



Subsection 102(2) of the *Telecommunications Act 1997*

Direction in relation to subsections 14(3) and 15(1) of the Telecommunications Service Provider (NBN Service Migration) Determination 2018

TO: Telstra Corporation Limited (ACN 051 775 556)

OF: Level 41, 242 Exhibition Street
Melbourne VIC 3000

BACKGROUND

The Australian Communications and Media Authority (**the ACMA**) is responsible for monitoring and enforcing compliance by carriage service providers (**CSPs**) with their obligations under the *Telecommunications Act 1997* (**the Telecommunications Act**).

Telstra Corporation Limited (ACN 051 775 556) (**Telstra**) is a CSP as defined in section 87 of the Telecommunications Act and under subsection 101(1) of the Telecommunications Act, it must comply with the service provider rules applicable to it. The service provider rules, set out in section 98 of the Telecommunications Act, include those set out in a service provider determination in force under section 99.

The Telecommunications Service Provider (NBN Service Migration) Determination 2018 (**the Service Migration Determination**) is a service provider determination in force under section 99 of the Telecommunications Act that is applicable to Telstra.

The ACMA has investigated whether Telstra contravened the service provider rules by not meeting its obligations under the Service Migration Determination. The ACMA found that between 21 September 2018 and 15 October 2020 Telstra did not comply with the Service Migration Determination. Specifically, Telstra did not comply with:

- > Subsection 14(3) – as it failed to notify up to 49,092 customers in relation to the maximum attainable speed on their NBN service as required.
- > Subsection 15(1) – by charging up to 49,092 customers for an NBN service in circumstances where it was not permitted to do so.

DIRECTION

The ACMA, being satisfied that Telstra has contravened the service provider rules set out in the Service Migration Determination as described above;

DIRECTS Telstra, under subsection 102(2) of the Telecommunications Act, to take the following action directed towards ensuring that Telstra does not contravene or is unlikely to contravene the Service Migration Determination in the future as required by subsection 101(1) of the Telecommunications Act:

Implementing effective systems, processes and practices

1. Telstra must implement and maintain effective systems, processes, and practices for ensuring compliance with subsections 14(3) and 15(1) of the Service Migration Determination. For the purpose of complying with, and to the extent necessary to comply with subsections 14(3) and 15(1) of the Service Migration Determination, until 31 May 2023, these systems, processes and practices must include:
 - (a) systems, processes and practices to provide a high level of accuracy and integrity in the ingestion, matching and analysis of data received from NBN Co;
 - (b) systems, processes and practices to ensure that the notifications provided under subsection 14(3) of the Service Migration Determination advise the consumer:
 - i. of the maximum attainable speed of the part of the network unique to the consumer;
 - ii. that they may, at no cost, move to a lower speed tier plan at a lower price that reflects the maximum attainable speed; and
 - iii. that they are free to exit the consumer contract which the NBN CSP has entered into with the consumer, without cost;
 - (c) systems, processes and practices to ensure that Telstra contact staff in call centres who answer calls from customers who have received notification under subsection 14(3) of the Service Migration Determination are provided with adequate scripts and training on the options available to customers under subsection 14(3) of the Service Migration Determination and in the correct handling of these calls; and
 - (d) systems, processes and practices to ensure that Telstra staff involved in the processing of customer requests to take up the options set out in subsection 14(3) of the Service Migration Determination are provided with adequate training to support the correct processing of customer requests to take up the options in the Service Migration Determination.

Governance processes

2. Telstra must implement and maintain processes to ensure that:
 - (a) any material changes to the notifications sent to customers under subsection 14(3) of the Service Migration Determination are reviewed and signed off by relevant internal Telstra stakeholders before being implemented, which must include a relevant member of Telstra's executive team; and
 - (b) any material changes to systems relied on to ensure compliance with subsections 14(3) or 15(1) of the Service Migration Determination are reviewed and signed off by relevant internal Telstra stakeholders before being implemented, which must include a relevant member of Telstra's executive team.

3. Telstra must implement and maintain processes to monitor the ingestion, matching and analysis of data received from NBN Co and any unmatched orders are identified and escalated for resolution within 2 weeks of being identified.

Independent audit

4. Telstra must appoint, in accordance with paragraph 5, a qualified and independent person (the Independent Auditor) to audit and report in writing on:
 - (a) the extent to which the systems, processes and practices described in paragraphs 1 to 3 are effective in achieving compliance with subsections 14(3) and 15(1) of the Service Migration Determination; and
 - (b) recommendations as to the improvements or maintenance of those systems, processes and practices directed towards ensuring Telstra's compliance with subsections 14(3) and 15(1) of the Service Migration Determination.
5. By no later than 18 June 2021, Telstra must seek written approval from the ACMA to:
 - (a) appoint a nominated person to be the Independent Auditor; and
 - (b) endorse the terms of reference for the audit.
6. If the ACMA refuses to approve the person for such appointment, or endorse the terms of reference, Telstra must repeat this process within 5 business days of receiving the ACMA's refusal, until it obtains the ACMA's written approval.
7. Within 5 business days after the ACMA has given its approval, Telstra must appoint the person to be the Independent Auditor at its own cost.
8. Telstra must require that the Independent Auditor's written report referred to in paragraph 4 be completed by no later than 27 August 2021.
9. Telstra must prepare a written response to any recommendations in the audit report referred to in paragraph 4 and implement all reasonable recommendations. Where it regards any recommendation in the audit report as unreasonable, it must record the reasons for its view in the written response.
10. Telstra must provide a copy of the audit report referred to in paragraph 4, and the written response referred to in paragraph 9, to the ACMA by no later than 30 September 2021.
11. By the end of each month starting in October 2021, Telstra must provide to the ACMA a written progress report on implementation of the reasonable recommendations referred at paragraph 9 until such time as the reports demonstrate all recommendations have been fully implemented.

ADMINISTRATIVE ARRANGEMENTS

12. Any variation to a timeframe or approval required or permitted to be given by the ACMA under this remedial direction must be in writing and may be given or made by any ACMA Authority member or by any ACMA staff member who is a member of the Senior Executive Service.

TAKE NOTE

- 13. Section 98 of the Telecommunications Act sets out the service provider rules which are applicable to a CSP. The service provider rules, set out in section 98 of the Telecommunications Act, include those set out in a service provider determination in force under section 99 of the Act.
- 14. Subsection 101(1) of the Telecommunications Act provides that a service provider must not contravene the service provider rules that apply to it.
- 15. If a service provider has contravened, or is contravening, a service provider rule, under subsection 102(2) of the Telecommunications Act, the ACMA may direct a service provider to take specified action directed towards ensuring that the service provider does not contravene a service provider rule, or is unlikely to contravene a rule, in the future.
- 16. Subsection 102(4) of the Telecommunications Act provides that a service provider must not contravene a direction given under subsection 102(2). A corporation that has contravened subsection 102(2) of the Telecommunications Act may be ordered by the Federal Court to pay to the Commonwealth such pecuniary penalty as the Court determines to be appropriate, up to a \$250,000 per contravention (section 570 of the Telecommunications Act).

REVIEW RIGHTS

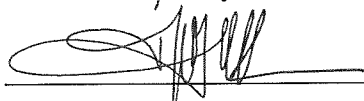
- 17. Telstra may request that the ACMA reconsider its decision to give the direction by application in writing made within 28 days of being informed of the decision, in accordance with section 558 and Part 29 of the Telecommunications Act.
- 18. If Telstra is dissatisfied with the ACMA's decision upon reconsideration then, in accordance with section 562 of the Telecommunications Act, Telstra has the right to seek review of the reconsideration decision by the Administrative Appeals Tribunal.

CONTACTING THE ACMA

- 19. Should you require further information, please contact:

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Australian Communications and Media Authority
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Email: peter.sutton@acma.gov.au

Dated this ^{9th} day of June 2021



Signature of Member

Nerida O'Loughlin

Name



Signature of Member

Fiona Cameron

Name