



Direction under subsection 121(1) of the *Telecommunications Act 1997*

TO: Optus Internet Pty Limited (ACN 083 164 532) and Optus Networks Pty Limited (ACN 008 570 330)

OF: Level 4, 1-7 Lyonpark Road
MACQUARIE PARK NSW 2113

Background

Following an investigation, the Australian Communications and Media Authority (the **ACMA**) found that Optus Internet Pty Limited (ACN 083 164 532) and Optus Networks Pty Limited (ACN 008 570 330) (together referred to as **Optus**) contravened the Billing Accuracy requirements in clause 5.5.1 of the Telecommunications Consumer Protections Code C628:2019 (the **TCP Code 2019**) between 1 August 2019 (when the TCP Code 2019 commenced) and 3 March 2021.

The investigation followed Optus advising the ACMA on 24 March 2021 that it had charged 994 customers a total of \$788,609 for services they did not receive between 3 February 2011 and 3 March 2021. The investigation was confined to this 10 year period as this was the duration of the internal review undertaken by Optus.

The following direction relates to the contraventions of the TCP Code 2019 identified during the ACMA's investigation, affecting 256 customers.

TCP Code billing accuracy requirements

Clause 5.5.1 of the TCP Code 2019 requires a Supplier to ensure it provides, and must be able to verify and demonstrate, Billing Accuracy except for inaccuracies caused by:

- (a) the Supplier's reliance on information provided by a person who is not its director, employee or agent;
- (b) an action or failure of another person who is not the Supplier's director, employee or agent; or
- (c) an accident, mistake or any matter beyond the Supplier's control, where the Supplier took reasonable care and precautions to avoid the inaccuracy.

'Billing Accuracy' is defined in the TCP Code 2019 to mean the validity of Charges and the correctness of the calculation of the Charges. 'Charge' is defined to mean the tariff or fee which a Supplier levies for the provision of a Telecommunications Product or a related transaction.

Details of the contraventions

The billing error which Optus reported to the ACMA on 24 March 2021 was caused by Optus, and none of the exceptions in clauses 5.5.1(a), (b) and (c) of the TCP Code 2019 (extracted above) apply. Optus has confirmed that 256 customers were affected by the billing error between 1 August 2019 (when the TCP Code 2019 commenced) and 3 March 2021. Accordingly, during that period Optus was not able to provide, verify and demonstrate Billing Accuracy for 256 customers when porting out their landline service, in contravention of clause 5.5.1 of the TCP Code 2019.

DIRECTION

The ACMA, under subsection 121(1) of the *Telecommunications Act 1997* (the **Act**), hereby directs Optus to comply with each provision in clause 5.5 (Verifying Charges) of the TCP Code 2019.

Requirement to comply with this Direction

Under subsection 121(2) of the Act, Optus must comply with a direction under subsection 121(1) of the Act. If Optus does not comply with this direction, the ACMA may apply to the Federal Court for an order that Optus pay the Commonwealth a pecuniary penalty in respect of its contravention of a civil penalty provision (subsection 121(4) and section 570 of the Act).

Reconsideration of a decision

If Optus is dissatisfied with the decision to give this direction, it may seek reconsideration of the decision by the ACMA under subsection 558(1) of the Act by making an application in writing to the ACMA, which sets out the reasons for the application. There is no application fee. If Optus requests reconsideration of the ACMA's decision to give this direction, the ACMA will reconsider its decision, taking into account any further submissions made by Optus. The ACMA may affirm, vary or revoke its decision to give this direction.

The ACMA must make a decision in response to an application under subsection 558(1) of the Act within 90 days after receiving the application. Any such application should be made within 28 days after the date on which this notice of decision is given to Optus, and addressed to the person whose contact details are included below.

If not already provided, Optus may also request a statement of reasons in relation to the decision on that reconsideration, under section 28 of the *Administrative Appeals Tribunal Act 1975* (**AAT Act**). Any such request should be made within 28 days of the reconsideration decision and addressed to the person whose contact details are included below.

Making a complaint

Any complaint about the way the ACMA handled this matter may be directed to the person whose details are provided below.


A complaint may also be made to the Commonwealth Ombudsman (the Ombudsman usually prefers that any concerns are raised with the ACMA first). There is an office of the Commonwealth Ombudsman in each capital city. Further information may be obtained at www.ombudsman.gov.au or call 1300 362 072.

Contacting the ACMA

Should you require further information, please contact:

Peter Sutton
Manager
Telecommunications Compliance and Enforcement Section
PO Box 13112 Law Courts
Melbourne, VIC 8010
Ph: (03) 9963 6950
Email: peter.sutton@acma.gov.au

The 17th day of September 2021



Signature of Member



Signature of Member/
General Manager

__Nerida O'Loughlin PSM_____
Name (Please Print)

__Cathy Rainsford_____
Name (Please Print)