

Final Findings - Investigation Report 5 May 2022

File No	ACMA2022/142
Entity	Urban Telecom (the trading name for Teleforce Pty Ltd)
ACN	129 658 895
Scope of Investigation	Compliance with section 132 of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>
	The service provider rule in clause 1 of Schedule 2 to the <i>Telecommunications Act 1997</i>

Final findings

The Australian Communications and Media Authority (**ACMA**) finds that for the period 9 March 2022 to 30 April 2022, Urban Telecom (the trading name for Teleforce Pty Ltd) (ACN 129 658 895) (**Urban Telecom**) has contravened:

- (a) section 132 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **TCPSS Act**)
- (b) the service provider rule set out in clause 1 of Schedule 2 to the *Telecommunications Act 1997* (the **Act**); and
- (c) subsection 101(1) of the Act,

by failing to comply with the decision made by the Telecommunications Industry Ombudsman (**TIO**) on 15 February 2022 (the **TIO Decision**), identified as 2020/09/13375 (a copy of the TIO Decision is at **Attachment A**).

Background

1. This report presents the findings of an investigation conducted by the ACMA, under paragraph 510(1)(aa) of the Act, into a matter referred to it by the TIO.
2. On 15 March 2022, the TIO referred Urban Telecom to the ACMA in relation to its failure to comply with the TIO Scheme as required by section 132 of the TCPSS Act.
3. On 15 February 2022, the TIO sent Urban Telecom a copy of the TIO Decision (**Attachment A**). On the same day, [REDACTED] s [REDACTED] accepted the TIO Decision and the TIO sent Urban Telecom a copy of [REDACTED] written acceptance of the TIO Decision (**Attachment B**).
4. Urban Telecom failed to pay \$784.78 into the bank account of [REDACTED] within 15 business days of [REDACTED] accepting the TIO Decision, as required by the TIO Decision.
5. On 17 March 2022, the ACMA emailed Urban Telecom in relation to the TIO Decision. On 19 March 2022, Mr Jackson Zhu of Urban Telecom in a telephone conversation with Corinne MacKenzie, ACMA, undertook to pay the amount required in accordance with the TIO Decision by 22 April 2022. However payment was not made.

6. On 28 April 2022, the ACMA sent a copy of the preliminary investigation report to Urban Telecom.
7. On 30 April 2022 Urban Telecom subsequently paid \$784.78 into the bank account of [REDACTED].

The TIO scheme, TIO Constitution and Terms of Reference

8. Relevantly, subsections 128(1) and (2) of the TCPSS Act provide that each carrier and eligible carriage service provider (**eligible CSP**) must enter into a scheme to be known as the TIO scheme. An 'eligible CSP' includes a CSP which supplies standard telephone services for residential or small business customers and/or carriage services that enable end-users to access the internet (subparagraphs 127(a)(i) and (iii) of the TCPSS Act).
9. Section 132 of the TCPSS Act provides that a carrier or a CSP which is a member of the TIO scheme must comply with the TIO scheme.
10. Under clause 17(b) of the TIO's Constitution, in becoming a member of the TIO scheme, each TIO member agrees to be bound by and observe the TIO's Terms of Reference (which set out how the TIO scheme operates).
11. Relevantly, clause 3.14 of the TIO's Terms of Reference provides that if a consumer, such as [REDACTED], accepts a decision made by the TIO, the provider must comply with the decision.
12. Accordingly, failure of a TIO member to comply with a TIO Decision constitutes a failure to comply with the TIO's Constitution and the TIO's Terms of Reference, and consequently a failure to comply with the TIO scheme and section 132 of the TCPSS Act.
13. The Act states that service providers (including CSPs) must comply with the service provider rules contained in the Act (see subsection 101(1)). The relevant service provider rule in this case requires a service provider to comply with the TCPSS Act (see subsection 98(1) and subclause 1(1) of Schedule 2 to the Act).
14. Failure to comply with section 132 of the TCPSS Act is therefore a breach of a service provider rule, and a contravention of subsection 101(1) of the Act.

Findings and reasons

15. Urban Telecom is an eligible CSP in Australia, as it provides internet and phone services to residential and small business consumers.
16. Urban Telecom is a member of the TIO scheme as evident from the list of members at www.tio.com.au/members accessed by the ACMA on 26 April 2022. The TIO has advised that Urban Telecom has been a member of the TIO scheme since 21 October 2021.
17. As a TIO member, Urban Telecom is required under section 132 of the TCPSS Act to comply with the TIO scheme. Accordingly, Urban Telecom must also comply with the TIO's Constitution and Terms of Reference.
18. The TIO Decision directed Urban Telecom to pay [REDACTED] \$784.78 within 15 business days of [REDACTED] acceptance of the TIO Decision. As [REDACTED] accepted the TIO Decision on 15 February 2022, Urban Telecom was required to comply with the TIO Decision under clause 3.14 of the TIO's Terms of Reference by 8 March 2022.

19. Having examined the record of the TIO Decision, the ACMA is satisfied that the TIO decision was made in accordance with the TIO's Constitution and Terms of Reference, and that Urban Telecom was required to comply with the TIO Decision by making the relevant payment to [REDACTED] by 8 March 2022.
20. [REDACTED] confirmed payment of \$784.78 was received on 30 April 2022.
21. For the above reasons and because Urban Telecom did not pay \$784.78 into [REDACTED] bank account by 8 March 2022 as required, the ACMA finds that Urban Telecom failed to comply with the TIO Decision. Consequently, for the period from 9 March 2022 to 29 April 2022, Urban Telecom contravened section 132 of the TCPSS Act, and thereby also contravened both the service provider rule set out at clause 1 of Schedule 2 to the Act, and subsection 101(1) of the Act.

Attachments

Attachment A	TIO email to Urban Telecom dated 15 February 2022 attaching a copy of the TIO Decision, identified as 2020/09/13375.
Attachment B	TIO email to Urban Telecom dated 15 February 2022 attaching [REDACTED] signed acceptance of the TIO Decision.