

INFRINGEMENT NOTICE

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

To: Telnyx Australia Pty Ltd
ACN 623 603 725
119 Willoughby Rd
Crows Nest NSW 2065
Attention: Jos Speeckaert

I, Jeremy Fenton, am an authorised infringement notice officer of the Australian Communications and Media Authority for the purposes of section 572L of the *Telecommunications Act 1997* (the **Act**).

I have reasonable grounds to believe that Telnyx Australia Pty Ltd ACN 623 603 725 (**Telnyx**), in its capacity as a carriage service provider (**CSP**), has contravened subsection 101(1) of the Act being a civil penalty provision (**the contraventions**). Details of the contraventions are outlined below.

I give Telnyx this Infringement Notice under section 572E of the Act in relation to the alleged 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 Telnyx contravened:

- the Integrated Public Number Database (**IPND**) service provider rule at subclause 10(2) of Schedule 2 to the Act (the **IPND service provider rule**) by failing to give to Telstra (in its capacity as the Integrated Public Number Database Manager) the information Telstra reasonably requires to provide and maintain the IPND
- paragraph 2.3(1)(a) of the *Telecommunications (Service Provider — Identity Checks for Prepaid Mobile Carriage Services) Determination 2017* (**Prepaid Determination**) by failing to obtain information and verify the identity of customers in accordance with the rules in Part 4
- section 101 of the Act provides that a service provider must comply with the service provider rules that apply to the provider. Section 98 provides that this includes the rules set out in Schedule 2 to the Act and rules set out in a service provider determination in force under section 99
- subclause 10(2) of Schedule 2 to the Act is a service provider rule and the Prepaid Determination is a service provider determination in force under section 99 of the Act

- in contravening subclause 10(2) of Schedule 2 to the Act and paragraph 2.3(1)(a) of the Prepaid Determination, it is also alleged that Telnix has contravened section 101 of the Act
- subclause 10(2) of Schedule 2 to the Act and subsection 2.3(1) of the Prepaid Determination are listed infringement notice provisions for the purpose of subsections 572E(5) and (7) of the Act.

Schedules 1-3 to this Infringement Notice set out brief details of the alleged contraventions.

Penalty payable under this Infringement Notice

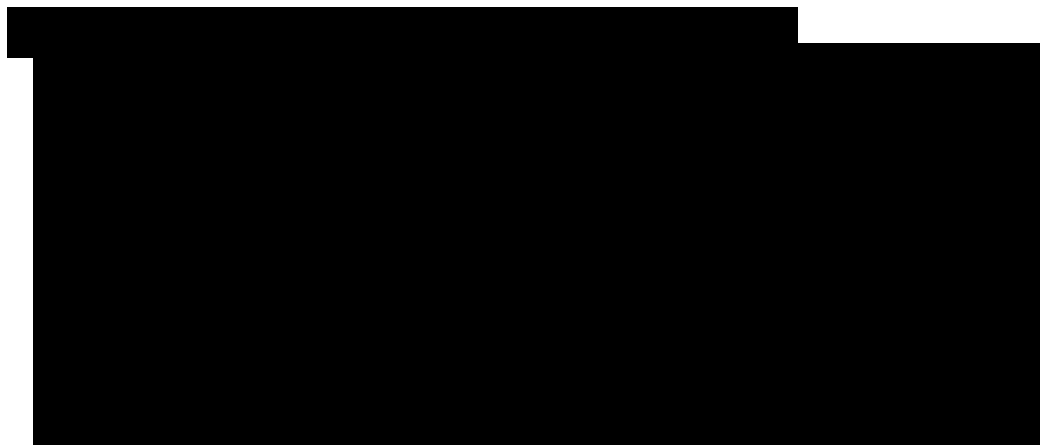
In accordance with section 572G of the Act, the penalty payable under this Infringement Notice is \$79,920. The penalty has been calculated as set out in the tables in Schedules 2-3 to this Infringement Notice.

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 “Telnix - IN” with your payment.



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 paragraph 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.

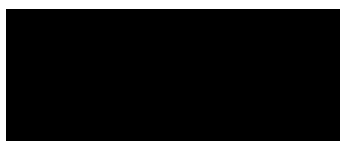
If you wish to apply for withdrawal of the Infringement Notice, you should write as soon as practicable setting out the basis/reasons for the request. Your application should be addressed to me in the first instance.

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 [REDACTED] or by email at [REDACTED]



Signature (Authorised Infringement Notice Officer)

Jeremy Fenton
Acting General Manager
Consumer Division
1 September 2023

SCHEDULE 1

Details of each of the alleged contraventions

In accordance with section 572F of the *Telecommunications Act 1997* (the **Act**), brief details of the alleged contraventions are set out below.

1. Background

- 1.1. Telnyx Australia Pty Ltd ACN 623 603 725 (**Telnyx**) is an Australian proprietary limited company, with a registered office at 119 Willoughby Road, Crows Nest NSW 2065.
- 1.2. Telnyx supplies telecommunications services (being listed carriage services) to the public. It is a carriage service provider (**CSP**) within the meaning of section 87 of the Act.
- 1.3. As a CSP, the following apply to Telnyx:
 - 1.3.1. Integrated Public Number Database (**IPND**) service provider rule at subclause 10(2) of Schedule 2 to the Act
 - 1.3.2. Telecommunications (Service Provider — Identity Checks for Prepaid Mobile Carriage Services) Determination 2017 (**Prepaid Determination**).
- 1.4. On 8 December 2022, the ACMA commenced an investigation into Telnyx's compliance with the IPND service provider rule and the Prepaid Determination.

2. Matters giving rise to the Notice

IPND service provide rule

- 2.1. Information obtained by the ACMA from Telnyx in the course of its investigation showed, among other things, that between 3 October and 10 November 2022, Telnyx did not give the IPND Manager customer data for public numbers associated with 4 of its active carriage services.

Prepaid Determination

- 2.2. Information obtained by the ACMA from Telnyx showed that on 22 September and 12 October 2022, Telnyx activated at least 2 prepaid mobile carriage services, without obtaining information and verifying the identity of its customers in accordance with the rules in Part 4 of the Prepaid Determination.

3. Details of the contraventions

IPND service provide rule

- 3.1. The IPND service provider rule at subclause 10(2) of Schedule 2 to the Act requires that, where a CSP supplies a carriage service to an end-user that has a public number, the CSP must give the IPND Manager such information as the IPND Manager reasonably requires to meet its obligation to provide and maintain an IPND.
- 3.2. The information which the IPND Manager requires from CSPs to fulfil its IPND obligations includes information specified in the Telstra Licence Conditions and the IPND Data Users and Data Providers Technical Requirements for IPND. These include, among other things, the public number, customer name, customer address, the name of the CSP

providing the service and a list status code for the public number indicating whether the service is listed or unlisted.

- 3.3. On 3 October, 18 October and 10 November 2022, Telnix did not give the IPND Manager customer data for public numbers associated with 4 of its active carriage services.
- 3.4. Therefore, the ACMA has reasonable grounds to believe that Telnix has contravened the service provider rule at subclause 10(2) of Schedule 2 to the Act.
- 3.5. In contravening subclause 10(2) of Schedule 2 to the Act, it is alleged that Telnix has also contravened subsection 101(1) of the Act, which requires a CSP to comply with service provider rules (subsection 98(1) of the Act states that the service provider rules include those set out in Schedule 2 to the Act).
- 3.6. Subsection 101(1) of the Act is a civil penalty provision (subsection 101(3) of the Act).
- 3.7. Subclause 10(2) of Schedule 2 to the Act is a listed infringement notice provision for the purposes of section 572E of the Act (see the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2022*).

Prepaid Determination

- 3.8. Subsection 2.3(1) of the Prepaid Determination provides that a CSP must not activate a prepaid mobile carriage service unless the CSP has either complied with the rules set out in Part 4 or complied with an approved compliance plan.
- 3.9. Section 4.5 of the Prepaid Determination provides that a service provider must verify the identity of the service activator using an approved method of identity verification specified in column B of Schedule 1 to the Prepaid Determination.
- 3.10. Schedule 1 sets out the approved methods for verification of the identity of a customer who is a service activator. Item 8 of Schedule 1 sets out that a CSP may verify the identity of a service activator by conducting a visual identity document check in relation to the service activator.
- 3.11. Telnix stated that it used the visual identity document check method of identity verification, however, the ACMA found that Telnix did not comply with the rules in item 8 of Schedule 1 to the Prepaid Determination.
- 3.12. Therefore, the ACMA has reasonable grounds to believe that on 22 September and 12 October 2022 Telnix contravened paragraph 2.3(1)(a) of the Prepaid Determination because it did not comply with the Part 4 rules.
- 3.13. In contravening the Prepaid Determination, it is alleged that Telnix has also contravened subsection 101(1) of the Act, which requires a CSP to comply with service provider rules. The rules set out in the Prepaid Determination are service provider rules as it is a determination in force under section 99 of the Act (subsection 98(1)).
- 3.14. Subsection 101(1) of the Act is a civil penalty provision (subsection 101(3) of the Act).
- 3.15. Subsection 2.3(1) of the Prepaid Determination is a listed infringement notice provision for the purposes of section 572E of the Act (see the

*Telecommunications (Listed Infringement Notice Provisions) Declaration
2022).*

4. The amount of the penalty

- 4.1. The total penalty specified in the Notice is \$79,920 calculated in accordance with section 572G of the Act, as shown in the tables at Schedules 2 - 3 below.

SCHEDULE 2

Penalties for alleged contraventions of the IPND service provider rule being contraventions of subsection 101(1) of the *Telecommunications Act 1997*

	Date of alleged contravention	Date on which public number customer data was supplied to IPND Manager	Public number associated with a service for which customer data was not supplied to IPND Manager	Penalty Units ¹	Penalty
1	3/10/2022	22/11/2022	██████████	60	\$13,320
2	3/10/2022	22/11/2022	██████████	60	\$13,320
3	18/10/2022	10/01/2023	██████████	60	\$13,320
4	10/11/2022	10/01/2023	██████████	60	\$13,320
	SUB-TOTAL				\$53,280

¹ The penalty unit which applied at the time of the alleged contraventions was \$222, as set by section 4AA of the *Crimes Act 1914* (Cth).

SCHEDULE 3

Penalties for alleged contraventions of paragraph 2.3(1)(a) of the Prepaid Determination being contraventions of subsection 101(1) of the *Telecommunications Act 1997*

	Date of alleged contravention	Public number associated with a service for which Part 4 of the Prepaid Determination was not complied with before activating a prepaid mobile carriage service	Penalty Units²	Penalty
1	22/09/2022	████████████████████	60	\$13,320
2	12/10/2022	█ ██████████	60	\$13,320
	SUB-TOTAL			\$26,640

² The penalty unit which applied at the time of the alleged contraventions was \$222, as set by section 4AA of the *Crimes Act 1914* (Cth).