

Investigation Report

Exetel Pty Ltd's compliance with clause 19 of Schedule 2 to the *Telecommunications Act 1997*

File No.	ACMA2017/869-15
Carriage service provider	Exetel Pty Ltd
ACN	097 986 546
Type of services	Standard Telephone Service
Scope of Investigation	Compliance with clause 19 of Schedule 2 to the <i>Telecommunications Act 1997</i>

Findings

1. The Australian Communications and Media Authority (**the ACMA**) finds that Exetel Pty Ltd (**Exetel**) has contravened:
 - paragraph 19(2)(a) of Schedule 2 to the *Telecommunications Act 1997* (**the Act**) on one occasion on 1 September 2018 as Exetel did not inform the prospective residential customer, who made an inquiry about the supply of a standard telephone service, that it did not offer priority assistance in connection with the service; and
 - paragraph 19(2)(b) of Schedule 2 to the Act on two occasions on 1 September 2018 as Exetel did not inform the prospective residential customer, who made an inquiry about the supply of a standard telephone service, of the names of one or more carriage service providers (**CSPs**) from whom the prospective residential customer could obtain priority assistance in connection with a standard telephone service.
2. As a consequence of those contraventions, the ACMA also finds that Exetel contravened subsection 101(1) of the Act on two occasions as it did not comply with the service provider rules that apply to it, namely the rules referred to in section 98 of the Act.
3. A table setting out the ACMA's findings is at Attachment A.

Background

4. Under section 510 of the Act, the ACMA has jurisdiction to investigate a potential contravention of the Act.
5. On 25 September 2018, the ACMA commenced an investigation under subsection 510(1) of the Act to determine whether Exetel was complying with the service provider rules in clause 19 of Schedule 2 to the Act, which requires CSPs that do not offer priority assistance to inform prospective residential customers that they do not offer this enhanced service, and to inform the prospective customer of at least one CSP from whom the customer can obtain priority assistance.
6. On the same day, the ACMA gave Exetel a notice under section 521 of the Act (**the Notice**) requiring the provision of information and documents in relation to a sample of 10 inquiries by prospective residential customers for a standard telephone service, in order to assess compliance with clause 19 of Schedule 2 to the Act.

7. On 16 October 2018, Exetel responded to the Notice.
8. On 21 December 2018, the ACMA sent its preliminary findings report to Exetel and invited it to respond. On 28 March 2019, Exetel provided a submission to the ACMA.

Relevant facts

9. Exetel is a CSP within the meaning of the Act¹. Exetel supplies telephone and internet services to residential and small business customers.
10. Priority assistance means the provision of the highest level of service practicably available at the time, supplied to priority customers in relation to new connections, fault repairs and service reliability of the standard telephone service at the priority customer's place of residence.² Priority customers are customers who require the telephone to access emergency medical treatment or advice to reduce the possibility of death from a life-threatening illness.³
11. Telstra Corporation Limited is the only CSP required to provide priority assistance under the Act. Other CSPs may offer priority assistance services but are not obliged by regulation to do so. CSPs (other than Telstra) that offer priority assistance are required to comply with the industry code *ACIF: C609:2007 Priority Assistance for Life Threatening Medical Conditions (the Priority Assistance Code)*.
12. Exetel does not offer priority assistance.

Findings and reasons

Compliance with the Act

13. Subsection 101(1) of the Act requires service providers (a term which includes CSPs) to comply with the service provider rules that apply to them. Subsection 98(1) of the Act provides that the service provider rules include the rules set out in Schedule 2 to the Act. Clause 19 of Schedule 2 to the Act provides that if a CSP receives an inquiry from a prospective residential customer about the supply of a standard telephone service, and the CSP does not offer priority assistance, the CSP must:
 - (a) inform the prospective residential customer that the CSP does not offer priority assistance in connection with the service; and
 - (b) inform the prospective residential customer of the names of one or more CSPs from whom the prospective residential customer can obtain priority assistance in connection with a standard telephone service.
14. In making its findings, the ACMA considered the evidence gathered during the course of the investigation as summarised in Attachment A. The ACMA also considered Exetel's submission dated 28 March 2019, in which Exetel made no arguments against the findings set out below.
15. On 1 September 2018, as specified in column B of Attachment A, two prospective residential customers contacted Exetel by telephone to make an inquiry about the supply of a standard telephone service.
16. In one instance, Exetel's response described in column F of Attachment A did not

¹ See section 87 of the Act

² Subclause 19(3) of Schedule 2 to the Act and clause 3.2 of the industry code *ACIF: C609:2007 Priority Assistance for Life Threatening Medical Conditions (the Priority Assistance Code)*.

³ Clause 3.2 of the Priority Assistance Code

meet the requirements of paragraph 19(2)(a) of Schedule 2 to the Act as Exetel did not advise the prospective customer that it did not offer priority assistance when the prospective customer inquired about the service.

17. In both instances, Exetel's response described in column G of Attachment A did not meet the requirements of paragraph 19(2)(b) of Schedule 2 to the Act as Exetel did not inform the prospective residential customer of the names of one or more CSPs from whom the customer could obtain priority assistance in connection with a standard telephone service.
18. Accordingly, the ACMA is satisfied that Exetel's contravened clause 19 of Schedule 2 to the Act.

Findings - ACMA Investigation into Exetel Pty Ltd's compliance with Paragraph 19 of Schedule 2 to the *Telecommunications Act 1997*

Attachment A

A	B	C	D	E	F	G	H	I
Provider	Date contacted	Plan	Test 1. Did the carriage service provider (CSP) receive an inquiry from a prospective residential customer about the supply of a standard telephone service? (paragraph 19(1)(a) of Schedule 2 to the <i>Telecommunications Act 1997</i>)	Test 2. Does the provider offer Priority Assistance? (paragraph 19(1)(b) of Schedule 2 to the <i>Telecommunications Act 1997</i>)	Test 3. Did the agent inform the prospective customer that the CSP does not offer Priority Assistance in connection with the service? (paragraph 19(2)(a) of Schedule 2 to the <i>Telecommunications Act 1997</i>)	Test 4. Did the CSP inform the prospective customer of the names of one or more CSPs who provide Priority Assistance? (paragraph 19(2)(b) of Schedule 2 to the <i>Telecommunications Act 1997</i>)	Findings	Comment
Exetel (Call 2) Call ID 3561582	1/09/2018	Internet and Homephone landline	Yes	No	Yes	No. Exetel did not inform the prospective customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(b) of the <i>Telecommunications Act 1997</i>	The prospective customer asked about a new internet and home phone service. Exetel advised the prospective customer that it does not offer priority assistance. However, Exetel did not inform the prospective customer of the names of one or more CSPs that provide priority assistance. Exetel created an account for the customer.
Exetel (Call 6) Call ID 3561754	1/09/2018	Internet and Homephone landline	Yes	No	No. Exetel did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Exetel did not inform the prospective customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(a) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i> and Breach of Section 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer advised Exetel that he was seeking a new NBN service (internet and voice). Exetel did not inform the prospective customer that it does not offer priority assistance or provide the names of one or more CSPs who provide priority assistance. Exetel created an account for the customer.

