

Investigation Report

File No	ACMA2020/61-2
Entity	Essential Online Pty Ltd
ACN	629 321 035
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 Essential Online Pty Ltd (ACN 629 321 035) (**Essential Online**) 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 24 October 2019, the ACMA received a referral from the TIO alleging that Essential Online had failed to join the TIO Scheme in accordance with subsection 128(1) of the TCPSS Act.
2. Specifically, the TIO's referral stated that one of Essential Online's customers had contacted the TIO about telecommunications services supplied by Essential Online.
3. The TIO contacted Essential Online by email on 30 August 2019, by telephone on 25 September 2019 and by email on 2 October 2019, to inform Essential Online that it was required to become a member of the TIO scheme. Essential Online informed the TIO, on 25 September 2019, that it would take steps to lodge an application to become a TIO member. 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 16 March 2020 the ACMA sent its preliminary findings report to Essential Online, inviting it to respond by 27 March 2020.
5. On 3 April 2020, Essential Online 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 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. Essential Online 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. Essential Online states on its 'home' webpage, at <http://www.essentialtelco.com.au/>, that it provides VoIP services that include unlimited local and national calls. The reference to local and national calls is consistent with the relevant key features of a standard telephone service, including being for the purpose of voice telephony and enabling communication between end-users who are supplied with a standard telephone service. Extracts from Essential Online's website obtained on 11 March 2020 are at **Attachment A**.
12. In responding to the preliminary findings report on 3 April 2020, Essential Online stated that it had completed a TIO application form a couple of months previously but that it had not submitted the form to the TIO due to an internal miscommunication within Essential Online. Essential Online also advised that it would make an application to join the TIO scheme.
13. The TIO advised that Essential Online joined the TIO scheme on 14 April 2020.
14. On 15 June 2020, Essential Online confirmed that it became an eligible CSP in February 2019.
15. For the above reasons, Essential Online was an eligible CSP for the period February 2019 to 14 April 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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