

TIO Determination – 14 November 2018

(De-identified for publication)

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

On 9 October 2018 I advised the parties of my Proposed Resolution (reproduced in the Appendix). The Company accepted the Proposed Resolution, but the Provider did not respond.

Directions

The Proposed Resolution is my final Decision in this matter.

Accordingly, I DIRECT the Provider to pay the Company \$4,177.87 within 10 working days of the Company accepting my decision.

My reasons for my decision are:

- the Provider should refund the Company \$862.47 (up to 30 June 2018) for a virtual number service, which was not contracted for,
- the Provider has provided sufficient credits for late payment fees,
- the Provider has undertaken to waive the difference between the current and previous plans for three landlines,
- the Provider should pay the Company a CSG payment of \$3,315.40, and
- the Company did not provide any evidence to substantiate a business loss compensation claim.

Judi Jones

Telecommunications Industry Ombudsman

Appendix

TIO Ombudsman's Proposed Resolution – 09 October 2018 (De-identified for publication)

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

1 Proposed Resolution

Based on the information given to me, my proposed resolution of this complaint is the Provider should pay the Company \$4,177.87. This is because:

- the Provider should refund the Company \$862.47 (up to 30 June 2018) for a virtual number service, which was not contracted for,
- the Provider has provided sufficient credits for late payment fees,
- the Provider has undertaken to waive the difference between the current and previous plans for three landlines,
- the Provider should pay the Company a CSG payment of \$3,315.40, and
- the Company did not provide any evidence to substantiate a business loss compensation claim.

2 Background

The Company has a contract with the Provider under which the Provider provides the Company five landline services:

- xxxxxxxx1, the main line which line hunts to two other lines,
- xxxxxxxx2, diverts from xxxxxxxx1 if busy,
- xxxxxxxx3, diverts from xxxxxxxx1 if busy,
- xxxxxxxx4, and
- xxxxxxxx5, for fax and eftpos.

3. The complaint

The Company complained about:

- a 14 day landline outage, where an interim service was not provided until day seven,
- the Provider not compensating the Company for the outage,

- the Provider charging \$862.47 for a virtual number service the Company did not request,
- late payment charges of \$40 when unpaid amounts were in dispute,
- being charged for service number xxxxxxxx4 from 5 April 2018 even though the service number has not been usable since then, and
- the Provider changing the charges for three of the Company's lines from \$31.77 per month to \$54.95 per month without its consent

3.1. 14 day outage

The Company complained its landlines were unable to receive incoming calls for a 14 day period between 5 April 2018 and 18 April 2018.

The Representative said a diversion to their personal mobile was set up on 12 April 2018. The Representative said the diversion had limited effectiveness as four phone lines were being redirected to one mobile which meant the business missed many calls.

3.2. Business loss compensation

The Company claimed compensation for losses the business suffered from the 14 day outage. On 20 July 2018, the Company offered to accept \$1,870 from the Provider to settle this part of the complaint.

3.3. Virtual number service

The Representative said they reviewed the Provider's invoices and found the Provider had charged the Company for a virtual number service since July 2017. The Representative said this service was not in the original application for services with the Provider, nor did the Company request this service at any point. The Representative said the total of these charges up to 30 June 2018 was \$862.47.

3.4. Late payment charges

The Representative said the Provider charged two \$20 late payment fees in April and May 2018. The Representative said they paid the Company's March invoice in full by 21 March 2018, which was well before the due date of 30 March 2018. The payment was not recorded on the April 2018 invoice. A further late payment fee was added on the May 2018 invoice, despite the unpaid service charges being in dispute because of the 14 day outage and ongoing service issues in April 2018.

3.5. Service charges for xxxxxxxx4

The Representative said the Company disputed paying charges for service number xxxxxxxx4 because this service remained disconnected after the original 5 April 2018 outage.

On 2 May 2018, the Representative told the Provider about the line remaining disconnected and not working. On 20 July 2018, the Representative reminded the Provider the line remained disconnected and unusable.

3.6. Rate increase without notice or consent

The Representative said the Provider increased the charges for three of the Company's lines without notice or consent. The application for services shows the rate for each of the three lines as \$31.77. From May 2018, the Provider began charging these three lines at \$54.95.

4. The Provider's response

The Provider says the fault was caused by a fault at the carrier's exchange. The Provider says it does not guarantee a fault free service, but offered to reimburse the Company for service charges for the 14 day fault.

On 23 August 2018, the Provider sent my office its view on:

- the virtual number service charges,
- late payment fees,
- service charges for xxxxxxxxx4,
- rate increases without notice, and
- the CSG assessment.

4.1. The virtual number service charges

The Provider said the charges listed under 'virtual number service' were legitimate charges for services the Company used, including service calls not otherwise listed on the bill.

The Provider acknowledged that listing these service charges under 'virtual number service', rather than correctly listing them, may have caused misunderstanding, and has now corrected the error.

4.2. Late payment fees

The Provider provided a screenshot of a table showing \$66 of late payment fees had been charged, but \$181.50 of credits had been applied.

4.3. Service charges for xxxxxxxxx4

The Provider disputes service number xxxxxxxxx4 has been unavailable. The Provider said there has been usage on the line until 1 August 2018, and the Company did not tell the Provider the service was not working until 1 August 2018. The Provider offered to send a technician out to assess the fault, but the Company did not agreed to accept service fees for the technician's appointment.

4.4. Rate increases without notice

The Provider said it would move the Company back to the original charge schedule and credit back the difference.

4.5. CSG assessment

The Provider disputed liability for a CSG payment. The Provider denies its liability for a CSG payment started on 5 April 2018, and said there were active lines during the fault period for the main line.

5. Reasons for my proposed resolution

5.1. The Provider should refund the Company \$862.47 for the virtual number service

I am satisfied the Provider should refund the Company \$862.47 for the virtual number service. This is because:

- the virtual number service is not listed on the original application for services,
- the Company did not request the virtual number service, and
- the Provider's explanation is satisfactory for ongoing charges but not for previous charges.

In its response on 23 August 2018, the Provider explained the charges for the virtual number service were for the 13/1300 numbers called from the service numbers on the original application for services. The Provider said these calls were separated from the actual service numbers that were used to call and then charged under the virtual number service. The Provider acknowledged this may be confusing. The Provider believes there was no explicit inclusion for 13/1300 numbers to be included in the call charges.

I accept the charges for virtual number service are likely to be legitimate. However, the Provider's internal process or system sorted the 13/1300 calls and assigned them to a service number the Company had not contracted to receive. On that basis I am satisfied the Provider had not given adequate notice about what these charges were for and therefore should refund these charges. The Provider has now left the 13/1300 calls assigned to the original service numbers they were called from and so there is no longer any confusion about these charges.

5.2. The Provider has provided sufficient credits for late payment fees

I am satisfied the Provider has provided sufficient credits for late payment fees.

The Company identified late payment fees in March and April 2018 that should not have applied because:

- the March 2018 payment was made on 21 March 2018, which was before the due date of 30 March 2018, and
- the April 2018 charges were in dispute because of the 14 day outage, and therefore credit management action, including late payment fees, should have been suspended during the complaints process.

In its response on 23 August 2018, the Provider provided a transaction screenshot showing:

- the late payment in March had been reversed, and
- a service impact credit (\$137.50) greater than the late payment fee in April (\$22) had been applied.

I am satisfied this is a fair and reasonable resolution of this aspect of the Company's complaint.

5.3. The Provider has undertaken to waive the difference between the current and previous plans

I am satisfied the Provider has undertaken to move the Company back to the original charge schedule and credit back the difference. Once the Provider confirms the credit has been applied, I will be satisfied this is a fair and reasonable resolution of this aspect of the Company's complaint.

5.4. The Company is entitled to a CSG payment to the Company of \$3,291.20

I am satisfied the Company is entitled to a Customer Service Guarantee (CSG) payment of \$3,291.20 because:

- the Provider, as the Company's carriage service provider, did not rectify the fault for five landline service numbers within the guaranteed maximum rectification period.
- the Provider has yet to rectify the fault with service number xxxxxxxx4.
- There are no mass service disruption (MSD) notices for service number xxxxxxxx4 since 5 April 2018.

5.4.1 The Customer Service Guarantee (CSG)

Under the Customer Service Guarantee (CSG) Standard, carriage service providers (CSPs) are required to meet performance standards and provide customers financial compensation when these standards are not met.

Customers with five or less eligible telephone services are eligible for a CSG payment. The Company has five eligible telephone services so is eligible for a CSG payment where the performance standards are not met.

5.4.2 The Provider did not rectify the fault within the maximum timeframes

I am satisfied the Provider did not rectify the fault for four landline services within the guaranteed maximum rectification period set out in the CSG Standard. While the Company has five landline services only four are used for voice telephony. The CSG standard only applies to voice telephony services.

Section 11(2) of the CSG Standard sets out the guaranteed maximum rectification period for a fault. It says:

If the site is in an urban centre with a population equal to or greater than 10000 people, the guaranteed maximum rectification period ends at the end of the first full working day after the carriage provider receives the report of a fault or service difficulty made by the customer.

The Australian Bureau of Statistics' website¹ shows [the Company's suburb] population in 2015 was [equal to or greater than 10000 people]. As the fault was reported on 5 April 2018, the guaranteed maximum rectification period for the fault was at the end of Friday 6 April 2018.

Section 7(1)(1)(b) of the CSG Standard says the performance standard does not apply where an interim service is offered and accepted by a customer. A landline diversion to The Representative's personal mobile was set up on Thursday 12 April 2018. Therefore, the Provider was in breach of the maximum rectification period by four days for five services.

5.4.3 The Provider has yet to rectify the fault with service number xxxxxxxx4

I am satisfied the Provider has not rectified the fault with service number xxxxxxxx4 within the guaranteed maximum rectification period set out in the CSG Standard.

After the services were restored on 18 April 2018, the Provider was entitled to assume all services had been fixed until the Company reported otherwise. The Company first reported the ongoing fault with service number xxxxxxxx4 on 2 May 2018. The guaranteed maximum rectification period for this fault was 3 May 2018, so CSG eligibility begins from Friday 4 May 2018.

5.4.4 There are no mass service disruption (MSD) notices

I reviewed the list of MSD notices for service number xxxxxxxx4 and could not find any for the Provider for the period since 5 April 2018. Therefore, the Provider cannot rely on the exemption from the Standard under section 21.

5.4.5 CSG payment of \$3,315.40

Taking all of the above into account, I calculate the CSG payment to be \$3,315.40 because:

- Schedule 2, Part 2, item 203 sets out the damages payable for each day of delay,
- the number of days of delay are 79,
- therefore, the CSG payment total is \$3,315.40.

¹ stat.abs.gov.au

Damages payable for each day of delay

Schedule 2, Part 2, item 203 of the Standard sets out the damages payable for each day of delay:

- for the first 5 working days of delay if a customer is a business customer - \$24.20,
- after the first 5 working days of delay - \$48.40.

The Company is a business customer.

The delay was 79 working days

I calculated the number of days of delay to be 79 using the following parameters (summarised in Figures 1 and 2 below:

- The outage for four services was reported on Thursday 5 April 2018,
- The guaranteed maximum connection period ended on Friday 6 April 2018,
- The interim diversion was put in place on Thursday 12 April 2018
- The interim diversion was removed after three services were restored on Wednesday 18 April 2018,
- Four landline services entitled to CSG calculation from Monday 9 April 2018 to Thursday 12 April 2018,
- One landline service entitled to CSG calculation from Friday 4 May 2018 until 2 August 2018, this is because:
 - the Company reported a fault with landline service xxxxxxxxx4 on 2 May 2018,
 - The guaranteed maximum connection period ended on 3 May 2018,
 - On 2 August 2018 the Company rejected a reasonable request to accept a service charge to carry out further investigation of the fault, therefore ending eligibility for CSG.

Figure 1 Calculation of CSG for 4 landline services

9 April 2018 to 12 April 2018 for 4 x landline services	
Number of working days	4
Less public holidays	0
Total days	4
Working days for 4 x services	16

Figure 2 Calculation of CSG for service number

4 May 2018 to 2 August 2018 for service number xxxxxxxxx4	
Number of working days	64
Less public holidays	1 ²
Total days	63

The first four working days for four services = $\$24.20 \times 4 \times 4 = \387.20

The first four working days for service number xxxxxxxxx4 = $\$24.20 \times 5 = \121

The remaining 58 days are at \$48.40.

$58 \times \$48.40 = \$2,807.20$

Total = $\$387.20 + \$121 + \$2,807.20 = \$3,315.40$

5.5. No evidence provided for business loss claim

I have not received any information from the Company to support a claim for business loss.

I am only able to recommend compensation for business loss where there is information that substantiates the loss.

Judi Jones

Telecommunications Industry Ombudsman

² Queen's Birthday.