

TIO Decision – 8 August 2018

(De-identified for publication)

This document sets out my Determination on a complaint made by the Consumer about the Provider.

Background

On 8 June 2018, I advised the parties of my preliminary view that the Provider should refund the Consumer \$197.98. My preliminary view is set out in the attached appendix to this document.

The Consumer has accepted my preliminary view.

I am not satisfied the Provider has confirmed acceptance of my preliminary view. This is because:

- On 21 June 2018 the Provider sent an email saying it disagreed with my preliminary view
- On 12 July 2018, the Provider sent an email saying there was a miscommunication and it is not disputing the charges

Final Determination

I confirm the preliminary view as my final determination in this matter.

Accordingly, I DIRECT the Provider to refund the Consumer \$197.98 in disputed charges.

Judi Jones

Telecommunications Industry Ombudsman

Appendix

TIO Preliminary View

This document sets out my preliminary view on a complaint made by the Consumer against the Provider.

Preliminary View

Based on the information provided, my view is the Provider must, within five business days of this Preliminary View, refund the Consumer \$197.98 in disputed charges. I have calculated this figure as:

- \$30.00 for the services disconnected on 29 July 2016 but continued to be charged for until November 2016
 - \$70.00 for the monthly service fees for the services from September 2016 until January 2017
 - \$97.98 for the additional charges.
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Background

The Consumer was a customer of telecommunications service provider X on a \$0/month plan since September 2007. He had five mobile phone services with telecommunications service provider X:

- 04xx xxx xx1,
- 04xx xxx xx2,
- 04xx xxx xx3,
- 04xx xxx xx4,
- 04xx xxx xx5.

Around June 2016, the Provider acquired telecommunications service provider X and the Consumer became its customer.

The complaint and the Provider's response

The Consumer's complaint is about the disconnection of mobile services and disputed charges on his account.

The complaint was initially assessed on 7 December 2017. Certain aspects of the complaint were dealt with at this stage requiring no further action while the matters dealt with in this preliminary view progressed to investigation.

The investigation considered whether the Provider charged the Consumer correctly and if not, whether the Consumer is entitled to a refund of any charges.

Preliminary View

Based on the information provided, my view is the Provider must, within five business days of this Preliminary View, refund the Consumer \$197.98 in disputed charges. I have calculated this figure as:

- \$30.00 for the services disconnected on 29 July 2016 but continued to be charged for until November 2016
- \$70.00 for the monthly service fees for the services from September 2016 until January 2017
- \$97.98 for the additional charges.

Reasoning

Charges for services not provided

The evidence available shows the Provider continued to charge the Consumer for services disconnected on 29 July 2016. The Provider is not entitled to charge for services it did not supply. As a result, the Consumer is entitled to refund for all charges relating to the services after 29 July 2016.

The Provider charged the Consumer a total of \$30.00 for services it did not supply. Table 1 sets out the details.

Table 1 – list of services the Provider charged the Consumer but did not supply

Bill number	Number	Period	Monthly line rental charges
xxxx1	04xx xxx xx3	1/10/2016 – 31/10/2016	\$5.00
xxxx1	04xx xxx xx1	1/10/2016 – 31/10/2016	\$5.00
xxxx1	04xx xxx xx2	1/10/2016 – 31/10/2016	\$5.00
xxxx2	04xx xxx xx3	1/11/2016 - 30/11/2016	\$5.00
xxxx2	04xx xxx xx1	1/11/2016 - 30/11/2016	\$5.00
xxxx2	04xx xxx xx2	1/11/2016 - 30/11/2016	\$5.00
		TOTAL:	\$30.00

The Provider confirmed it disconnected service numbers 04xx xxx xx1, 04xx xxx xx2 and 04xx xxx xx3 on 29 July 2016. However, the invoices show the Provider continued charging for these numbers until the invoice issued on 24 November 2016.

The Provider has not explained why the numbers were charged for until November 2016. The Provider said this would have been a genuine mistake but has not agreed to refund the charges.

New monthly service charge

I am not satisfied the Provider is entitled to charge the Consumer the new monthly service charge before he had effective notice of the new charge.

Clause 18 of telecommunications service provider X's terms and conditions says:

Telecommunications service provider X reserves the right to change prices including call rates and monthly access fees at any time.

Clause 11.6 of the terms and conditions provides:

Where telecommunications service provider X reasonably consider that an amendment to the SFOA will result in more than a minor detrimental impact to you, telecommunications service provider X will give you individual notice 21 days prior to the amendment taking affect (sic)...

This means telecommunications service provider X (and by extension the Provider) is entitled to change its prices.

However, I believe it is fair and reasonable for the charge not to commence until the customer had reasonable notice of it. The Provider says it gave customers notice of the fee in August, and started charging customers the fee in September. This would suggest the Provider were prepared to provide around a month's notice to customers.

I am not satisfied on the evidence provided that the Provider sent the Consumer notice of the new monthly fee in August 2016. The Provider started charging the Consumer for the monthly service fee on the bill issued on 24 September 2016. The Consumer first became aware of the charges on 24 January 2017 when he contacted the Provider to clarify the charges on his invoices. In my view, it is reasonable to take this date as when the Consumer received notice of the charges.

The Consumer was not in a fixed term contract with the Provider. If he was dissatisfied with the new charges for his service, it was open to him to port his services to another provider. His decision to remain with the Provider means that he is liable for the new services charges upon being given notice of them.

In total, the Provider charged the Consumer \$70.00 in service charges between September 2016 and January 2017. Accordingly, the Consumer is entitled to a refund of all monthly service charges before 24 January 2017. Table 2 (on the next page) sets out the details.

Table 2 – details of monthly service charges

Bill number	Number	Period	Monthly line rental charges
xxxx1	04xx xxx xx4	1/10/2016 – 31/10/2016	\$5.00
xxxx1	04xx xxx xx5	1/10/2016 – 31/10/2016	\$5.00
xxxx2	04xx xxx xx4	1/11/2016 - 30/11/2016	\$5.00
		1/09/2016 - 30/09/2016	\$5.00
xxxx2	04xx xxx xx5	1/11/2016 - 30/11/2016	\$5.00
		1/09/2016 - 30/09/2016	\$5.00
xxxx3	04xx xxx xx4	1/10/2016 – 31/10/2016	\$5.00
xxxx3	04xx xxx xx5	1/10/2016 – 31/10/2016	\$5.00
xxxx4	04xx xxx xx4	1/11/2016 – 30/11/2016	\$5.00
xxxx4	04xx xxx xx5	1/11/2016 – 30/11/2016	\$5.00
xxxx5	04xx xxx xx4	1/12/2016 – 31/12/2016	\$5.00
xxxx5	04xx xxx xx5	1/12/2016 – 31/12/2016	\$5.00
xxxx6	04xx xxx xx4	1/01/2017 – 31/01/2017	\$5.00
xxxx6	04xx xxx xx5	1/01/2017 – 31/01/2017	\$5.00
		TOTAL	\$70.00

The Provider said it emailed all its customers in August 2016 outlining details of the price increase and then started to charge for the new price from October 2016 onwards. The Provider has provided a template of the email but has not provided evidence to show it sent the email to the Consumer.

The Consumer also identified incorrect charges on his account where he was charged the monthly fee for the same period more than once. The Provider initially agreed to waive all monthly fees charged until 3 May 2017 but later refused to do so.

The Provider has not provided evidence to show these charges are valid.

Additional charges

On the evidence available, I am not satisfied the additional disputed charges on the account are valid. The Provider has not provided any information explaining what these charges are for or attempted to verify it. Accordingly, the Consumer is

entitled to refund for \$97.98 covering all the additional charges. Table 3 sets out details of these charges.

Table 3 – additional disputed charges

Bill number	Period	Service and Equipment charges
xxxx1	24/08/2016 to 31/08/2016	\$3.48
	1/09/2016 to 30/09/2016	\$13.50
	1/10/2016 to 31/10/2016	\$13.50
xxxx2	1/11/2016 to 30/11/2016	\$13.50
xxxx3	1/12/2016 to 31/12/2016	\$13.50
xxxx4	1/01/2017 to 31/01/2017	\$13.50
xxxx5	1/02/2017 to 28/02/2017	\$13.50
xxxx6	1/03/2017 to 31/03//2017	\$13.50
	TOTAL	\$97.98

The Consumer identified the charges set out in Table 3 as charges he could not understand. In January 2017, he questioned a charge of \$13.50 on his invoices. The description for this charge on the invoice appears as both ‘monthly plan rental’ and ‘service and equipment charges’. The Provider initially responded in February 2017 saying it was an error and had been fixed but then continued to charge the Consumer this amount until February 2017 totalling \$97.98.

The Provider could not explain what the charges were for and said it may have already refunded these to the Consumer, but did not provide evidence to show the refund. The invoices the Provider issued until 23 July 2017 do not show adjustments applied to the account.

No agreement made to resolve the complaint

I am not satisfied the parties reached an agreement to resolve this complaint. I accept the Consumer engaged in extensive correspondence with the Provider between March and May 2017. The negotiations involved a number of offers and counter offers. Ultimately there was no finality. This means the Provider is not obliged to pay the Consumer \$709.76 it proposed, or reinstate its offer.

The Consumer said the Provider offered to pay him \$709.76 to settle the complaint but later reneged on the offer. The Consumer supplied copies of email correspondence between March and May 2017. The emails show negotiations between the Consumer and the Provider representatives.

In an email dated 13 April 2017, the Provider representative offered to refund \$709.76. This email also advised that the Provider would continue charging the increased monthly fee. This appears to be a condition on the offer. Although the Consumer sought to accept part of the offer, there was disagreement on the condition. Both parties to the discussion accepted that they were not in agreement.

In an email dated 3 May 2017, the Provider presented a further offer to waive the monthly fees charged until the date of the offer and apply a credit for the amount. The Consumer responded on 6 May 2017 stating he accepted the offer to cover the monthly fees until 3 May 2017. He also proceeds to discuss part of the previous offer assuming it was still available for acceptance.

On 12 May 2017, the Provider emailed the Consumer stating it decided to retract the offer. The Provider is entitled to withdraw an offer that the Consumer had not accepted.