

Investigation Report

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

File No.	ACMA2017/869-14
Carriage service provider	Skymesh Pty Ltd
ACN	103 009 552
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 Skymesh Pty Ltd (**Skymesh**) has contravened paragraph 19(2)(b) of Schedule 2 to the *Telecommunications Act 1997* (**the Act**) on eight occasions between 3 September 2018 and 20 September 2018 as Skymesh did not inform eight prospective residential customers, 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 Skymesh contravened subsection 101(1) of the Act on eight 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 test whether 15 CSPs, including Skymesh, were complying with the service provider rule 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 Skymesh a notice under section 521 of the Act (**the Notice**) requiring the provision of information and documents in relation to a sample of ten 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 5 October 2018, Skymesh responded to the Notice. Skymesh provided the ACMA with call recordings for eight residential customers that purchased a standard telephone service. This is two less than the number of recordings requested under the Notice. Skymesh advised that only eight calls met the requirements specified by the 521 Notice for the relevant period.

8. On 21 December 2018, the ACMA sent its preliminary findings report to Skymesh and invited it to respond. On 1 February 2019 Skymesh provided its submission to the ACMA.

Relevant facts

9. Skymesh is a CSP within the meaning of the Act.¹ Skymesh 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 residence². 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 illness³.
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. Skymesh does not offer priority assistance.

Findings and reasons

Compliance with the Act

13. Subsection 101(1) of the Act which requires that service providers (a term which includes CSPs) 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 Skymesh's submission dated 1 February 2019, in which Skymesh made no arguments against the findings set out below.

¹ See section 87 of the Act.

² Subclause 19(3) of Schedule 2 to the Act and clause 3.2 of the Priority Assistance Code.

³ Clause 3.2 of the Priority Assistance Code

Breach findings

15. On the dates specified in column B of Attachment A, eight prospective residential customers contacted Skymesh by telephone to make an inquiry about the supply of a standard telephone service.
16. In all eight instances, Skymesh'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 because, although Skymesh did inform the prospective residential customers that it did not offer priority assistance in connection with its standard telephone services, Skymesh did not inform the prospective residential customer of the names of one or more CSPs from whom the prospective residential customer could obtain priority assistance in connection with a standard telephone service.
17. Accordingly, the ACMA is satisfied that Skymesh contravened clause 19 of Schedule 2 to the Act.

Findings - ACMA Investigation into Skymesh Pty Ltd's compliance with clause 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
Skymesh (Call recording 1)	3/09/2018	SkyMesh Voice (VoIP)	Yes	No	Yes	No. Skymesh did not inform the customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked Skymesh about swapping his landline phone over to VoIP. Skymesh did not inform the prospective customer that it does not offer a priority assistance service or provide the names of one or more CSPs who provide priority assistance during the call. However, Skymesh sent an application form to the prospective customer that includes a check box which states 'Please tick this box if you require priority assistance or live with someone that requires priority assistance. Please note that Skymesh Voice services are not available to households that require priority assistance.' The form does not contain the names of one or more CSPs that does offer a priority assistance service.
Skymesh (Call recording 2)	4/09/2018	SkyMesh Voice (VoIP)	Yes	No	Yes	No. Skymesh did not inform the customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about a new voice service. Skymesh did not inform the prospective customer that it does not offer a priority assistance service or provide the names of one or more CSPs who provide priority assistance during the call. However, Skymesh sent an application form to the prospective customer that includes a check box which states 'Please tick this box if you require priority assistance or live with someone that requires priority assistance. Please note that Skymesh Voice services are not available to households that require priority assistance.' The form does not contain the names of one or more CSPs who provide priority assistance.
Skymesh (Call recording 3)	4/09/2018	SkyMesh Voice (VoIP)	Yes	No	Yes	No. Skymesh did not inform the customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer advised that he wanted to port his Telstra number to Skymesh. Skymesh did not inform the prospective customer that it does not offer a priority assistance service or provide the names of one or more CSPs who provide priority assistance during the call. However, Skymesh sent an application form to the prospective customer that includes a check box which states 'Please tick this box if you require priority assistance or live with someone that requires priority assistance. Please note that Skymesh Voice services are not available to households that require priority assistance.' The form does not contain the names of one or more CSPs who provide priority assistance.

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Skymesh (Call recording 4)	7/09/2018	SkyMesh Voice (VoIP)	Yes	No	Yes	No. Skymesh did not inform the customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer advised that he wanted to port his Telstra number to Skymesh. Skymesh did not inform the prospective customer that it does not offer a priority assistance service or provide the names of one or more CSPs who provide priority assistance during the call. However, Skymesh sent an application form to the prospective customer that includes a check box which states 'Please tick this box if you require priority assistance or live with someone that requires priority assistance. Please note that Skymesh Voice services are not available to households that require priority assistance.' The form does not contain the names of one or more CSPs who provide priority assistance.
Skymesh (Call recording 5)	12/09/2018	SkyMesh Voice (VoIP)	Yes	No	Yes	No. Skymesh did not inform the customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked Skymesh about a VoIP landline on his NBN service. Skymesh advised the prospective customer that they would need to complete a VoIP application form. Skymesh did not inform the prospective customer that it does not offer a priority assistance service or provide the names of one or more CSPs who provide priority assistance during the call. However, Skymesh sent an application form to the prospective customer that includes a check box which states 'Please tick this box if you require priority assistance or live with someone that requires priority assistance. Please note that Skymesh Voice services are not available to households that require priority assistance.' The form does not contain the names of one or more CSPs who provide priority assistance.
Skymesh (Call recording 6)	12/09/2018	SkyMesh Voice (VoIP)	Yes	No	Yes	No. Skymesh did not inform the customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about switching from Telstra to the Skymesh voice plan. Skymesh did not inform the prospective customer that it does not offer a priority assistance service or provide the names of one or more CSPs who provide priority assistance during the call. However, Skymesh sent an application form to the prospective customer that includes a check box which states 'Please tick this box if you require priority assistance or live with someone that requires priority assistance. Please note that Skymesh Voice services are not available to households that require priority assistance.' The form does not contain the names of one or more CSPs who provide priority assistance.

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Skymesh (Call recording 7)	13/09/2018	SkyMesh Voice (VoIP)	Yes	No	Yes	No. Skymesh did not inform the customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer was seeking to add a landline to an existing service. Skymesh recommended a VoIP phone service to the prospective customer. Skymesh did not inform the prospective customer that it does not offer a priority assistance service or provide the names of one or more CSPs who provide priority assistance during the call. However, Skymesh sent an application form to the prospective customer that includes a check box which states 'Please tick this box if you require priority assistance or live with someone that requires priority assistance. Please note that Skymesh Voice services are not available to households that require priority assistance.' The form does not contain the names of one or more CSPs who provide priority assistance.
Skymesh (Call recording 8)	20/09/2018	SkyMesh Voice (VoIP)	Yes	No	Yes	No. Skymesh did not inform the customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer advised that he was seeking a voice service to connect to his skymuster service. Skymesh did not inform the prospective customer that it does not offer a priority assistance service or provide the names of one or more CSPs who provide priority assistance during the call. However, Skymesh sent an application form to the prospective customer that includes a check box which states 'Please tick this box if you require priority assistance or live with someone that requires priority assistance. Please note that Skymesh Voice services are not available to households that require priority assistance.' The form does not contain the names of one or more CSPs who provide priority assistance.

