

## **Decision – 11 June 2019**

### **(De-identified for publication)**

This document sets out my decision and direction on a complaint made by the Representative on behalf of the Company about the Provider.

On 6 May 2019 I advised the parties of my proposed resolution (reproduced in the Appendix). The Representative accepted the proposed resolution. The Provider rejected my proposed resolution but did not provide any further information or arguments for me to consider.

### **Decision and direction**

The proposed resolution is my final decision in this matter.

Accordingly, I DIRECT the Provider, within 10 working days of the Company accepting my decision, to pay the Company \$1,102.30.

Judi Jones

**Telecommunications Industry Ombudsman**

## Appendix

### Ombudsman's proposed resolution – 6 May 2019

#### (De-identified for publication)

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

My proposed resolution is what I believe to be a fair and reasonable outcome, having regard to:

- relevant laws (based on my view of what a Court would be likely to find in all the circumstances), and
  - good practice, including industry guidelines.
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#### 1 Proposed resolution

Based on the information given to me, my proposed resolution of this complaint is that the Provider should by Monday 27 May 2019:

- refund the late payment fees of \$109, and
- pay the Company \$993.30 under the Customer Service Guarantee (CSG) Standard.

This is because:

- the Provider was not entitled to charge the Company \$109 in late payment fees, and
  - the Provider is liable to pay the Company \$993.30 under the CSG Standard.
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#### 2 Background

The Representative is the director of the Company and is authorised to represent the Company for this complaint.

The Company had a contract with the Provider for two landline services (xx xxxx xxx1 – main number) and a fax service (xx xxxx xxx2) paying \$260 a month for the services. The services commenced in October 2017 and were on a month to month plan. The services are SIP services which are Voice over Internet Protocol (VoIP) services

through the Representative's internet service, which is with another provider. In August 2018 the Representative ported the landline services to a new provider.

### 3 The complaint

The Company complained about:

- problems with the landline services,
- late payment fees applied to its account,
- suspension of services for disputed amounts, and
- the Provider failing to assess the Company's eligibility for a compensation payment under the CSG Standard.

#### 3.1 Landline service problems

From December 2017 until the services were ported out in August 2018, the Representative said the Company experienced drop outs and service difficulties and reported this to the Provider.

The Representative said the Company decided to port out its services from the Provider because of the service difficulties. They said the intermittent disruptions with the landline services affected the business.

#### 3.2 Late payment charges

The Representative said the Company disputed late payment fees of \$109 across three months of invoices because they specifically requested the Provider to send invoices to the Company's email address and the Provider did not. The Representative said they received an overdue notice on their personal email address but did not receive the original invoices in time.

#### 3.3 Suspended services

In June 2018, the Representative said the Company received an email saying services would be suspended because of overdue charges. A few hours after receiving the email, the Company's services were suspended. The Representative said the Company disputed the service suspension and the services were reconnected.

#### 3.4 CSG assessment

The Representative said the Provider had not assessed the Company's eligibility for a CSG payment.

## 4 Response from the Provider

### 4.1 Landline service problems

The Provider said it will not pay the Representative for the service difficulties. It said the service difficulties were because of the firmware in the modem. It said it did not supply the modem so it is not responsible to compensate the Representative for their service difficulties.

### 4.2 Late payment charges

The Provider said it will refund the Company \$25 for double charging late payment fees in February 2018. The Provider said the remainder of the late payment fees of \$84 are valid and payable. The Provider said the \$84 comprises late payment fees in January, February and March 2018 (3 x \$27.50 = \$82.50). The Provider said the remaining \$1.50 was because it mistakenly charged the Company \$25 instead of \$27.50 for the late payment fee on the invoice issued on 1 March 2018.<sup>1</sup>

### 4.3 Suspended services

The Provider did not provide a response to this part of the complaint.

### 4.4 CSG assessment

The Provider did not assess the Company's eligibility for a CSG payment.

## 5 Reasons

The reasons for my proposed resolution are:

- the Provider was not entitled to charge the Company \$109 in late payment fees, and
- the Provider is liable to pay the Company \$993.30 under the CSG Standard.

### 5.1 The Provider was not entitled to charge the Company late payment fees

I am satisfied the Provider was not entitled to charge the Company \$109 in late payment fees. This is because the Provider did not send invoices to the Company by the method the Company had requested.

The Telecommunications Company Protections (TCP) Code<sup>2</sup> says a supplier must

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<sup>1</sup> I note the difference is \$2.50 rather than \$1.50 as calculated by the Provider

<sup>2</sup> The TCP Code is code of conduct designed to specifically benefit and protect consumers and to ensure good service and fair outcomes for all consumers of telecommunications products in Australia. All Carriage Service Providers (CSPs) who supply telecommunications products to customers in Australia are required to observe and comply with the TCP Code.

offer to supply a bill to a consumer in a bill media that the consumer is able to store and reproduce. Bill media options include email.<sup>3</sup>

The Representative provided a copy of the email they sent the Provider on 20 October 2017 requesting the Provider send invoices to [Company's email address]. The Provider confirmed it received the email specifically requesting invoices be sent to the above address.

The Provider's account summary shows from November 2017 to May 2018, it sent invoices to a different email address, [Representative's email address].

As the Provider did not send the Company invoices to the email address specified, I am satisfied it is likely the Company either did not receive the invoices or did not receive the invoices in time to be able to pay them by the due date. Therefore I am satisfied the Provider is not entitled to charge the Company \$109 in late payment fees incurred after the Company requested invoices be sent to [Company's email address].

## 5.2 The Provider is liable to pay the Company \$993.30 for a breach of the CSG Standard

I am satisfied the Provider is liable to pay the Company \$993.30 for a breach of the CSG Standard because:

- the Provider provides the Company a CSG eligible service,
- the Provider did not repair the service fault within the guaranteed repair timeframe,
- the Provider is not exempt from the CSG for this fault, and
- therefore the Provider is liable to pay the Company \$993.30.

The Telecommunications Customer Service Guarantee Standard (CSG Standard) is a standard created and regulated by the Australian Communications & Media Authority (ACMA). The CSG Standard provides for financial compensation to be paid to consumers affected by delays in connecting telephone services, delays in fault repairs, and missed appointments.

### 5.2.1 The Provider provides the Company a CSG eligible service

I am satisfied the Provider provides the Company a CSG eligible service.

The CSG Standard says a CSG service is a standard telephone service<sup>4</sup> supplied by a

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<sup>3</sup> Clauses 5.2.1 and 5.2.3

<sup>4</sup> Section 6 of the Telecommunications (Company Protection and Service Standards) Act 1999 defines a 'Standard telephone service' is a carriage service for the purpose of voice telephony.

carriage service provider to a customer of a provider.<sup>5</sup>

The Provider provides the Company service number xx xxxx xxx1 through a SIP trunk service for voice telephony purposes. The Critical Information Summary explains that the Provider's SIP trunks service is a Voice over Internet Protocol (VoIP) service. A VoIP service is a CSG eligible service.

### *5.2.2 The Provider did not repair the service fault within the guaranteed repair timeframe*

I am satisfied the Provider did not repair the service fault within the guaranteed repair timeframe.

The CSG Standard says the guaranteed repair timeframe ends at the end of the first full working day after the fault is reported by the customer.<sup>6</sup>

On Wednesday 9 May 2018 the Company reported to the Provider the phone line was unworkable. The Company reported the fault again on 10 May 2018, 14 May 2018, 15 May 2018 and 13 June 2018. Throughout this period, the account summary says that the Provider was monitoring the service, the firmware on the modem was being replaced by the manufacturer [name], and the modem was being remotely accessed and restarted. I have considered this as a single CSG event from 9 May 2018 to 13 June 2018 as it was the same issue and the same process was tried to restore the service.

Therefore, the Provider had until the end of Thursday 10 May 2018 to repair the fault affecting the Company's service. As the fault continued, the Company's eligibility for a CSG payment began on Friday 11 May 2018.

### *5.2.3 The Provider is not exempt from the CSG for this fault*

I am satisfied the Provider is not exempt from the CSG for this fault because:

- the Provider did not offer the Company an interim or alternative service, and
- the Provider did not notify the Australian Communications and Media Authority (ACMA) of any mass service disruptions (MSD) that may have applied during the period of the landline fault.

#### **5.2.3.1 The Provider did not offer an interim or alternative service**

I am satisfied the Provider did not offer the Company an acceptable interim or alternative service.

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<sup>5</sup> Section 4 of the CSG Standard, definitions of 'CSG Service' and 'eligible telephone service'

<sup>6</sup> Section 11(2) of the CSG Standard says the timeframe applies if the site is in an urban centre with a population equal to or greater than 10,000. The Company's premises are in [state capital], which has a population greater than 10,000.

The CSG standard says a performance standard does not apply where a provider has made a reasonable offer to supply a customer with an interim service or alternative service and the customer has refused to accept the service.<sup>7</sup>

The Provider did not provide any information to show it offered the Company an acceptable interim service or alternative service while service number xx xxxx xxx1 was unavailable.

#### **5.2.3.2 The Provider did not notify the ACMA of any MSDs that may have applied**

I am satisfied the Provider did not notify the ACMA of any MSDs that may have applied during the period of the landline fault.

The CSG Standard says a provider will be exempt from complying with a performance standard if non-compliance results from circumstances beyond the control of the provider **and** specific notice requirements are met.<sup>8</sup>

The Australian Communications and Media Authority maintains a database for all MSD notices meeting the requirements of the CSG Standard. I reviewed the database for the period 11 May 2018 to 13 June 2018 and there are no records of the Provider's notices.

#### *5.2.4 The Provider is liable to pay the Company \$993.30*

I am satisfied the Provider is liable to pay the Company \$993.30 for its non-compliance with the CSG Standard.

CSG compensation is payable on a daily basis of \$24.20 for the first five business days and \$48.40 for every business day after that.<sup>9</sup>

Eligibility for a CSG payment began on Friday 11 May 2018 (see 5.2.2 above). Up to Wednesday 13 June 2018 (when the fault was fixed), this is a total of 23 working days.<sup>10</sup>

Table 1 sets out the total CSG payment of \$993.30.

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<sup>7</sup> Section 7(1) of the CSG Standard

<sup>8</sup> Sections 21, 22, 23 and 24 of the CSG Standard

<sup>9</sup> Schedule 2, Part 2, item 201 of the CSG Standard

<sup>10</sup> Monday 11 June 2018, excluded for Queen's Birthday public holiday

**Table 1 – Calculation of CSG payment**

<b>Days</b>	<b>Rate</b>	<b>Payment</b>
5	\$24.20	\$122.10
18	\$48.40	\$871.20
<b>Total</b>		<b>\$993.30</b>

Judi Jones

**Telecommunications Industry Ombudsman**