

Investigation Report

Southern Phone Company Limited's compliance with clause 19 of Schedule 2 to the *Telecommunications Act 1997*

File No.	ACMA2017/869-8
Carriage service provider	Southern Phone Company Ltd
ACN	100 901 184
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 Southern Phone Company Limited (**Southern Phone**) has contravened:
 - paragraph 19(2)(a) of Schedule 2 to the *Telecommunications Act 1997* (**the Act**) on nine occasions on 1 September 2018, as Southern Phone did not inform nine prospective residential customers, who made an inquiry about the supply of a standard telephone service, that it does not offer priority assistance in connection with the service; and
 - paragraph 19(2)(b) of Schedule 2 to the Act on nine occasions on 1 September 2018, as Southern Phone did not inform nine 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 Southern Phone contravened subsection 101(1) of the Act on nine 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 Southern Phone was 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 a prospective customer of at least one CSP from whom the customer can obtain priority assistance.
6. On the same day, the ACMA gave Southern Phone 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 8 October 2018, Southern Phone responded to the Notice.
8. On 21 December 2018, the ACMA sent its preliminary findings report to Southern Phone and invited it to respond. On 18 January 2019, Cooper Mills Lawyers, acting on behalf of Southern Phone, provided the ACMA with a submission in response.

Relevant facts

9. Southern Phone is a CSP within the meaning of the Act¹. Southern Phone 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. Southern Phone does not offer priority assistance.

Findings and reasons

Compliance with the Act

13. Subsection 101(1) of the Act 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 Southern Phone's submission of 18 January 2019.

CSP initiated calls and existing customers

15. In Southern Phone's submission, it argued that clause 19 of Schedule 2 to the Act is not applicable in scenarios where a CSP initiates a proposal to an existing customer. Southern Phone contended that this scenario applied in two of the 10 sample phone

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

recordings supplied to the ACMA in response to the Notice.

16. The ACMA considers that there is nothing in the language or purpose of clause 19 in Schedule 2 that would support an interpretation that a CSP cannot be taken to have received an inquiry from a prospective residential customer where the CSP initiated contact with an existing residential customer to promote and sell a new standard telephone service to that existing customer. Given the importance of priority assistance for those who need it, such an interpretation would be unduly restrictive for a provision whose purpose is to ensure that prospective residential customers for a standard telephone service are informed about the availability of priority assistance.
17. There may be circumstances in which communications between a CSP and an existing residential customer, who has already been informed about whether the CSP offers priority assistance in respect of his/her current standard telephone service, will not attract the application of clause 19. Despite this, the ACMA does not accept the proposition that clause 19 has no application to an existing customer. For instance, where a CSP receives an inquiry from an existing residential customer about a new standard telephone service that is materially different from the standard telephone service that the CSP is currently providing to that person (such as, in the instance referred to in paragraph 19 below, a new NBN VOIP telephone service), then that person is a prospective customer in respect of the new standard telephone service which is the subject of the inquiry and clause 19 applies. Similarly, a new standard telephone service bundled with other services provided over the NBN, would be a materially different standard telephone service from one delivered over a current copper connection and an existing customer may be a prospective customer for that service.
18. Two of the phone calls in the ten sample recordings supplied to the ACMA were made by Southern Phone to existing residential customers who had an ADSL internet plan and a home phone plan, inviting them to switch to an NBN internet plan and a new NBN home phone plan. One of the customers agreed to transfer to the new NBN plans without making any inquiry about the supply of the new standard telephone service. The ACMA accepts that no inquiry of the kind specified by paragraph 19(1)(a) was made by this prospective residential customer, so clause 19 did not apply.
19. The other existing customer made a general inquiry about the costs and benefits of the new plans he was being asked to transfer to. This meant that Southern Phone had received an inquiry from a prospective residential customer about the supply of a new standard telephone service, and, since Southern Phone did not offer priority assistance in connection with the service, the obligations imposed by subclause 19(2) were enlivened.

Timing of information to be provided

20. In Southern Phone's submission, it took issue with the ACMA's interpretation that the subclause 19(2) obligations are enlivened at the time that a CSP receives an inquiry that meets the criteria specified in subclause 19(1). It argued that it was not necessary for the information to be supplied in the course of the initial phone call or web chat, so long as it is supplied before the prospective customer establishes an account for service. It also contended that the ACMA's approach to clause 19 should take into account the requirement in the TCP Code to provide prospective customers⁴ with a

⁴ Clause 4.1.1(e) of the *Telecommunications Consumer Protection Code C628:2015* requires that a summary of each of the supplier's current offers ("a Critical Information Summary") is provided to a consumer prior to sale

Critical Information Summary (CIS) before a buying decision is made, and that a permissible way for a CSP to comply with clause 19 of Schedule 2 would be for it to convey the relevant priority assistance information in a CIS.

21. The clause 19 requirements are higher order statutory requirements that are not to be interpreted by reference to the provisions of an industry code. It can be inferred from the language used in clause 19 that the relevant information must be supplied before a prospective residential customer becomes an actual customer by agreeing to a contract for the supply of a standard telephone service. In instances where that occurs after more than one interaction with the CSP, the clause 19 obligations may not be breached if the relevant information is provided before a contract is entered into. In all ten of Southern Phone's sample phone recordings, the prospective residential customer signed-up to the new standard telephone service during the initial call, so Southern Phone's argument does not arise for consideration in those instances.
22. Moreover, many inquiries that meet the criteria in subclause 19(1) will not progress to the stage of entry into a contract, or even to a follow-up inquiry. The importance of priority assistance being available to those who need it, and the obvious purpose of clause 19, give rise to a strong inference of a legislative intention that the clause 19(2) obligations are enlivened at the time a CSP, which does not offer priority assistance, receives an inquiry from a prospective residential customer about the supply of a standard telephone service. If the prospective customer is one who wants a priority assistance service, he or she should be informed straightaway of the CSP's position so no further time is wasted, and the prospective customer can move on to a CSP which does provide priority assistance. Therefore, the ACMA considers that CSPs should provide the required information to the prospective residential customer at the time he or she inquires about the service.

Breach findings

23. On the dates specified in column B of Attachment A, a prospective residential customer, in a telephone call with a representative of Southern Phone, made an inquiry about the supply of a standard telephone service.
24. In nine instances, Southern Phone's response described in column F of Attachment A did not meet the requirements of paragraph 19(2)(a) of Schedule 2 to the Act, as Southern Phone did not inform the prospective residential customer that it does not offer priority assistance in connection with the service.
25. In nine instances, Southern Phone'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 Southern Phone did not 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.
26. Accordingly, the ACMA is satisfied that Southern Phone contravened clause 19 of Schedule 2 to the Act.

except in limited circumstances.

Findings - ACMA Investigation into Southern Phone'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
Customer 1 (call 605553)	1/09/2018	Mobile phone plan and landline	Yes	No	No. Southern Phone did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Southern Phone 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 paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about a new mobile phone and landline service with Southern Phone. Southern Phone added the service to the customer's existing account. Southern Phone obtained the customer's account number with Telstra to progress the transfer of the landline service. Southern Phone 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.
Customer 2 (call 605957)	1/09/2018	Mobile, NBN and home phone	Yes	No	No. Southern Phone did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Southern Phone 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 paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about transferring her NBN home phone service and mobile service to Southern Phone. Southern Phone requested the customer's personal details to set up the accounts. Southern Phone read through the details of the service offerings and confirmed that the orders had been processed. Southern Phone 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.
Customer 3 (call 605993)	1/09/2018	Home phone	Yes	No	No. Southern Phone did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Southern Phone 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 paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	A prospective customer asked about setting up a home phone service with Southern Phone. Southern Phone asked for the prospective customer's details to set up the account for the service. Southern Phone read through the details of the service offering and confirmed that the order had been processed. Southern Phone 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.

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Customer 4 (call 121856)	1/09/2018	NBN service	Yes	No	No. Southern Phone did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Southern Phone 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 Telecommunications Act 1997 and breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the Telecommunications Act 1997	Southern Phone contacted an existing customer to advise that their premises was ready for NBN. Southern Phone discussed the various NBN (voice and internet) plans with the prospective customer. Southern Phone advised that the service came with a home phone. Southern Phone advised that it could not guarantee the prospective customer's ability to use the NBN service to make or receive calls in a power failure, including calls to an emergency service number. Southern Phone advised that the NBN service depends on a number of factors including the type of NBN connection. Southern Phone 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. Southern Phone added the order for the new service to the customer's account.
Customer 5 (call 502231)	1/09/2018	NBN service	Yes	No	No. Southern Phone did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Southern Phone 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 Telecommunications Act 1997 and breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the Telecommunications Act 1997	The prospective customer had a representative contact Southern Phone on her behalf to set up a new NBN plan (internet and home phone). Southern Phone recommended an NBN plan with a home phone for the prospective customer. Southern Phone added the new service to the customer's account. Southern Phone 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.

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Customer 6 (call 585208)	1/09/2018	NBN, home phone and mobile service	Yes	No	No. Southern Phone did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Southern Phone 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 Telecommunications Act 1997 and breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the Telecommunications Act 1997	The prospective customer asked Southern Phone to bundle his home phone and internet service. Southern Phone recommended a new NBN plan option. Southern Phone read through the details of the service offering and confirmed that the order had been processed. Southern Phone 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.
Customer 7 (call 605943)	1/09/2018	NBN, home phone and mobile service	Yes	No	No. Southern Phone did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Southern Phone 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 Telecommunications Act 1997 and breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the Telecommunications Act 1997	The prospective customer advised that he was seeking an internet, home phone and mobile phone connection. Southern Phone advised that the home phone service was over the NBN and obtained personal information from the prospective customer to set up the account. Southern Phone read through the details of the service offerings and confirmed that the order had been processed. Southern Phone 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.
Customer 8 (call 240798)	1/09/2018	NBN	Yes	No	No. Southern Phone did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Southern Phone 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 Telecommunications Act 1997 and breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the Telecommunications Act 1997	The prospective customer contacted Southern Phone to establish a new service for his sister. Southern Phone obtained the prospective customer's personal information to set up the account. Southern Phone provided information about the NBN plan. Southern Phone read through the details of the service offerings and confirmed that the order had been processed. Southern Phone 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.

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Customer 9 (call 605990)	1/09/2018	Home phone	Yes	No	No. Southern Phone did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Southern Phone 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 paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about obtaining a new home phone service for her business address (a farm). Southern Phone advised that it would set up a residential account and obtained the prospective customer's personal information. Southern Phone explained the details of the fixed line service, but 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. Southern Phone confirmed the order had been processed.