

## TIO Decision – 17 December 2018

### (De-identified for publication)

This document sets out my decision on a complaint from the Representative on behalf of the Company about the Provider.

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#### 1. Decision

My decision is the Provider must:

- release the Company from its contract, waiving any early termination fees,
  - arrange the return of all provided equipment, and
  - refund the Company \$189.00 in technician's costs.
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#### 2. Background

The Company contracted with the Provider for the supply of eight fixed-line VoIP services, an ADSL internet service, and a fax line service. The account number is xxxxxx, and the services are connected at [address].

The Company authorised the Representative to represent the Company in this complaint, and the Representative provided my office with information from the Company.

#### 3. The complaint

This complaint is about drop outs on the Company's fixed-line services.

On 7 February 2017 the Company contracted with the Provider for eight VoIP services, an ADSL internet service, a fax line service, and related equipment. The Representative says the Provider told them the Company would be able to use all eight VoIP services at the same time through a dedicated connection the Provider would provide to the Company.

On 17 April 2017, the Provider installed the VoIP handsets and modem at the Company's premises. The Representative says the Company has not changed the set up of the equipment, apart from installing a network switch to provide additional connection points for the handsets. The modem provided by the Provider to the Company had insufficient ports to allow the 8 VoIP phones to be connected directly to it.

The Representative says since April 2017 the Company's VoIP services have been dropping out. The Representative says the Company's business is providing financial advice to clients over the phone, and the Company is unable to make or receive calls when the VoIP services drop out. The Representative says they contacted the Provider on multiple occasions to troubleshoot the issue, but the Provider has not been able to fix the drop outs. The Representative also says the Company has replaced the network switch after the Provider told them the switch was causing the service issues, but this did not resolve the problem.

The Representative says the Provider offered to resolve the complaint by transitioning the Company's services to the National Broadband Network (NBN), but the Company would have to enter into a new contract with the Provider to be connected to the NBN. The Representative says the Company is not willing to enter into a new contract with the Provider because of the service issues the Company has experienced. The Representative says the Company now only uses five of its VoIP services, and continues to experience service issues.

The Representative preferred resolution is for the Provider to release the Company from its contract without early termination charges. The Representative says the Company is willing to return all equipment the Provider supplied to the Company as part of the service contract.

#### **4. The Provider's response to the complaint**

The Provider says the Company is experiencing issues with its VoIP services because of a fault on the Company's side of the network boundary. The Provider says the service issue could be caused by over-utilisation of the modem, a switch fault, internal wiring issue, problems with the Company's Local Access Network (LAN), or another fault beyond the network boundary point. The Provider also says the service issues are not related to the speeds the Company receives on the Company's dedicated VoIP fixed-line services.

The Provider says it is not responsible for the service issues, and says the Representative has not been willing to troubleshoot the issue with it. The Provider says it can transition the Company's services to the NBN, but says this will not address the Company's service issues. The Provider says it is not willing to release the Company from the contract without early termination charges.

#### **5. Jurisdiction to consider this complaint**

I am satisfied I have jurisdiction to consider this complaint. I am able to consider a complaint about any type of telecommunications service supplied or offered by a TIO member. I am also able to consider a complaint about any telecommunications equipment supplied by a TIO member that affects a consumer's access to a telecommunications service.

The Company has complained the services provided by the Provider do not work. The Provider has provided the Company with modems and handsets the Company uses to access its VoIP services.

My Terms of Reference (ToR) explain what the Telecommunications Industry Ombudsman scheme does, the types of complaints we handle, and how the complaints are handled.

Clauses 2.7(a) and 2.7(b) of the ToR says:

*We handle the following types of complaints:*

- (a) A consumer's complaint about any type of telecommunications service supplied or offered by a TIO member, or the supply of which is arranged by a TIO member, where the consumer is an end-user of the telecommunications service or is directly affected by the telecommunications service*
- (b) A consumer's complaint about a problem with telecommunications equipment supplied by a TIO member, or with a TIO member's network infrastructure, that affects the consumer's access to a telecommunications service supplied or offered by a TIO member*

## **6. Providers can be liable for faults with equipment beyond the network boundary**

I am satisfied that a provider can be liable for faults with equipment beyond the network boundary point.

The Telecommunications Act 1997 separates responsibility for maintaining Australia's telecommunications network between consumers and providers:

- a provider is responsible for diagnosing and fixing faults with a telecommunications network up to the consumer's side of that network. If a consumer's service is connected to a main distribution frame (MDF), a provider's responsibility ends at the MDF, and
- a consumer is responsible for diagnosing and fixing faults located after the MDF, including any issues with internal wiring, sockets, and equipment.

The Australian Consumer Law (ACL) sets out a number of guarantees relating to the supply of goods and services. Under the ACL, providers have an obligation to supply goods of an acceptable quality, and goods that are fit for purpose.

If a provider supplies telecommunications equipment that is not of an acceptable quality or fit for purpose, which affects a consumer's access to a telecommunications service, a provider can be liable for loss related to breaching those guarantees.

These guarantees cannot be excluded by contract, and are not excluded from applying to faults beyond the network boundary point, under the Telecommunications Act 1997.

## 7. Reasons

The reasons for my decision are:

- the Provider contracted to provide the Company with eight simultaneous VoIP services,
- the Provider is unable to provide the Company with the VoIP services the Company contracted for:
  - the Company does not receive adequate upload speeds to support eight simultaneous VoIP services, and
  - the Provider's solution is not capable of supporting eight simultaneous VoIP services;
- the Company has checked the Company's side of the network boundary and has not been able to locate a fault,
- the fault is likely to be on the Provider's side of the network, or with equipment provided by the Provider, and
- even if there is no fault on the Provider's side of the network, or with the equipment, the Company's upload speeds are insufficient to support eight VoIP services.

### 7.1 Fair and reasonable: release the Company from its contract, arrange return of all provided equipment

I am satisfied it is fair and reasonable for the Provider to release the Company from its contract and arrange the return of all provided equipment because:

- the Provider contracted to provide the Company eight simultaneous VoIP services, and
- the Provider cannot provide the Company with the services the Company has contracted for.

#### **7.1.1 The Provider contracted to provide the Company with eight simultaneous VoIP services**

I am satisfied the Provider contracted to provide the Company with 8 simultaneous VoIP services.

On 7 February 2017, the Representative entered into the contract with the Provider over the phone on the Company's behalf. During that call, the Representative made it

clear that the Company was contracting for eight VoIP services, which could be connected as a hunt group.

In an email to the Representative on 9 February 2017, the Provider confirmed its service would support eight simultaneous phone calls (or VoIP services) based on the estimated internet speeds the Company would receive at its premises.

**7.1.2 The Provider is unable to provide the Company with the VoIP services the Company contracted for**

I am satisfied the Provider is unable to provide the Company with the VoIP services the Company contracted for.

On the balance of probabilities, I am satisfied the Provider misrepresented to the Company that the Company's service would be capable of supporting all eight VoIP services. The Company does not receive the speeds required to support those services, which the Provider could have identified if it had conducted speed tests at the modem.

I am also satisfied, on the balance of probabilities, that the Provider did not take reasonable steps to resolve the fault with the Company's services and as a result, did not supply the Company with services that were fit for purpose or supplied with due care and skill.

The Company has consistently reported VoIP service issues to the Provider since April 2017. The Provider's account notes and fault reports show:

- the Representative has been reporting ongoing issues with the Company's services since the services were connected in around April 2017,
- the Representative reported issues about the phones not ringing simultaneously, not being able to make outgoing or receive incoming calls, and not being able to transfer calls between the hunt group, and
- while the Provider was able to resolve some of the issues the Company was experiencing, the Provider was not able to resolve all the issues the Company had reported.

Although the Representative was reporting different issues with the Company's VoIP services, the Representative's consistent reporting of issues shows the VoIP services were never functioning as intended. The Provider has not provided the Company with the VoIP services the Company contracted for.

**7.1.2(a) The Company does not receive adequate upload speeds to support eight simultaneous VoIP services**

I am satisfied the Company does not receive adequate upload speeds to support eight simultaneous VoIP services.

In an email to the Representative on 9 February 2017, the Provider said based on the Company's expected upload speed of 1.07Mbps (or 1070Kbps), its line could provide up to 10 concurrent calls (or VoIP services). The Provider said it would cap the number of calls at eight concurrent calls to ensure all eight services would work.

I understand from the Provider's email that each call (or VoIP service) would require a download speed of 100Kbps, and an upload speed of 100Kbps to work (symmetrical speeds of 100Kbps/100Kbps). This means the Company would require speeds of 800Kbps/800Kbps on its dedicated VoIP ADSL internet service to support eight simultaneous calls.

In comparison, nbn co recommends a minimum symmetrical speed of 150Kbps (150Kbps/150Kbps) to support a single VoIP service on Traffic Class 1, with Quality of Service (QoS) settings:

- Traffic Class 1 (TC 1) is nbn co's default traffic class for VoIP services, which provides symmetrical download and upload speeds, and
- QoS settings are settings required for VoIP services to ensure phone pack transfers are give priority over data packets, as the loss of packets can impact call quality.

If the Company's services were connected to the NBN on TC 1 with QoS settings, the Company would require minimum symmetrical speeds of 1200Kbps/1200Kbps to support eight VoIP services.

If the Company's services were connected to the NBN on Traffic Class 4 (TC 4), which is designed for general internet data, without QoS settings, the Company would require minimum symmetrical speeds of 300Kbps to support a single VoIP service (300Kbps/300Kbps).

On 3 October 2018, the Representative provided my office with screenshots of three speed tests (see figure 1 below) my office has asked them to perform. The Representative's speed tests show the Company receives an adequate download speed to support eight simultaneous calls. However, the Company does not receive the upload speed required by the Provider to support eight simultaneous calls.

**Figure 1 Results of speed tests at the Company's premises (Kbps)**

Time	Download speed	Upload speed
9:30am	16,700Kbps	590Kbps
12:30am	17,690Kbps	730Kbps
3:15pm	12,800Kbps	690Kbps

I do not accept the Provider's position that because the results could be affected by issues with networks outside the Provider's control, I should disregard the speed test results the Representative has provided.

The Company's VoIP services likely interact with many other networks apart from the Provider's own so the Company can receive calls from, and make calls to, consumers with other providers. Speed tests conducted over other networks are likely to give a better indication of how a service works on a day to day basis, rather than a speed test conducted in isolation.

I have sought advice from my Telecommunications Technical and Regulatory Specialist (TTRS) and note:

- lack of upload speed or bandwidth is one of the main causes of faults with VoIP services on the ADSL network and NBN, and
- the Company does not receive adequate upload speeds to support the eight VoIP services it contracted with the Provider for.

***7.1.2(b) The Provider's solution is not capable of supporting eight simultaneous VoIP services***

I am satisfied the solution the Provider offered to the Company is not capable of supporting eight simultaneous VoIP services.

When a consumer enters into a contract with a provider for telecommunications services, a consumer usually relies on advice from their provider to decide if the services are suitable for their needs. In this case, the Company relied on the Provider's advice that its service would be capable of supporting eight VoIP services.

As outlined above, the Company does not receive adequate upload speeds to support the eight VoIP services it contracted with the Provider for. In addition, the Provider provided the Company with a four port modem as part of the contract but the Company needed all eight VoIP services.

The Company purchased and connected its own switch to the modem so the Company would have enough ports to connect all eight VoIP services to the modem.

The Company's switch was not at the Company's premises when the Provider's technician attended to install the VoIP services. Based on the information available to me, all eight VoIP services were not tested together at installation to ensure the services would work simultaneously.

The Company now only uses five of its eight VoIP services, and continues to experience service issues.

## 7.2 Fair and reasonable: the Provider should refund the Company the cost of the technician

I am satisfied it is fair and reasonable for the Provider to refund the Company the cost of a technician because:

- The Provider considered the cause of the Company's service issues to be on the Company's side of the network boundary (the MDF),
- the Company has checked the Company's side of the network boundary and has not been able to locate a fault,
- the fault is likely to be on the Provider's side of the network, or with equipment provided by the Provider, and
- even if there is no fault on the Provider's side of the network, the Company's upload speeds are not sufficient to support eight VoIP services.

### ***7.2.1 The Company has checked the Company's network and has not been able to locate a fault***

I am satisfied it is fair and reasonable for the Provider to refund the Company the cost of having a technician test the Company's side of the network.

When a consumer and a provider disagree about the cause of a fault, either party can organise for an independent technician to attend the premises to investigate the fault. If the independent technician is not able to find a fault on the consumer's side of the network, we expect a provider to cover the cost of a technician.

I am satisfied that the Company, based on the information below, has checked its side of the network boundary, and has not been able to locate a fault. The information available to me shows the Company is likely experiencing service issues because of a fault on the Provider's side of the network.

As a result, the Provider should refund the Company \$189.00, the cost of organising the technician to check the Company's side of the network boundary.

### ***7.2.2 The fault is likely to be on the Provider's side of the network, or with equipment provided by the Provider***

On the balance of probabilities, I am satisfied the fault is likely to be on the Provider's side of the network or with equipment provided by the Provider. This is because:

- the Company has tested the Company's side of the network and did not find a fault,
- The Provider has not provided information to show it has:
  - sufficiently tested its side of the network, or



- investigated possible issues with the handsets and modem it provided to the Company.

As outlined above, the Telecommunications Act 1997 separates responsibility for maintaining Australia's telecommunications network between consumers and providers.

However, a provider can be responsible for issues beyond the network boundary if it has supplied equipment that is not of an acceptable quality or fit for purpose, that affects a consumer's access to a telecommunications service.

On 27 August 2018, an independent technician tested the Company's side of the network boundary. The technician's report shows they were unable to identify any issues with the Company's network between the MDF and the modem.

The Provider's Customer Terms of Agreement for Phone Services says it will endeavour to rectify faults on phone services within a reasonable time.

The Provider has been aware of the Company's service issues for over a year. However, the Provider has not provided any information to show it either sent a technician to check the Provider's side of the network boundary, or conducted speed tests at the premises to confirm whether the Company's upload speed was sufficient for eight VoIP services.

The Provider has provided my office with evidence of remote line testing conducted by its network wholesaler. The wholesaler's remote line testing does not show any issues with the Company's line.

I have sought advice from my TTRS about these remote line tests, and note:

- the speed tests conducted on the line are only an indication of the speeds the Company is able to receive on the line (referred to the 'sync rate' on the line),
- a consumer is likely to only receive around 80% of the speeds a line is capable of supplying due to overheads associated with the data transmission over the connection and other issues on the provider's side of the telecommunications network,
- remote line testing is used to check that a particular copper-based line at a consumer's premises is capable of supporting an ADSL service (usually referred to as a service qualification check),
- remote line testing is not a substitute for the Provider sending a technician to check the Provider's side of the network for issues up to the MDF, and
- remote line testing is also not a substitute for checking the configuration and operation of the equipment supplied to the Company as part of the contract.

The Provider's account notes and fault reports show the Representative initially cooperated with the Provider's requests to troubleshoot the service issues, but stopped doing so. The Representative explained they stopped troubleshooting because the Provider asked them to repeat troubleshooting actions they had completed on multiple occasions. The Provider's account notes and fault reports support the Representative's position.

I accept that the Company should have organised for a private technician to attend the Company's premises sooner than September 2018, over a year after the Provider had asked the Company to check the Company's side of the network. However, I do not consider it reasonable for the Provider to determine the Company's service issues are caused by a fault on the Company's side of the network boundary, when the Provider has not sufficiently checked its side of the network boundary.

I am not satisfied that the Provider has investigated possible issues with the handsets and modem it provided to the Company before determining it is not responsible for the Company's service issues.

I understand that the Company's handsets connect to a network switch, separate from its computer network that is then connected directly to a dedicated modem. The Representative says the Company's IT consultants attend its premises at least once a week to check the Company's LAN.

I also understand the Company has replaced the network switch once before, but this did not fix the service issues. This information suggests the network switch is unlikely to be causing the Company's service issues.

I also understand from the Provider that when it attended the Company's premises to install and configure the modem and handsets, the switch was not at the Company's premises at the time. I am unable to determine if the Provider set up the modem and handsets correctly because:

- there is no evidence to show the Provider was able to test and confirm all eight VoIP services would work concurrently as agreed, and
- if the switch was not available at installation, the technician would not have had sufficient ports to plug all eight handsets in to test them together, as the modem the Provider supplied to the Company only has four ports.

### ***7.2.3 Even if there is no fault on the Provider's side of the network, the Company's upload speeds are insufficient to support eight VoIP services***

I am satisfied that even if there is no fault on the Provider's side of the network, the Company's upload speeds are insufficient to support eight VoIP services.

As outlined above, the Provider says the Company requires symmetrical speeds of 100Kbps/100Kbps for each VoIP service to work.

The Representative's speed tests show the Company receives adequate download speeds to support all eight VoIP services, but does not receive an adequate upload speed.

Even if there is no fault on the Provider's side of the network, the Company's upload speeds will not support the eight VoIP services the Company contracted with the Provider for.

Judi Jones  
**Telecommunications Industry Ombudsman**