

TIO Determination – 10 August 2016

(De-identified for publication)

This document sets out my decision of a complaint made by the small business consumer (the Company), against the Provider.

The Representative is authorised to represent the Company in this complaint.

Decision and Direction

Having regard to the law, good industry practice, and what is fair and reasonable in all the circumstances, I believe that a fair and reasonable outcome of this complaint is:

The Provider should:

1. waive all outstanding charges on the Company's account,
2. finalise the account with a nil balance, and
3. refund \$136.63 to a bank account nominated by the Company.

Accordingly, I DIRECT the Provider to do each of these things within 14 days of the TIO providing a signed Confirmation of Acceptance signed on behalf of the Company.

Background

The Company had a bundled ADSL2+ internet and landline service with the Provider until 14 August 2015, when the services were transferred to another provider. The Representative says that in early August 2015, the internet stopped working and she reported this to the Provider on 6 August 2015.

The Representative said the Provider told her there was a problem with its wholesale supplier, advised her to change providers and confirmed she could do so without incurring termination fees. She contacted another provider and transferred the services, including an internet service, on 14 August 2015.

The complaint

The Representative's complaint is the Provider continued to bill the Company \$80 each month for the internet service, despite providing no service.

The Representative paid the bill issued on 25 August 2015, but has not paid any bills issued since. She disputes all amounts billed after 14 August 2016.

She says the Provider does not respond to her requests to close the account.

The Provider's response

The TIO has issued routine notices to the Provider requesting a response to the complaint. However, the Provider has not provided a response to the Representative or the TIO to this complaint to date. The TIO's formal notifications to the Provider are summarised in the appendix to this report.

Preliminary view

On 18 May 2016, I advised the parties my preliminary view was the Provider should waive all outstanding charges on the Company's account, finalise the account with a nil balance and refund \$136.63 to the Company.

The parties were asked to respond to my view.

The Representative advised she accepted my view. The Provider did not respond.

My Assessment

Screenshots from the Representative's mobile phone show an exchange between The Representative and the Provider's representative on 6 August 2015. The Representative told the Provider's representative the internet connection had been down for two days and asked for assistance. The Provider's representative responded:

"Hey really sorry to advise you that the provider we are using have are having technical issues with their service and we don't know when it will be resolved. I would strongly advise you to find an alternative solution such as connect with another provider ... I'm really sorry this has happened"

The Representative queried whether she should incur any penalty for terminating the contract before November 2015. The Provider's representative responded:

"No, we will waive the penalty".

The Representative transferred the services to another provider on 14 August 2015.

I am satisfied all charges paid in advance for the services after that date were required to be refunded (less any pro rata discounts) and no further service charges could be billed. The bill issued on 28 July 2015 shows the following charges and discounts in advance:

Item	Charge/discount
Caller number display 19/7/15 to 18/8/15	\$6.71
Monthly line rental 28/7/15 to 27/8/15	\$27.23
ADSL 28/7/15 to 27/8/15	\$72.73
Bundle discount 28/7/15 to 27/8/15	\$27.23 CR

Another invoice issued on 28 August 2015 shows the Caller Number display charges for the period 13 August to 18 August 2015 and service and equipment charges from

14 August to 27 August 2015 were credited back to the account.

However, the ADSL charges that had been paid in advance were not credited back. Instead, The Provider charged the Company \$72.73 for another month in advance to 27 September 2015. The total amount invoiced was \$66.47.

In my view, the invoice issued on 28 August 2015 should have reflected a credit of \$70.16, owing to the Company. The following table shows my calculations.

Item	Charge (Refund)
Call charge to 13/1300 number	\$0.33
BPay Surcharge 5 August	\$1.00
Caller number display refund for 13/8 to 18/8	(\$1.33)
Monthly line rental 14/8 to 27/8 credit	(\$12.30)
ADSL2+ access 6/8 to 27/8 (22 days)	(\$57.86)
Total Refund owing	(70.16)

The credit for the ADSL2+ service reflects the fact that the service did not work after 6 August 2015. The Representative paid the \$66.47 invoice, despite her belief the money was not owed. That amount should be refunded to the Company.

My assessment is the Provider should refund \$136.63 to the Company. To be clear, this total is calculated on the basis of my view the Provider owes the Representative a \$70.16 credit for payment of 28 July 2015 bill and a \$66.47 for payment of the 28 August 2015 bill.

All other service charges billed after 28 August 2015 should be waived and the account closed with a nil balance.

Judi Jones
Ombudsman

Appendix – relevant correspondence and information

The Representative raised her complaint with the TIO on 6 November 2015. The TIO has sent the following notices to the Provider since then:

1. Level 1 Referral notice on 6 November 2015
2. Level 2 Conciliation notice on 14 December 2015
3. Level 3 Investigation notice on 22 January 2016
4. Level 3 Assessment on 5 April 2016
5. Preliminary View dated 18 May 2016.

The Provider did not respond to these notifications.

Therefore, I have only been able to consider information provided by the Representative. I considered the following information from the Representative:

1. Screenshots of Facebook correspondence dated 6 August and 7 October 2015, between the Representative and the Provider's representative
2. Screenshots of Facebook correspondence from the Representative dated 7 October 2015 and addressed to the Provider's representative, in which she advises him that she transferred her services to another provider on 18 August 2015
3. Copy of a letter the Representative wrote to the Provider dated 22 October 2015 requesting that her account be terminated
4. Invoices issued to the Company from August 2015 to April 2016
5. A bill from another provider issued to the Company on 9 September 2015