

Investigation Report

File No	ACMA2020/221
Entity	ATS Telecoms Pty Ltd
ACN	069 143 157
Scope of Investigation	Compliance with section 128 of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>
	Compliance with the service provider rule at clause 1 of Schedule 2 to the <i>Telecommunications Act 1997</i>

Findings

The Australian Communications and Media Authority (the **ACMA**) finds that ATS Telecoms Pty Ltd (ACN 069 143 157) (**ATS Telecoms**) has contravened:

- (a) subsection 128(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **TCPSS Act**);
- (b) the service provider rule set out at clause 1 of Schedule 2 to the *Telecommunications Act 1997* (the **Telecommunications Act**); and
- (c) subsection 101(1) of the *Telecommunications Act*,

by failing to join the Telecommunications Industry Ombudsman (**TIO**) scheme.

Background

1. On 8 April 2020, the ACMA received a referral from the TIO alleging that ATS Telecoms had failed to join the TIO scheme in accordance with subsection 128(1) of the TCPSS Act.
2. The TIO became aware that ATS Telecoms appeared to be providing broadband and VoIP services over the NBN when it received a complaint. Specifically, the TIO's referral referenced a complaint it received on 11 March 2020 alleging that ATS Telecoms requested a consumer's service be ported from Telstra to ATS Telecoms without the consumer's consent.
3. The TIO contacted ATS Telecoms by email on 1 March 2020, by telephone and email on 26 March 2020 and then by email again on 30 March 2020 to inform ATS Telecoms that it was required to become a member of the TIO scheme. However, no TIO membership application was received by the TIO prior to its referring this matter to the ACMA.
4. The ACMA investigated the TIO referral and on 14 May 2020 the ACMA sent its preliminary findings report to ATS Telecoms, inviting it to respond by 28 May 2020.
5. On 15 May 2020, ATS Telecoms responded to the preliminary findings report.

Legislative framework

6. Under paragraph 510(1)(aa) of the *Telecommunications Act*, the ACMA may investigate a matter where it has reason to suspect that a person may have contravened the TCPSS Act.
7. Section 128 of the TCPSS Act requires each carrier and eligible carriage service provider (**CSP**) to enter into a scheme known as the TIO scheme. For the purpose of Part 6 of the TCPSS Act, an 'eligible CSP' includes a CSP who supplies standard telephone services to residential or small business customers, a public mobile telecommunications service; or carriage services that enable end-users to access the internet (subparagraphs 127(a)(i), (ii) and (iii) of the TCPSS Act).

8. When a CSP contravenes subsection 128(1) of the TCPSS Act, it also contravenes the service provider rule set out at clause 1 of Schedule 2 to the Telecommunications Act and subsection 101(1) of that Act.

Findings and reasons

9. ATS Telecoms is an eligible CSP as it supplies standard telephone services to small business customers (subparagraph 127(a)(i) of the TCPSS Act).
10. Section 6 of the TCPSS Act defines a standard telephone service as a carriage service for the purpose of voice telephony (or an equivalent form of communication for an end-user with a disability) between end-users supplied with the same service, whether or not the end-users are connected to the same telecommunications network.
11. ATS Telecoms states on its website at <http://www.atstelecoms.com.au/business-internet-plans/> that it offers internet and phone bundles to small and medium businesses that include unlimited standard local and national calls. An extract from ATS Telecoms' website obtained on 14 May 2020 is at **Attachment A**.
12. In responding to the preliminary findings report on 15 May 2020, ATS Telecoms stated that it would join the TIO scheme.
13. The TIO advised that ATS Telecoms joined the TIO scheme on 19 May 2020.
14. On 29 June 2020, ATS Telecoms confirmed that it became an eligible CSP in January 2018.
15. For the above reasons, ATS Telecoms was an eligible CSP for the period January 2018 to 19 May 2020, and by not joining the TIO scheme for that period, it contravened subsection 128(1) of the TCPSS Act, and thereby failed to comply with the service provider rule set out at clause 1 of Schedule 2 to the Telecommunications Act, in contravention of subsection 101(1) of the Telecommunications Act.

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