

## Investigation Report

<b>File No.</b>	ACMA2023/322
<b>Carriage service provider</b>	SkyMesh Pty Ltd
<b>ACN</b>	613 736 137
<b>Scope of investigation</b>	Compliance with clause 4.2.8 of the Telecommunications Consumer Protections Code C628:2019

### Findings

The Australian Communications and Media Authority (the **ACMA**) finds that SkyMesh Pty Ltd (**SkyMesh**) has contravened clause 4.2.8 of the *Telecommunications Consumer Protections Code C628:2019* (the **TCP Code**) by failing to provide a Critical Information Summary (**CIS**) for post-paid services to an approximate number of consumers less than but close to 11,615 prior to sale between 1 August 2019 to 11 July 2023.

### Background

1. On 7 July 2023, the ACMA commenced an investigation into SkyMesh's compliance with clause 4.2.8 of the TCP Code under paragraph 510(1)(b) of the *Telecommunications Act 1997* (the **Act**).
2. The investigation followed a consumer complaint to the ACMA dated 19 May 2023, which raised concerns about the provision of information to consumers entering into customer contracts with SkyMesh via a phone sale.
3. The TCP Code is registered under Part 6 of the *Telecommunications Act 1997* (the **Act**) and sets out rules that apply to all carriage service providers (**CSPs**) that supply telecommunications products to residential and small business consumers.
4. In the course of the investigation, the ACMA examined information provided to the ACMA by Cooper Mills Lawyers, acting on behalf of SkyMesh, on 4 August 2023 and 11 September 2023, and SkyMesh's submission to the ACMA's preliminary findings dated 28 September 2023.

### Findings and reasons

#### ***Provision of information prior to sale***

5. Chapter 4 of the TCP Code sets out what suppliers must do for consumers in relation to retail sales and service, including the provision of information to allow consumers to make informed choices. Clause 4.2.8 of the TCP Code requires that a supplier must provide the CIS for post-paid services to a consumer prior to sale except:
  - (a) Unsolicited consumer agreement: where the sale falls within the scope of an unsolicited consumer agreement under the Australian Consumer Law (**ACL**) and as a result the consumer is entitled to a cooling off period, a supplier must provide the consumer with a copy of the relevant CIS after the sale at the same time as the relevant unsolicited consumer agreement and cancellation notice required by the ACL, or
  - (b) Other agreement via phone: where the sale is carried out over the phone and is not treated as an unsolicited consumer agreement under the ACL, the consumer may agree to opt out of their right to receive all information contained in the CIS prior to sale. In this case, a supplier must:

- i. give the consumer a general overview of the CIS prior to or at the point of sale and dispatch a copy of the CIS to the consumer within 5 working days after the sale; and
  - ii. not engage in practices that would encourage consumers to opt out of receiving the CIS prior to the sale.
6. To determine SkyMesh's compliance with clause 4.2.8 of the TCP Code, the ACMA has assessed the following questions:
  - (a) Is SkyMesh a CSP within the meaning of the Act and a supplier for the purposes of the TCP Code?
  - (b) Did SkyMesh fail to provide the CIS for post-paid services to a consumer prior to sale as required?

***Is SkyMesh a CSP within the meaning of the Act and a supplier for the purposes of the TCP Code?***

7. Yes. SkyMesh provides nbn and satellite internet services, which are listed carriage services that enables end-users to access the internet. SkyMesh also provides landline phone to residential and small business customers using network units. It is therefore a CSP within the meaning of section 87 of the Act and a supplier for the purposes of the TCP Code.

***Did SkyMesh fail to provide the CIS for post-paid services to a consumer prior to sale as required?***

8. Yes. On 25 August 2023, the ACMA sought from SkyMesh information about:
  - the total number of customers who had entered into a contract with SkyMesh for an offer for the provision of a post-paid service, via a phone sale, where SkyMesh did not provide the customer with the relevant CIS prior to the sale as per clause 4.2.8 of the TCP Code, and where none of the exceptions in clause 4.2.8 applied, noting that the TCP Code commenced on 1 August 2019.
  - the duration of the non-compliance with clause 4.2.8 (that is, the first day that SkyMesh did not provide the CIS as required under clause 4.2.8 to when it revised its systems so that a CIS was provided as required).
9. On 11 September 2023, SkyMesh advised that the total number of affected customers was 11,615. SkyMesh noted that this figure will be overstated to an extent because SkyMesh has a cohort of business customers that do not fall into paragraph (b) of the definition of 'consumer' in clause 2.1 of the TCP Code. In its submission to the ACMA's preliminary findings, SkyMesh further advised that the number in this cohort is unlikely to be material in the circumstances.
10. Additionally, SkyMesh advised that the duration of the non-compliance with clause 4.2.8 was 1 August 2019 to 11 July 2023.
11. For the above reasons, the ACMA finds that, between 1 August 2019 and 11 July 2023, SkyMesh contravened clause 4.2.8 of the TCP Code because it did not provide a CIS for post-paid services to an approximate number of consumers less than but close to 11,615 prior to sale, and none of the exceptions in clause 4.2.8(a) or (b) of the TCP Code applied.