

INFRINGEMENT NOTICE

NOTICE UNDER SECTION 572E OF THE *TELECOMMUNICATIONS ACT 1997* (CTH)

To: Lycamobile Pty Ltd
ACN 139 717 212
Unit 2
1B Kleins Road
NORTHMEAD NSW 2152

I, Cathy Rainsford, am an authorised infringement notice officer of the Australian Communications and Media Authority (**ACMA**).

I have reasonable grounds to believe that between 21 June 2021 and 30 September 2021, Lycamobile Pty Ltd (ACN 139 717 212) (**Lycamobile**), in its capacity as a carriage service provider, contravened the direction to comply with the Industry Code (C555:2020) Integrated Public Number Database (IPND) (**IPND Code**) given to Lycamobile by the ACMA under subsection 121(1) of the Act on 13 January 2021 (**direction to comply**), which is a contravention of subsection 121(2) of the Act, being a civil penalty provision (**the contraventions**).

I give Lycamobile this Infringement Notice under section 572E of the Act in relation to the contraventions.

In giving this Infringement Notice I have had regard to the *Telecommunications (Infringement Notices) Guidelines 2022*.

Details of the contraventions

It is alleged that Lycamobile contravened subsection 121(2) of the Act by failing to comply with a direction under subsection 121(1) of the Act requiring Lycamobile to comply with clause 4.2.16 of the IPND Code on 12 occasions. Clause 4.2.16 of the IPND Code requires a carriage service provider (**CSP**) to provide accurate and complete public number customer data to the IPND Manager.

Schedule 1 to this Infringement Notice sets out brief details of the contraventions.

Penalty payable under this Infringement Notice

In accordance with section 572G of the Act, the penalty payable under this Infringement Notice is \$159,840. The penalty has been calculated as set out in the table in Schedule 2 to this Infringement Notice.

Time for payment of the penalty

The penalty should be paid **within 28 days** after the day on which this Infringement Notice is given.

The penalty should be paid to the Australian Communications and Media Authority, on behalf of the Commonwealth, into the account below within 28 days of receipt of the Notice. **Please include** the narration “Lycamobile - NS” with your payment.

ABN:	55 386 169 386
Financial Institution:	████████
Branch:	████████████████████
BSB:	██████████
Account No	██████████████
Account Name:	██ ██████████████████

You may ask for additional time to pay. Any request should be made to me as soon as possible, and no later than 28 days after the date this Infringement Notice is given.

If the penalty is paid

If you pay the penalty specified in this Infringement Notice within the time for payment (being within 28 days after the day on which this Infringement Notice is given, or, if applicable, within the longer period allowed under subparagraph 572F(1)(d)(ii) of the Act) and the Infringement Notice is not withdrawn, the matter will not be dealt with by the Federal Court of Australia under Part 31 of the Act. Your liability for the alleged contraventions, the subject of this Infringement Notice, will be discharged. No further proceedings will be taken with respect to the alleged contraventions.

Payment does not equate to a finding that the contraventions occurred.
Payment is not an admission of liability.

If the penalty is not paid

If you do not pay the penalty within the time for payment, the ACMA may take action for the alleged contraventions.

That action may include the institution of civil penalty proceedings in the Federal Court. The penalties that the Court can impose are potentially significantly higher than that in an Infringement Notice (see section 570 of the Act).

Withdrawal of the infringement notice

The ACMA may withdraw this Infringement Notice. It may do so of its own volition or upon your request. To be effective the withdrawal must occur within 28 days after the Infringement Notice was given.

If you wish to apply for withdrawal of the Infringement Notice, you should write as soon as practicable setting out the basis/reasons for the request. Your application should be addressed to me in the first instance.

If the Infringement Notice is withdrawn after the penalty is paid, the penalty will be refunded.

Please note that if this Infringement Notice is withdrawn, the ACMA may consider taking action for the alleged contravention(s), the subject of this Infringement Notice.

Enquiries concerning the Infringement Notice

If you have any enquiries or questions about this Infringement Notice contact me on +61 2 6219 5500 or by email at Cathy.Rainsford@acma.gov.au.



Signature (Authorised Infringement Notice Officer)

Cathy Rainsford
General Manager
Content and Consumer Division
Australian Communications and Media Authority
Authorised Infringement Notice Officer
13 May 2022

SCHEDULE 1

Details of each of the contraventions

In accordance with section 572F of the Telecommunications Act (**the Act**), brief details of the contraventions are set out below.

1. Background

- 1.1. Lycamobile Pty Ltd (ACN 139 717 212) (**Lycamobile**) is an Australian proprietary company, limited by shares, with a registered office at Unit 2, 1B Kleins Road, Northmead, NSW, 2152.
- 1.2. Lycamobile offers prepaid mobile carriage services (being listed carriage services) to the public and is therefore a CSP within the meaning of section 87 of the Act.
- 1.3. On 3 December 2020, the ACMA found that Lycamobile had contravened:
 - a. the *Telecommunications (Service Provider— Identity Checks for Prepaid Mobile Carriage Services) Determination 2017* (the Prepaid Determination);
 - b. the IPND service provider rule set out in subclause 10(2) of Part 4 of Schedule 2 to the Act (**IPND service provider rule**); and
 - c. the Industry Code (C555:2020) Integrated Public Number Database (IPND) (**IPND Code**).
- 1.4. In response, the ACMA:
 - a. gave Lycamobile a remedial direction under subsection 102(2) of the Act (**remedial direction**) on 13 January 2021 for the contraventions of the Prepaid Determination;
 - b. gave Lycamobile a direction to comply with the IPND Code under subsection 121(1) of the Act on 13 January 2021 (**direction to comply**);
 - c. gave Lycamobile an infringement notice specifying contraventions totalling \$604,800 for breaches of the IPND service provider rule (paid in April 2021); and
 - d. accepted, from Lycamobile, an enforceable undertaking on 13 May 2021 in relation to Lycamobile's IPND obligations (**enforceable undertaking**).
- 1.5. On 16 December 2021, the ACMA commenced a second investigation following ongoing indications Lycamobile was not complying with its IPND obligations and its continued failure to comply with the remedial direction and enforceable undertaking. The ACMA investigated whether Lycamobile had contravened:
 - > the IPND service provide rule in clause 10 of Schedule 2 to the Act;
 - > the IPND Code and consequently the direction to comply with the IPND Code given to Lycamobile under subsection 121(1) of the Act on 13 January 2021; and
 - > the remedial direction given to Lycamobile under subsection 102(2) of the Act on 13 January 2021.

2. Matters giving rise to the Notice

- 2.1. Clause 4.2.16 of the IPND Code requires each CSP to ensure that the customer data provided to the IPND Manager is accurate, complete and up to date.
- 2.2. Information in IPND records show that between 21 June 2021 and 30 September 2021, Lycamobile provided customer data to the IPND Manager which was inaccurate and incomplete on 12 occasions. Specifically, key service address fields were missing, including street name and locality.
- 2.3. Therefore, the ACMA has reasonable grounds to believe that Lycamobile contravened clause 4.2.16 of the IPND Code on 12 occasions.
- 2.4. By contravening the IPND Code on 12 occasions after 13 January 2021, the date on which the ACMA gave Lycamobile the direction to comply under subsection 121(1) of the Act, Lycamobile has also contravened subsection 121(2) of the Act by failing to comply with the direction to comply.
- 2.5. Subsection 121(2) of the Act is a civil penalty provision, as per subsection 121(4) of the Act.
- 2.6. The dates and public numbers associated with the services relevant to the alleged contraventions are set out in Schedule 2 to the Infringement Notice.

3. The amount of the penalty

- 3.1. The total penalty specified in the Notice is \$159,840 calculated in accordance with section 572G of the Act, as shown in Schedule 2 below.

SCHEDULE 2

**Penalties for alleged contraventions of subsection 121(2) of the
*Telecommunications Act 1997.***

	Date of alleged contravention/date inaccurate customer data was given to IPND Manager¹	Public number associated with service for which customer data was not, or inaccurate customer data was, given to IPND Manager	Penalty Units²	Penalty
1.	30/9/2021	██████████	60	\$13,320
2.	22/6/2021	██████████	60	\$13,320
3.	23/6/2021	██████████	60	\$13,320
4.	25/6/2021	██████████	60	\$13,320
5.	5/7/2021	██████████	60	\$13,320
6.	3/8/2021	██████████	60	\$13,320
7.	9/8/2021	██████████	60	\$13,320
8.	9/8/2021	██████████	60	\$13,320
9.	21/6/2021	██████████	60	\$13,320
10.	30/9/2021	██████████	60	\$13,320
11.	21/6/2021	██████████	60	\$13,320
12.	21/6/2021	██████████	60	\$13,320
Total penalty				\$159,840

¹ Based on information in IPND records, items 1 to 12 were public numbers to which Lycamobile supplies or supplied carriage services. It is alleged that Lycamobile gave inaccurate customer data to the IPND Manager, in particular, either no address fields were populated, or key service address fields were missing, including street name and locality.