

Decision – 20 May 2021 (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 31 March 2021 an Adjudicator at my office advised the parties of their Preliminary View. The Preliminary View 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.

The Company has accepted the Preliminary View, but the Provider did not respond.

I have decided the Provider must pay \$7,800 to the Company's bank account within 15 business days of the Company accepting this Decision.

20 May 2021

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1 Background

In December 2019, the Company entered into a contract for services with the Provider. The contract included landline and internet services for \$349 (excluding GST) and also an agreement by the Provider to pay up to \$7,800 for early termination fees on the Company's telecommunications contract at the time.

2 The complaint and the Provider's response

The Representative complained that the Provider has failed to pay the early termination fees for the contract the Company cancelled to sign up with the Provider. The Representative provided an invoice from the previous Provider showing the costs of cancellation and a copy of an invoice from the Company to the Provider to recover the costs.

3 Reasons

The reasons for my Decision are:

- The Provider offered to pay the Company up to \$7,800 if the Company entered into a contract with the Provider
- The Provider should pay the \$7,800 to the Company's bank account

3.1 The Provider offered to pay the Company up to \$7,800 if the Company entered into a contract with the Provider

I am satisfied the Provider agreed to pay the Company up to \$7,800 (excl GST) if the Company entered into a contract with the Provider and incurred early termination fees from cancelling its current telecommunications contract.

The Business Application Form (BAF) included a section which said:

<ul style="list-style-type: none">• Buyout current contract<ul style="list-style-type: none">○ 26 months @ \$300 per month (maximum)	1000000
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The clause appears to be signed by the Provider's director. The value of the 26 months at \$300 per month is \$7,800. While all of the other quoted figures in the BAF are excluding GST, the use of the modifier 'maximum' in the context of the buyout leads me to conclude the contract buyout clause figure is inclusive of GST.

The Representative supplied an invoice from the Company's previous telecommunications provider, showing an early termination fee calculated for the period 3 March 2020 to 8 March 2022, a period of 24 months. The total is \$7,499.32 (excl GST) which is \$8,249.25 (incl GST).

As the total buyout of the previous Provider's contract is more than the maximum of \$7,800 that the Provider agreed to pay, the Provider is liable to pay the Company \$7,800.

3.2 The Provider should pay the \$7,800 to the Company's bank account

I am satisfied the Provider should pay the \$7,800 to the Company's bank account. This is because the payment was intended to cover any early termination cost of the Company moving from its previous telecommunications provider.

The Representative has supplied:

- An invoice from their previous provider, showing an amount of \$8,249.25 is currently payable for the termination of the Company's services
- An invoice from the Provider dated 29 July 2020 showing a credit balance of \$7,874.60.

Applying a credit to the Company's telecommunications account does not assist the Company with the immediate debt it incurred in reliance on the Provider's promise to pay the buyout for the current contract.

Judi Jones

Ombudsman

Telecommunications Industry Ombudsman
