

## **Decision – 21 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 10 May 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.

---

### **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:

- accept the Company's rejection of the equipment,
- refund the Company \$3,989.34 (what it has paid for the equipment),
- pay the Company the costs to cancel the finance agreement, within 15 working days of the Company giving the Provider evidence of the cancellation costs, and
- cancel the Company's contract for services without penalty.

Judi Jones  
Telecommunications Industry Ombudsman

---

## Appendix

### Ombudsman's proposed resolution – 10 May 2019 (De-identified for publication)

This document sets out my proposed resolution to 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 codes and guidelines.
- 

#### Proposed resolution

Based on the information given to me, my proposed resolution of this complaint is the Provider should by 31 May 2019:

- accept the Company's rejection of the equipment,
- refund the Company \$3,989.34 (what it has paid for the equipment),
- pay the Company the costs to cancel the finance agreement, within 15 working days of the Company giving the Provider evidence of the cancellation costs, and
- cancel the Company's contract for services without penalty.

This is because:

- the Provider's conduct points to breaches of the Australian Company Law (ACL) guarantees
  - the Provider's failure to remedy the likely breaches of the guarantees are a major failure to comply
  - it is fair and reasonable for the Company to be entitled to remedies set out in the ACL for a major failure to comply
-

## Background

[Director] is the director of the business and has authorised the Representative to deal with the complaint.

On 7 February 2018 the Company entered into a 60 month fixed term contract with the Provider for services and equipment. The services included:

- 7 lines, 2 ISDN, 1 data/ADSL, 1 fax to email and 1 fax line, with the following features:
  - Auto attendant
  - MOH
  - Voicemail
  - Voicemail to email

The total monthly cost for the services is \$370.00.

The Provider also supplied equipment<sup>1</sup> which included:

- A [brand, model] phone system [model number]
  - 11 [brand] handsets
  - 1 reception panel
  - 5 bluetooth headsets

While the Provider supplied and installed the Company's equipment, the equipment was financed through a separate agreement between the Company and [finance company].

## The complaint

The Representative complained the services and equipment never worked satisfactorily. Despite multiple contacts (see chronology at appendix 1) with the Provider, the Company did not receive the service it contracted for and complained about:

- calls dropping out,
- not being able to make outgoing calls,
- crackling lines,

---

<sup>1</sup> The Provider's order specification form included at appendix 2 has a section headed "[Provider] Equipment Rental" and includes the monthly cost of the equipment and the 60 month term of the rental

- the main business number being made private without consent, and
- randomly calling people's mobiles and registering a missed call.

The chronology shows the Company emailed the Provider at least 36 times over a three and a half month period, about faults with the service and equipment.

The Representative said the Company had lost all faith in the Provider to resolve the difficulties it was experiencing. The Representative explained, as a result, the Company wanted to be released from all contracts it had signed for telecommunications services and equipment.

### **The Provider's response**

The Provider refused to release the Company from the bundled contracts for the services and equipment because it says:

- the Company's complaint about its phone system is not within my jurisdiction
- the contracts are not bundled
- the equipment was fit for purpose and of acceptable quality
- the Company did not provide a reasonable opportunity to address the faults
- the Provider is not a party to the equipment lease

### **No jurisdiction**

The Provider says I have no jurisdiction over hardware and the reliance on clause 2.7(b) of my Terms of Reference is incorrect.

### **The contracts are not bundled**

The Provider says the contracts for the services and the equipment are not bundled. In support of its position the Provider says it retails and maintains phone system equipment which is financed through a financial provider. The Provider says many of its customers have agreements in place for network services and no equipment, or equipment on finance and no network services.

### **The equipment was fit for purpose**

The Provider says the terms of the ACL are usually in place to protect consumers from being sold poor quality and cheaply manufactured goods. The Provider said the [brand, model] phone system was fit for purpose and of acceptable quality.

The Provider denies the emails of 29 March 2018 and 1 May 2018 constitute a rejection of the equipment.

On 7 June 2018 the Provider told the consumer the problem was the phone system itself and the Provider will replace it. The Provider believes the consumer must accept a free repair or replacement and it has not done so.

### The Company did not provide a reasonable opportunity to address the faults

The Provider's position is it has not had a reasonable opportunity to resolve the Company's problems.

The Provider denies that the faults were major faults.

### Privity of contract

The Provider says it is not a party to the rental agreement for the equipment and has said, as a result, I am unable to decide whether the Provider has obligations under the rental agreement.

### Jurisdiction to consider a complaint about equipment

I am satisfied I have jurisdiction to consider the complaint about the equipment because clause 2.7(b) of my Terms of Reference says:

*We handle the following types of complaints....a consumer's complaint about a problem with telecommunications equipment supplied by a TIO member...that affects the consumer's access to a telecommunications service supplied or offered by a TIO member*

I am satisfied the equipment is supplied by the Provider and affects the Company's access to the telecommunications service offered by the Provider. This is confirmed in the *Order Specification* document at Appendix 2.

### Reasons

The reasons for my proposed resolution are:

- the Provider's conduct points to breaches of the Australian Company Law (ACL) guarantees
- the Provider's failure to remedy the likely breaches of the guarantees are a major failure to comply
- it is fair and reasonable for the Company to be entitled to remedies set out in the ACL for a major failure to comply

### The Provider's conduct points to breaches of the Australian Consumer Law (ACL) guarantees

I am satisfied the Provider's conduct points to breaches of the Australian Consumer Law (ACL) guarantees to provide goods that are:

- of acceptable quality, and
- fit for purpose.

### *Goods not of acceptable quality*

I am satisfied the Provider's conduct points to a breach of the guarantee to provide goods of acceptable quality.

The ACL says goods of acceptable quality will be fit for all the purposes for which goods of that kind are commonly supplied, and free from defects.<sup>2</sup>

After the Provider installed the equipment, the Company emailed the Provider 36 times to report faults. The emails included multiple complaints about voice mail problems, crackling noises, headsets not working and calls dropping out.

On 5 June 2018, four months after the contracts were signed and over three months after the equipment was installed, the Provider concluded the phone system was faulty. I am satisfied the ongoing fault reporting and the Provider's acknowledgement shows the phone equipment was not of an acceptable quality.

### *Goods not fit for purpose*

I am satisfied the Provider's conduct points to a breach of the guarantee to provide goods that are fit for a particular purpose.

The ACL says suppliers guarantee the goods it supplies are reasonably fit for any disclosed purpose, and for any purpose for which the supplier represents that they are reasonably fit.<sup>3</sup>

One of the primary purposes of a phone system is to provide access to telecommunications services. As the Provider acknowledges the phone system was faulty, I am satisfied this compromised the Company's ability to access its telecommunications services. As the Company could not use the phone system to consistently access its telecommunications services, I am satisfied the Provider has likely breached the guarantee to provide goods that are fit for purpose.

### *The Provider's failure to comply with the guarantees are a major failure*

I am satisfied if the Provider has breached the guarantees, then those breaches would be major failures under the ACL. This is because I am satisfied:

- the goods would not have been acquired by a reasonable consumer fully

---

<sup>2</sup> Section 54(2) ACL

<sup>3</sup> Section 55(1) ACL

acquainted with the nature and extent of the failure,<sup>4</sup> or

- the goods are unfit for a disclosed purpose and the goods cannot, easily and within a reasonable time, be remedied to make them fit for a purpose.<sup>5</sup>

*The goods would not have been acquired by a reasonable consumer*

I am satisfied a reasonable consumer would not have acquired the goods in this complaint, if they were fully acquainted with the nature and extent of the failure.

In June 2018 the Provider told the Company for the first time the problems the Company was experiencing with its telecommunications services were the result of faulty equipment. In the three months before this, the Provider had been consistently saying the problem was the result of a line fault.

The Representative said the problems began as soon as the equipment was installed. The problems were numerous and included calls dropping out, the phone system dialling numbers randomly, crackling on the line and calls unable to be answered. These faults affect the primary purpose of the equipment. I am satisfied a consumer who was made aware there would be an unresolved fault four months after equipment was installed, would not have acquired the goods. This is especially the case for a business, such as the Company, which relies heavily on having a functioning voice telecommunications system.

*The phone system was not made fit for purpose within a reasonable time*

I am satisfied the Provider did not make the faulty phone system fit for purpose within a reasonable time.

The Provider installed the phone system for the Company in February 2018. the Representative raised a fault with the Provider almost immediately the phone system was installed. In June 2018, the Provider told the Company the phone system was likely to be faulty. I am satisfied three months is more than a reasonable time for the Provider to diagnose and fix the phone system issue, but it did not.

*Fair and reasonable for the Company to be entitled to the remedies set out in the ACL for a major failure to comply with guarantees*

I am satisfied it is fair and reasonable for the Company to be entitled to the remedies set out in the ACL for a likely major failure to comply with guarantees, which in this case includes:

- the Company rejecting the equipment,

---

<sup>4</sup> Section 260(a) ACL

<sup>5</sup> Section 260(d) ACL

- the Provider collecting the equipment from the Company, and
- the Provider refunding the Company \$3,989.34, and paying the Company for the costs to cancel the finance agreement, and
- the Company cancelling services connected with the rejected equipment.

### *The Company can reject the equipment*

I am satisfied the Company can reject the equipment supplied by the Provider because rejection of goods is an available remedy where there is a major failure.

The ACL says if there is a major failure of a guarantee the consumer may notify the supplier of the rejection and the reasons for the rejection.<sup>6</sup> The Provider supplies the equipment and services to the Company as a bundle. The Company may reject the equipment provided by the Provider for the reasons given above.

As the Provider does not contract to supply each piece of equipment separately, I am satisfied a major failure of one piece of equipment, especially the phone system itself, triggers the right to reject all goods associated with the contract.

I am satisfied the Company made clear its intention to reject the equipment to the Provider in its email of 1 May 2018 (two months after installation):

*Please contact me tomorrow and advise of a time and date by which we can expect our telephone service to be working properly, or otherwise advise us of our options in withdrawing from the contract with you.*

### *The Provider should collect the equipment from the Company*

I am satisfied the Provider should collect the equipment from the Company.

The ACL says if the goods cannot be returned the supplier must, within a reasonable time, collect the goods at the supplier's expense.

I am aware the phone system may be 'wired in' and it may not be possible for the Company to return the equipment to the Provider. Therefore I am satisfied the Provider must arrange a suitable time with the Company to attend and remove the equipment it supplied to the Company.

### *The Provider must refund the Company \$3,989.34 and pay the Company for the costs to cancel the finance contract*

I am satisfied it is fair and reasonable for the Provider to refund the Company \$3,989.34 and pay the Company for the costs to cancel the finance agreement. The costs result directly from the Provider's major failure to comply with its guarantees.

---

<sup>6</sup> Appendix 2 explains why the exception under section 262 of the ACL does not apply



The ACL says in accordance with an election<sup>7</sup> made by the consumer, the supplier must refund:

- any money paid by the consumer for the goods, and
- an amount that is equal to the value of any other consideration provided by the consumer for the goods

**The Provider must pay the Company \$3,989.34**

I am satisfied the Provider must pay the Company \$3,989.34 as this is the amount the Company has already paid [finance company] for the goods supplied by the Provider.

**The Provider to pay the Company after receiving evidence of the costs to cancel the finance agreement**

I am satisfied the Provider must pay the Company the costs to cancel the finance agreement within 15 working days of the Company providing the Provider evidence of the cancellation costs.

I am satisfied the costs for the Company to cancel the finance agreement for the equipment will be consideration provided by the Company for the equipment. As this amount is constantly changing because of the remaining time left in the agreement, it is fair and reasonable for the Provider to pay the Company directly within 15 working days of receiving evidence of the cancellation costs.

*The Company can cancel services connected with the rejected equipment*

I am satisfied it is fair and reasonable for the Company to cancel its services with the Provider connected with the rejected equipment.

The ACL says if:

- a consumer notifies a supplier of goods that the consumer rejects the goods, and
- the supplier is required under section 263(4)(a) to give the consumer a refund, and
- the goods are supplied in trade or commerce,

then the consumer may terminate the contract for the supply of services. I am satisfied the criteria is satisfied and already covered in my decision at:

- 6.3.1 the Company is entitled to reject the equipment

---

<sup>7</sup> Section 263(4) provides the consumer an option for a refund or a replacement of the goods. As the Company has rejected the option of replacement of the goods, I have only considered the option of the refund.

- 6.3.3.1 the Provider must refund the Company \$3,989.34 under section 263(4)(a)
- Appendix 3 the Provider supplies the equipment to the Company in trade or commerce

This means, I am satisfied the Company can also cancel its service contracts with the Provider.

Judi Jones

**Telecommunications Industry Ombudsman**

## Appendix 1 – Chronology

### Abbreviations

C – the Company

P – the Provider

W – [wholesaler]

TIO – The office of the Telecommunications Industry Ombudsman

### Key

Company reporting a fault



Provider taking action to address the fault



Company asking to be released from contract



Date	Event
7 Feb 18	C signed P's order form for services and equipment. The services form said <i>P Equipment Rental \$400 per month for 60 months</i>
9 Feb 18	C signed [finance company] finance agreement for equipment finance
27 Feb 18	P installed the equipment at the Company's premises
8 Mar 18	Internal email from P's salesperson to P referring to faults with the handsets, incomplete installation and further training required for the consumer
9 Mar 18	C says it called P (based on the Company's outbound call records). No notes for the call but C says it would have been about the problems with the phones.
13 Mar 18	C says it called P (based on the Company's outbound call records). No notes for the call but C says it would have been about the problems with the phones.
19 Mar 18	P technician visits the Company's premises but there are no notes about what was done.
21 Mar 18	12.16pm P emailed C an auto response to the Company's email.

29 Mar 18	<p>C emailed P saying because of the problems it had missed a critical phone call. C said if it did not get some action within seven days, it wanted P to come and collect the equipment.</p>
23 Apr 18	<p>11.59am C emailed P saying it had not had a response its emails were being received.</p> <p>12.12pm P emailed C saying the last email it had received was on 29 March 2018 about the line hunt not working. P said it had a technician attend that day and no further contact was received</p> <p>12.33pm C emailed P saying emails were sent on 21/3, 22/3, 29/3, 17/4 and 19/4</p>
24 Apr 18	<p>9.31am P emailed C asking which phone line is used for internet, because the porting request had been rejected</p> <p>9.36am C emailed P saying it will try and find the right person to respond to P's question</p> <p>9.55am P emailed C saying it just needs to contact its current service provider to find out which phone line the ADSL is on</p> <p>9.59am C emailed P asking P to call the Company's tech support. C told P calls were not going to voicemail and no calls would be diverted if the reception phone was being used</p>
1 May 18	<p>5.54pm C emailed P saying there were still major problems with the phone lines, even after the technician visit on 26 April 18. C told P it no longer had any faith in P's ability to provide the service. C gave P until 2 May 18 to fix the service.</p> <p>10.34pm P emailed C saying it would contact C in the morning.</p>
2 May 18	<p>9.20am P emailed C saying it had consulted to of its technicians. The technicians believed the drop outs and call quality are related to a line issue. P said it would raise a fault with W.</p> <p>9.45am C emailed P saying it is busy and asked if P could send someone to figure out the problem in person</p> <p>10.20am P emailed C saying it would organise a technician to come out on 3 or 4 May 18</p> <p>10.38am C emailed P asking for the technician to come on 3 May 18</p> <p>10.40am C emailed P's salesman who had signed it up to the contract. C</p>

	<p>wanted them to see the correspondence it had with P about the issues.</p> <p>11.35am C emailed P asking if W are continuing to have line issues as the line is 'crackling badly again'</p> <p>12.10pm C emailed P saying incoming calls are also crackling. C said the last call dropped out altogether with a message that flashed 'ISDN NOT RELEASED'.</p> <p>12.11pm P's salesman emailed C saying they were not sure what the Company's email was about.</p> <p>12.17pm P emailed C asking which number or button flashes on the call that has crackling</p> <p>12.30pm C emailed P saying on the last occasion it was the line labelled 'Reception' 100 but yesterday all the lines were affected</p> <p>12.41pm C emailed P's salesman explaining the multiple issues</p> <p>4.42pm P emailed C saying a technician will visit on 3 May 18 to program the other handsets. Also P raised a fault about poor quality calls and a technician would visit to test the line.</p>
3 May 18	<p>11.09am C emailed P saying it was unable to make calls from one of the handsets</p> <p>11.40am P emailed C confirming the technician would visit around 12pm and it was following up with W about the line quality issue</p> <p>2.02pm C emailed P confirming the technician had fixed most issues but line 2 was showing as a private number. C asked for the private number to be removed as this was the main number advertised and C needed this to be identifiable</p> <p>3.21pm P emailed C confirming it could remove the private setting</p>
8 May 18	<p>6.12pm P emailed C saying it had checked with W about the crackling noise on the line. P said W had sent a technician on 6 May 18. P said the test to the pit was ok, but could not test the pit to the premises because no one was there (Sunday). P said it had booked for a W technician to visit the pit on 9 or 10 May 18.</p>
9 May 18	<p>9.18am C emailed P acknowledging a call from 8 May 18. C told P that voicemail had not worked for two days.</p>
10 May 18	<p>12.03am P emailed C asking if the night mode is set up for calls to go to</p>

	voicemail.
11 May 18	<p>11.42am C emailed P saying in view of the major and ongoing problems, C wanted P to put a stop on its monthly payments until the issues were all resolved or release from contract. C also asked for a refund of the payment taken in error at the start of the contract.</p> <p>11.49am C emailed P saying it had not had a response from P about the headsets. C also told P there was a problem with line 2, there is no dial tone and the line is crackly.</p> <p>12.19pm P emailed C asking if the technician came out on 6 May 18 to test the line from the pit to the office.</p>
14 May 18	<p>4.19pm C emailed P saying P's technicians are onsite installing the headsets, but still problems with the phone lines.</p> <p>5.00pm C emailed P saying P's technicians are on the phone with the Company's internal network consultant to resolve some of the issues.</p>
16 May 18	<p>10.51am C emailed P asking if there was any progress in sorting the phone issues.</p> <p>10.54am C emailed P saying it would make a complaint to the TIO. C said it wanted an immediate release from contract with a refund of all the payments it had made to P.</p> <p>12.49pm P emailed C, acknowledging there had been a phone conversation and saying the issue is with infrastructure, involving the integration of two technologies, PSTN and ISDN. P said it would talk to a technician about a solution for the problem</p> <p>12.55pm C emailed P saying it would wait to hear from P in due course</p>
17 May 18	<p>10.16am P emailed C saying it had ordered an expansion card for the Company's pbx that will give C capacity for two more channels which will help with call capacity. P said when it arrives, P will organise a technician to install.</p> <p>4.05pm C emailed P saying P's technicians had been onsite to install the expansion card and now C could not get a line to call out. C said the lines were sometimes 'dead' or there was a ring tone then crackling then it goes dead. C said the technician had also disconnected its computer so it could not email technical support.</p> <p>4.13pm P emailed C asking if the computer was reconnected.</p> <p>5.24pm C emailed P asking for an email for the managing director or</p>

	<p>someone in a position of authority at P.</p> <p>5.40pm P emailed C providing an email address, [Provider's escalations email address]</p> <p>6.14pm P emailed C explaining the Company's setup (based on what was inherited from the previous provider) and suggested a different solution.</p>
18 May 18	<p>3.16pm C emailed P saying it had received five calls from people who said it had missed a call from the Company's number.</p> <p>3.19pm C emailed P two examples of missed calls.</p> <p>3.21pm P emailed C saying it will log an investigation with W.</p> <p>3.24pm C emailed P giving an example of a missed call at 2.45pm.</p> <p>3.37pm C emailed P two examples of missed calls.</p> <p>4.46pm C emailed P three examples of unwanted calls.</p> <p>5.08pm P emailed C confirming it had logged a fault with W.</p> <p>5.11pm C emailed P asking when it could expect something to happen.</p> <p>5.31pm P emailed C confirming W would do a trace with an attempt to get the caller to stop.</p>
20 May 18	<p>8.49pm P emailed C asking if C could respond to its suggestion to address the issues so it could begin implementation.</p>
21 May 18	<p>12.07pm C emailed P saying it had lodged a complaint with the TIO and asked if P had received the Company's email from 17 May 18.</p> <p>1.15pm C emailed P asking if its emails were coming through.</p> <p>2.11pm C emailed P saying it wanted a release from contract.</p>
22 May 18	<p>12.11pm P emailed C saying it would not release C from contract. P said it had made an offer to improve the quality of service.</p> <p>12.20pm P emailed C asking if the missing call issue was still happening.</p> <p>12.21pm C emailed P saying it had not received any further calls but this did not mean it was fixed. C asked if P had fixed the issue.</p> <p>1.15pm C emailed P saying P had not met its contractual obligations and set out a history of the issues. C said it would wait for the outcome of the</p>

	TIO process.
23 May 18	<p>12.08am P emailed C acknowledging the calls had stopped.</p> <p>10.18am C emailed P saying it did not know if the calls had stopped as it had no way of monitoring this. C said it was still experiencing crackling on the line.</p>
24 May 18	9.41am C emailed P saying the hands free on the reception phone was not working.
28 May 18	9.37am C emailed P saying the lines in and out are crackling and lines out are not connecting.
29 May 18	<p>12.05am P emailed C saying it had engaged a technician to check whether replacing the cabling from the MDF to the phone system will fix the cracking noise issue.</p> <p>9.24am C emailed P saying it could not answer any of P's technical questions. C said it would wait for the TIO decision.</p> <p>11.14am C emailed P saying it could not get a line out on line 1 and several calls had dropped out mid conversation.</p> <p>11.25am C emailed P saying incoming calls are also dropping out when they are answered.</p> <p>1.15pm P emailed C asking if C had decided on the expansion card or moving the numbers to a VoIP service.</p> <p>1.37pm C emailed P saying the expansion card had already been installed. C said it could not explain the technical issues to P and that there had been no issues prior to P taking over the services and installing the new phone system.</p> <p>9.22pm P emailed C confirming it would not release C from the contract but did want to help resolve the issues.</p>
30 May 18	10.09am C emailed P saying P could send a technician any day of the week except Saturday. C was not confident P could do anything to fix the issues given the history.
5 Jun 18	<p>11.27am C emailed P saying the missed call issue was apparent again.</p> <p>12.39pm C emailed P asking P to revise its decision not to release C from contract.</p> <p>2.55pm P emailed C saying it had concluded the current phone system</p>



	<p>is faulty. P offered to order a new phone system and have a technician attend on 11 June 18 to install it</p> <p>5.01pm C emailed P rejecting the offer saying 'we have reached a point where we have zero confidence in P's service and/or ability to rectify our ongoing, recurring and unresolved issues'.</p>
6 Jun 18	<p>10.53am C emailed P saying customers had told C they were missing calls from the Company's phone number. C asked P to fix this.</p> <p>1.52pm C emailed P acknowledging an earlier phone call where P would ask its technicians to look into the issue. C confirmed it would not accept a new phone system and would wait for the TIO.</p> <p>4.13pm C emailed P saying the issue reported earlier was ongoing and appeared to have increased. C asked for an update.</p> <p>6.03pm C emailed P asking for an immediate release from contract.</p> <p>6.40pm P emailed C saying its technician had attempted to make some changes and asked C to reset the phone system from the IPECS box.</p>
7 Jun 18	<p>9.38am C emailed P saying it does not have any technical understanding of the phone system. C asked P to send a technician to reset the IPECS box.</p> <p>10.23am P emailed C saying there is no network fault or fault with network related equipment. P would not release C from the agreement and was committed to fixing the phone system issue.</p> <p>11.42am C emailed P saying it would wait for the TIO decision.</p> <p>11.57am P emailed C saying C was contributing to its own loss by not cooperating with P. P asked C to confirm when it was available to have a new phone system installed.</p> <p>12.43pm C emailed P saying it would wait for the TIO decision.</p>
18 Jun 18	<p>10.35am C emailed P saying there were ongoing phone problems, the night switch was not working, and the headset at reception was not working. C also told P there was still crackling on the lines and calls not connecting, but this was intermittent.</p> <p>11.20am P emailed C asking what phone numbers were failing to connect and what lines had the crackling sound</p>
19 Jun 18	<p>2.46pm C emailed P saying there were numerous drops outs when trying to answer a call. C told P, the TIO had told C to continue to report faults</p>

	with the service and equipment.
20 Jun 18	4.36pm C emailed P saying the night mode was still not working and there was a beeping coming from the main phone. C said calls were still dropping out.
21 Jun 18	<p>11.26am P emailed C saying C must allow P the opportunity to fix the problem which C was not doing.</p> <p>12.10pm C emailed P saying it had been told by the TIO to continue to report faults. C said it was expecting a determination by 29 June 18.</p> <p>1.01pm P emailed C saying it confirmed C was not accepting P's offer for a technician to visit to fix the issues nor engaging in any efforts to resolve.</p> <p>1.20pm C emailed P saying P's offers to fix the problem came after months of issues and a lack of willingness on P's part to fix the problems after installing the system and services.</p>

## Appendix 2 – Copy of the Provider Order Specification

[copy of order specification form – 2 images]

## Appendix 3 – Further discussion of the application of ACL sections

### The Company meets the definition of consumer for the purpose of the ACL

All guarantees apply where a person supplies, in trade or commerce, goods or services, to a consumer. I am satisfied the Provider supplied both its equipment and services, in trade or commerce to the Company. For the purposes of the ACL I am satisfied the Company meets the definition of a consumer. Section 3(1) of the ACL says a person is taken to have acquired particular goods as a consumer if the amount payable for the goods did not exceed \$40,000. Likewise a person is taken to have acquired services as a consumer if the total cost of the services did not exceed \$40,000. The total cost over the duration of the contract for the goods is \$24,000. The total cost over the duration of the contract for the services is \$22,200.

### Purpose of equipment disclosed by implication

I am satisfied the purpose of the equipment was disclosed by the Company to the Provider by implication.

Section 55(2) says a consumer may make known, expressly or by implication, to the supplier a particular purpose the goods are being acquired for. One of the primary purposes of a phone system is to provide access to telecommunications services. As this purpose is so fundamental to a phone system I am satisfied this particular purpose is made known by the Company to the Provider by implication.

### None of the exceptions from section 54(4) to 54(7) apply

I am satisfied none of the exceptions to exclude the guarantee apply.

Section 54(4) says if the only reasons goods do not meet the guarantee were specifically drawn to the consumer's attention before the consumer agreed to the contract then the goods are taken to be of acceptable quality. The Provider did not provide information showing it told the Company the phone system would not work properly.

Section 54(5) concerns goods displayed for sale or hire, so does not apply to this complaint.

Section 54(6) excludes the guarantee if the consumer has damaged the goods. Neither party provided information to suggest the problem with the phone system was caused by the Company.

Section 54(7) applies to goods examined by the consumer and the consumer ought reasonably to have identified the goods were not of acceptable quality. Four months passed between the installation of the equipment and the Provider informing the Company the problems they had been experiencing were probably related to the equipment. All other interactions had been focussed on the problems being the result of a defect with the services. The Company is not a telecommunications provider. The Provider is the provider of both the services and the equipment. It is appropriate for the Company to rely on the Provider's expertise to diagnose the problem it is experiencing. The Provider did not do this in a timely manner, if at all.

### The rejection period has not ended

I am satisfied the rejection period has not ended, and therefore the Company is still entitled to reject the equipment provided by the Provider.

Section 262(2) describes the rejection period for goods as the period from the time of the supply of the goods to the consumer within which it would be reasonable to expect the relevant failure to comply with a breached guarantee to become apparent having regard to:

- the type of goods, and
- the use to which a consumer is likely to put them, and
- the length of time for which it is reasonable for them to be used, and
- the amount of use to which it is reasonable for them to be put before such a failure becomes apparent.

I am satisfied identification of the phone system fault within four months of installation and one month of use is still well within the rejection period because:

- no information was provided by either party to show the phone equipment had a shorter than expected life span
- no information was provided to show the Company intended to use the phone equipment other than what it was provide for
- phone systems should be usable for more than two weeks without fault
- the amount of reasonable use before a failure becomes apparent, has not been reached in this case.