

Decision and direction – 28 August 2019 (De-identified for publication)

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

On 9 July 2019 I advised the parties of my proposed resolution (reproduced in the Appendix). The Company has accepted the proposed resolution, but the Provider did not respond.

1 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's acceptance of my decision, to:

- waive the full outstanding balance of the Company's account, and
- cancel all the services and close the Company's account at \$0.00 balance.

Judi Jones

Telecommunications Industry Ombudsman

Appendix

Ombudsman's Proposed Resolution – 9 July 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 and codes (based on my view of what a Court would be likely to find in all circumstances), and
 - good practice, including industry guidelines.
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2 Proposed resolution

Based on the information given to me, my proposed resolution of this complaint is that the Provider should within 10 business days:

- waive the full outstanding balance of the Company's account, and
 - cancel all the services and close the Company's account at \$0.00 balance.
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3 Background

The Representative is Director of the Company as trustee for the Company Trust. The Representative operates a [brand name] franchise store at [location].

The Representative says around June 2016, the Company entered into a 24-month internet contract with the Provider with account number xxxxxx. The Representative signed up for the services by phone. The Representative says by early 2018, the fixed-contract term had ended and the Company was free to cancel the services at any time by providing 30 days' notice.

4 The complaint and the Provider's response

Around August 2018, the Representative says they began experiencing internet service issues.

The Representative says they contacted a third-party technical support company the Provider had previously referred them to for any technical assistance. The Representative says the technical support company could not fix the issues, so they decided to cancel the services.

The Representative says they called the Provider several times between September and December 2018 to cancel the services but there was no response. They also called the third-party technical support company, but they told the Representative they also were not able to contact the Provider.

The Representative said they stopped paying for the service in September 2018, however, the Provider has continued to charge them and post them invoices.

The Provider has not responded to the complaint or provided any of the information my office has requested.

5 Reasons

In my view, the Provider should waive the full balance of the Representative's account and close it with a \$0.00 balance because:

- the Provider did not respond to information requests
- the Company cancelled the internet service in September 2018
- the Provider is not entitled to charge the Company after 30 September 2018

5.1 The Provider did not respond to information requests

The Provider did not respond to any requests from my office for information about this complaint. As permitted by my Terms of Reference, I have drawn an adverse inference against the Provider.

I am satisfied it is more likely than not:

- either the Provider does not hold evidence to support their position, or
- the Provider holds evidence supporting the Company's position.

I am satisfied the Provider has had reasonable opportunity to provide the information requested. Table 1 below outlines my office's interactions with the Provider about this complaint.

Section 5.5 of the Telecommunications Industry Ombudsman's Complaint Handling Procedures says if a party does not provide information requested, the Telecommunications Industry Ombudsman can draw inferences from this. This includes:

- *“That the party does not have information or evidence to support their position, or*
- *That the information the party holds supports the other party’s position.”*

Table 1 – Outline of interactions

Date	Activity
1/3/2019	Conciliation notice and request for information about the complaint
20/3/2019	Reminder to the Provider to provide information requested
25/3/2019	Final reminder to the Provider to provide the information requested
15/5/2019	Assessment of the complaint sent to the Provider

5.2 The Company cancelled the internet service in September 2018

On the information available, I am satisfied the Representative took reasonable steps to cancel the Company’s services with the Provider in September 2018.

The Representative confirmed they signed up for the services by phone and does not have a copy of the contract. The Representative said the only written correspondence they had from the Provider was copies of their invoices by post. The Representative provided a copy of the first invoice they received from the Provider dated 28 June 2016 and says apart from this they only had phone contact with the Provider.

The invoices the Representative provided shows the only contact details available to consumers are:

- customer service number,
- third party technical support number,
- fax number, and
- pay-by-phone number.

The Provider’s website is no longer active and there is no email address available on the invoices. In my view, it would be reasonable in the circumstances for the Representative to cancel the services by phone.

The Representative said in early September 2017 they called the Provider’s customer service number but there was either no answer or it would go to voicemail. The Representative said they also called the Provider’s third-party technical support

company, but they told the Representative they could not assist in any event and were also unable to contact the Provider.

The Representative said they made the calls through their business landline but could not provide the call records because as a franchisee they do not have access to this information.

After several attempts, the Representative said the Company stopped paying for the services. In my view, this is consistent with the Company's intention to cancel and is supported by the Representative's bank statement which shows the last payment was made in September 2018.

The Provider has not responded to the information requests. I have therefore drawn an adverse inference and accept the Representative's account that:

- the Company was entitled to cancel by providing 30 days' notice, and
- the Representative took reasonable steps to contact the Provider to cancel their services in early September 2018.

5.3 The Provider is not entitled to charge the Company after 30 September 2018

In my view, the Provider is not entitled to charge the Company for any services after 30 September 2018.

If the Provider initiated the cancellation process when the Representative first called, it would have been entitled to charge for a further 30 days.

Based on the information available, I cannot determine an exact date the Representative cancelled the contract. However, for the purpose of this decision I will treat the date of cancellation as 1 September and the end of the notice period as 30 September.

The Company's invoices show:

- the Provider issued invoices around the 28th of each month,
- the Provider charged the Company in advance for the next 30 days, and
- the Provider requested payment for each invoice around two weeks after it was issued.

The Representative provided bank statements, which show the last payment made to the Provider was on 6 September 2018 for \$89.95.

Based on the information available, it is more likely than not the 6 September 2018

payment relates to the Company's invoice issued 28 August 2018. This invoice would have been for the period between 28 August and 27 September 2018. This means the Company paid for services until 27 September 2018, which covers most of the 30-day notice period.

In the circumstances, it would be fair and reasonable for the Provider not to charge the Company after the 28 September.

Judi Jones

Telecommunications Industry Ombudsman
