Representative his new system would be available within one day of moving in. The Provider says it told the Representative a new line would have to be connected and the normal relocation time frame is about four weeks.

3.2 Provision of voice telephone services

On about 6 July 2016, the Provider installed one PSTN line at the premises. The Representative says this line supported ADSL² and VOIP³ services. He says the Provider never told him the VOIP services were an interim service nor when the Company would eventually get all four PSTN lines the Company had ordered. The Representative says the VOIP services were never fully functional and the Company experienced constant faults.

The Representative says the Provider did not connect the remaining three PSTN lines providing voice telephony services until 2 May 2017.

The Provider confirmed the Company’s services were all “restored” to PSTN on 2 May 2017. The Provider does not deny the Representative reported faults with the service. The Provider says it placed the Company on a “like” service (the VOIP) in the interim while the porting was being completed.

The Provider says there was no delay in rectifying faults with the VOIP service, as it began steps to rectify reported faults straight away. The Provider also says “extreme weather conditions” pushed back the Wholesaler’s new line appointment, which meant the Provider was exempt from the performance standards under the CSG Standard.

¹ Public Switched Telephone Network

² Asymmetric Digital Subscriber Line

³ Voice Over Internet Protocol

4 Reasons

My reasons for my decision are:

- The Company is entitled to a CSG payment of \$23,328,80
- The Provider can deduct from the CSG payment credits it has already applied.

4.1 The Company is entitled to a CSG payment of \$23,328.80

I am satisfied the Company is entitled to a CSG payment of \$23,328.80 because:

- The CSG applies to connection timeframes for transferred services,
- The Provider, as the Company's carriage service provider, did not connect the Company's specified services within the guaranteed maximum rectification period,
- The Provider is not entitled to rely on exemptions granted to its Wholesaler for mass service disruptions, and
- The Provider did not obtain the Representative's agreement to extend the interim VOIP service beyond six months.

4.1.1 CSG applies to the connection timeframes even for transferred services

Despite one of four services being transferred, I am satisfied the CSG applies to the connection timeframes.

The Provider argued the Company's request for the connection of the four PSTN services was a transfer of services and therefore excluded from the CSG Standard.

The Telecommunications (Customer Service Guarantee) Standard 2011 (CSG Standard) sets mandatory connection timeframes for landline services. If a provider does not connect a service within the maximum period set out in the CSG Standard, the provider must pay compensation for the period of the delay, subject to any exemption in the Standard.

Section 8(5) of the CSG Standard says:

This section⁴ does not apply if a customer who is connected by a carriage service provider to a specified service requests another carriage service provider to supply the service.

The previous Provider provided the Company's phone services at its previous premises. The previous Provider provided two telephone services, one for the main phone number and the other for a fax line (a fax line is not a CSG service). Both of

⁴ Relating to guaranteed maximum connection periods

these numbers were to be ported to the Provider when the connections were installed. Three PSTN lines would be completely new and have new phone numbers.

I agree two of the services were being transferred as the Company had two service numbers it was porting to the new premises. While the CSG does not apply to delays in porting services, I am satisfied the CSG still applies to the connection timeframes.

4.1.2 The Provider did not connect the Company's specified services within the guaranteed maximum rectification period

I am satisfied the Provider did not connect the Company's specified PSTN services within the guaranteed maximum rectification period set out in the CSG Standard.

Based on a reasonable request date of 25 May 2016, the guaranteed maximum connection period ended on 8 June 2016. I believe this date is supported by the Provider's initial appointment date for installation of 6 June 2016.

The Provider did not connect the specified PSTN services until 2 May 2017.

Item 202(b) of Part 2, Schedule 1 says the maximum connection period in this case is not later than 10 working days after receiving the request.⁵ Item 202(b) says:

if the site at which a customer requests a carriage service provider to connect a specified service is in an urban area or other recognised community grouping with a population greater than 2 500 but less than 10 000 – not later than 10 working days after the carriage service provider receives the request

The Company's premises is in a suburb with a population of 8,780 according to the Australian Bureau of Statistics' Census QuickStats for 2016.

The Provider consistently said it agreed to connect the services within 4 weeks. However, there does not appear to be an agreement between the parties on this extended maximum connection period, and therefore the timeframe of 10 working days in the CSG Standard should apply.

4.1.3 The Provider is not entitled to rely on exemptions granted to its Wholesaler for mass service disruptions

I am satisfied the Provider is not entitled to rely on exemptions granted to the Wholesaler for mass service disruptions for the following periods:

- 4 June 2016 to 25 September 2016, and
- 8 February 2017 to 22 March 2017.

⁵ Item 201 does not apply because the connection was not an 'in-place connection' because the services were not available for automatic reconnection or reactivation by a carriage service provider.

The Provider resells services provided by the Wholesaler. The Wholesaler had exemptions for the periods set out above, but the Provider did not comply with the regulatory requirements needed for the Provider to be able to rely on the Wholesaler's exemptions.

To rely on the Wholesaler's exemptions, The Provider should have given the ACMA⁶ and my office a copy of its notice to customers and a list of the telephone numbers of customers to whom the exemption relates.

This is because, while the Wholesaler obtained exemptions from the CSG Standard for these periods, the Provider did not meet its obligations under section 24(2) of the CSG Standard to be able to rely on the Wholesaler's exemptions.

The ACMA maintains a database containing all the notices of exemption. I reviewed the database for the relevant period and there are no records of the Provider notices in reliance on the Wholesaler's exemptions.

Section 24(2) says:

*If the carriage service provider is a reseller, the reseller may comply with **paragraphs (1) (a), (b) and (c)** by taking the action required as soon as practicable, but in any event not later than 2 working days after the day when the reseller receives notice from the carriage service provider from whom it acquires the service (the supplier) that an exemption is available to the supplier under section 21. (emphasis mine)*

4.1.4 The Provider is not liable to pay a CSG payment for the first six months of the interim service

I am satisfied the Provider is not liable to pay the Company a CSG payment for the first six months from the date of the request for services. This is because although the Provider provided the Company with an interim service, the Provider did not get the Company's agreement to extend the interim service beyond the maximum of six months.

I am satisfied the Provider provided the Company an interim service when the VoIP service was connected on 7 July 2016. While not the specified service requested, the VoIP service provides a voice telephony service and therefore meets the definition of an interim service.

The CSG Standard defines an interim service as a voice telephony service. Section 101(2) of Schedule 2 says while an interim service is being provided, there will be no compensable connection delay for the purposes of Part 2 of Schedule 2.

While the interim VOIP service was set up on 7 July 2016, section 7(5) says the six

⁶ Australian Communications and Media Authority

month timeframe starts from the date of the customer's request for the connection of the service. As set out above, taking into consideration the views of both parties, I determined the reasonable date for the request of services to be 25 May 2016, the date the Company gained access to the premises.

I did not receive any evidence showing the Provider received the Company's agreement to extend the interim VOIP service in lieu of the remaining PSTN services to be installed. Therefore, the end of the six month time limit for the interim service was 25 November 2016.

Section 7(5) of the CSG Standard says:

A carriage service provider must not, without the agreement of a customer, supply the customer with an interim service for a period exceeding 6 months from the time of the customer's request for the connection of a standard telephone service.

4.1.5 CSG payment of \$23,328.80

Taking all of the above into account, I calculate the CSG payment to be \$23,328.80. This is based on 492 days of delay.

Schedule 2, Part 2, item 201 of the CSG Standard sets out the damages payable for each day of delay. The CSG Standard says if the customer is a business customer (which the Company is), the payment is \$24.20 for the first five working days of delay, and \$48.40 for subsequent days of delay.

Calculation of the number of days

I have calculated the 492 days delay using the following information:

- The request for connection was 25 May 2016
- The guaranteed maximum connection period ended on 8 June 2016
- The interim VoIP service was installed on 7 July 2016
- The interim service 'expired' on 25 November 2016

This means four⁷ PSTN services were entitled to a CSG payment from 9 June 2016 to 6 July 2016, and four PSTN services were entitled to a CSG payment from 26 November 2016 to 1 May 2017. Figures 1 and 2 below show my calculation of the number of days on which to base the CSG payments.

⁷ Each service requested for connection is calculated for CSG separately.

Figure 1 Calculation of 76 days for CSG payment 9 June to 6 July 2016

Number of working days	20
Less public holiday ⁸	1
Total days	19
Working days for 4 x services	76

Figure 2 Calculation of 416 days for CSG payment 26 November 2016 to 1 May 2017

Number of working days	111
Less public holidays ⁹	7
Total days	104
Working days for 4 x services	416

Calculation of the amount

I have determined the amount payable under the CSG Standard to be \$23,328.80 using the following calculations:

- The first five working days for four service

\$24.20
x 5
 \$121.00
x 4
\$484

- The remaining 472 days (416 + 56) working days¹⁰ for four services

\$48.40
x 472
\$22,844.80

Total = \$23,328.80

⁸ Queen's Birthday, 13 June 2016

⁹ Christmas Day, Boxing Day, New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day.

¹⁰ 56 days remaining from the CSG period prior to the interim service

4.2 The Provider can deduct from the CSG payment credits it has already applied

The Provider is entitled to deduct credits it has already applied for the delay from the calculated CSG payment figure, which is \$3,070.00.

I reviewed the information provided by both parties and note the Provider provided the following credits and services without charge to compensate for the delay in connection:

- Three PSTN lines provided at no charge to the Company, valued at \$990
- New ADSL line provided at no charge to the Company, valued at \$330
- Goodwill credits of \$1,750.

Total = \$3,070

I have not taken into account the credits for the 1300 calls as these are not credits for the delay in connection.

The Provider said it carried out multiple site visits valued at \$240 each to the Company's premises. However, the Provider did not say whether these visits were over and above the visits it was required to make to meet its obligations to connect the Company's services. I have therefore not taken these into account.



Judi Jones

Telecommunications Industry Ombudsman