

ENFORCEABLE UNDERTAKING GIVEN TO THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY BY TELNYX AUSTRALIA PTY LIMITED (ABN 79 623 603 725) UNDER SECTION 572B OF THE TELECOMMUNICATIONS ACT 1997 (CTH)

1. Definitions

- 1.1. In this Undertaking:
- 1.1.1. **ACMA** means the Australian Communications and Media Authority.
 - 1.1.2. **Act** means the *Telecommunications Act 1997 (Cth)*.
 - 1.1.3. **Business Day** means a day that is not a Saturday, a Sunday or a public holiday or a bank holiday in New South Wales, Australia.
 - 1.1.4. **Commencement date** has the meaning given in clause 2.1.2
 - 1.1.5. **Gaining carriage service provider** has the meaning given in the Telecommunications (Mobile Number Pre-Porting Additional Identity Verification) Industry Standard 2020.
 - 1.1.6. **Independent consultant** means a qualified and independent consultant with expertise in audits relating to risk and compliance, processes, procedures, systems, governance and controls.
 - 1.1.7. **IPND service provider rule** means clause 10 of Schedule 2 to the Act.
 - 1.1.8. **PNCD** means public number customer data.
 - 1.1.9. **PPV Standard** means the Telecommunications (Mobile Number Pre-Porting Additional Identity Verification) Industry Standard 2020.
 - 1.1.10. **Prepaid Determination** means the Telecommunications (Service Provider — Identity Checks for Prepaid Mobile Carriage Services) Determination 2017.
 - 1.1.11. **Report** means the report produced by the Independent consultant referred to in clause 5.1.2.
 - 1.1.12. **Telnyx Australia** means Telnyx Australia Pty Limited (ABN 79 623 603 725).
- 1.2. Unless the contrary intention appears, terms that are defined in the Act, Prepaid Determination or PPV Standard have the same meaning in this Undertaking as they have in the Act, the Prepaid Determination or the PPV Standard.

2. Term of the Undertaking

- 2.1. This Undertaking commences when:
- 2.1.1. it has been executed by Telnyx Australia.
 - 2.1.2. so executed, it has been accepted by the ACMA and written notification of that acceptance has been provided to Telnyx Australia (**Commencement date**).
- 2.2. This Undertaking will have effect for a period of 30 months unless it is:
- 2.2.1. withdrawn or varied by Telnyx Australia with the ACMA's consent under subsection 572B(3) of the Act; or
 - 2.2.2. cancelled by the ACMA under subsection 572B(4) of the Act.
- 2.3. This Undertaking will cease to have effect upon expiry of the term (or upon prior withdrawal or cancellation as referred to in clause 2.2).
- 2.4. Any notice or approval required or permitted to be given by the ACMA under this Undertaking must be in writing and may be given by any ACMA Authority member or

by any ACMA staff member who is a member of the Senior Executive Service.

3. Background

- 3.1. Telnyx Australia has been providing communications platform as a service (CPaaS) services to Australians since the first calendar quarter of 2017.
- 3.2. On or around 26 July 2023, the ACMA notified Telnyx Australia of the ACMA's conclusion that it had reasonable grounds to believe that Telnyx Australia contravened:
 - 3.2.1. the IPND service provider rule on 3,256 occasions;
 - 3.2.2. paragraph 2.3(1)(a) and section 6.3 of the Prepaid Determination on 558 occasions between 24 January 2017 and 8 December 2022 (being contraventions of subsection 101(1) of the Act);
 - 3.2.3. subsections 8(2) and 8(5) of the PPV Standard on 118 occasions between 24 September 2020 and 22 November 2022 (being contraventions of subsection 128(1) of the Act).
- 3.3. Telnyx Australia acknowledges the ACMA's findings regarding its compliance with the IPND service provider rule, Prepaid Determination and PPV Standard, and offers this Undertaking to the ACMA aimed at addressing future compliance. Telnyx Australia takes regulatory compliance seriously and has cooperated with the ACMA's investigation.
- 3.4. The ACMA's findings have been made in the context of an industry-wide audit of compliance with various processes.
- 3.5. During the ACMA's investigation, Telnyx Australia undertook the following remedial actions:
 - 3.5.1. On 22 November 2022, Telnyx Australia implemented systems and processes designed to ensure that the IPND Manager receives PNCD by the end of the following Business Day.
 - 3.5.2. On 29 June 2023, with respect to the PPV Standard, Telnyx Australia implemented systems and processes designed to ensure that the requesting person is the rights of use holder of the mobile service number prior to initiating a port. For instance, it now sends a verification code by SMS to the relevant customer. That code must be submitted with the porting request or the port is rejected.

4. Undertakings

- 4.1. Telnyx Australia undertakes to take the following specified actions to ensure Telnyx Australia complies with the IPND service provider rule, Prepaid Determination and PPV Standard in the future.
- 4.2. Telnyx Australia will continue to implement systems and processes necessary to ensure that it provides the IPND Manager with the relevant PNCD by the end of the following Business Day.
- 4.3. With respect to PPV Standard compliance, in order to prevent the unauthorised porting of mobile service numbers, prior to initiating a port of a mobile service number, Telnyx Australia (in its capacity as the Gaining carriage service provider), will continue to send a verification code by SMS to the respective customer (via the number to be ported). The verification code must be submitted to Telnyx Australia with the porting request. If a customer does not follow this process, Telnyx Australia will reject the port request.
- 4.4. With respect to Prepaid Determination compliance, Telnyx Australia will continue to implement processes and procedures required by paragraph 2.3 of the Prepaid

Determination to collect information from the customer in accordance with section 4.3 and to verify the identity of the customer in accordance with sections 4.4 or 4.5 or Part 5 of the Prepaid Determination.

- 4.5. Under section 572B of the Act, Telnyx Australia also undertakes to carry out the actions specified in clauses 5 to 10 below within the timeframes specified.

5. Independent Consultant

- 5.1. **Telnyx Australia** undertakes to appoint an Independent consultant to:
- 5.1.1. review Telnyx Australia's current procedures, policies, training and systems relating to its compliance with the IPND service provider rule, Prepaid Determination and PPV Standard and identify any instances where the consultant considers there to be non-compliance with the legal requirements.
 - 5.1.2. produce a confidential report (**the report**) making recommendations as to:
 - a. improvements to systems, policies and procedures where the consultant considers them to be non-compliant with the IPND service provider rule, Prepaid Determination or PPV Standard;
 - b. ongoing training for Telnyx Australia's personnel on the IPND service provider rule, Prepaid Determination and PPV Standard compliance;
 - c. ongoing monitoring of the IPND service provider rule, Prepaid Determination and PPV Standard compliance measures;
 - d. steps that may be taken by Telnyx Australia to address any identified systemic problems relating to its compliance with the IPND service provider rule, Prepaid Determination and PPV Standard.
- 5.2. Telnyx Australia undertakes to seek written approval from the ACMA for the appointment of the proposed Independent consultant within 30 Business Days after commencement of this Undertaking. If the ACMA does not approve the choice of Independent consultant, Telnyx Australia will repeat this process until it has the ACMA's written approval.
- 5.3. Telnyx Australia undertakes to appoint the Independent consultant, and to provide written notification of that appointment to the ACMA, within 20 Business Days after the ACMA has given its written approval.
- 5.4. The Independent consultant will provide, simultaneously, a draft report to the ACMA and Telnyx Australia within 3 months after the consultant's appointment, and the final version of its report to the ACMA and Telnyx Australia, within 5 months after their appointment.
- 5.5. Within 2 months of receiving the final version of the report, Telnyx Australia will prepare a written response to the recommendations made by the Independent consultant in the report and provide it to the ACMA. Telnyx Australia will implement all reasonable recommendations following receipt of the final version of the report (in accordance with clause 6). If Telnyx Australia considers a recommendation to be unreasonable, Telnyx Australia will document the reason for its view in the written response to the ACMA.
- 5.6. Subject to the ACMA's written agreement, Telnyx Australia may remove the Independent consultant at any time and replace the Independent consultant with a new Independent consultant approved by ACMA. If the ACMA does not approve the choice of Independent consultant, Telnyx Australia will repeat this process until it has the ACMA's approval.

6. Implementation Plan, Audit & Reporting

- 6.1. Within 90 Business Days of receiving the final report Telnyx Australia will:
 - 6.1.1. develop an implementation plan setting out the steps Telnyx Australia has taken, or will take, to implement the recommendations made by the Independent consultant in the report, including timeframes (unless Telnyx Australia considered a recommendation to be unreasonable and documented the reason for its view in the written response to ACMA under clause 5.5); and
 - 6.1.2. provide a copy of the implementation plan to the ACMA for its consideration and approval.
- 6.2. Telnyx Australia undertakes to comply with the implementation plan approved by the ACMA in accordance with the timeframes specified in the plan.
- 6.3. The implementation plan may be modified at any time subject to the ACMA's written approval.
- 6.4. Every 6 months from the date the implementation plan is provided to the ACMA, during the term, Telnyx Australia will provide a compliance report, to the ACMA that covers the previous 6 months and includes:
 - 6.4.1. the status of actions it will take or is taking under the implementation plan; and
 - 6.4.2. details of the actions already taken or planned to be taken by Telnyx Australia to remedy any non-compliance with the IPND service provider rule, Prepaid Determination and PPV Standard as a result of the Independent consultant identifying non-compliant policies or procedures; and
 - 6.4.3. a spreadsheet (as an attachment to the compliance report) setting out the following information for the first 50 prepaid mobile carriage services activated within the last 6 months:
 - a. the mobile number of the prepaid mobile carriage service;
 - b. the date the prepaid mobile carriage service was activated;
 - c. the name of the customer of the prepaid mobile carriage service;
 - d. a description of the information that was obtained from the customer, as required under section 4.3 of the Prepaid Determination; and
 - e. the type of identity documents shown to Telnyx as part of the visual identity document check method in accordance with section 4.5 and Item 8 of Schedule 1 to the Prepaid Determination.

7. Training

- 7.1. Within 45 Business Days of the Commencement date, Telnyx Australia undertakes to conduct training for all personnel tasked with ensuring compliance with the IPND service provider rule, Prepaid Determination and PPV Standard.
- 7.2. Telnyx Australia undertakes to review its training as part of its implementation of recommendations made by the Independent consultant.
- 7.3. Telnyx Australia undertakes to provide training similar to that described in clause 7.1, for all new personnel within 12 weeks of their commencement in such roles.
- 7.4. Telnyx Australia undertakes to repeat the training, described in clause 7.1, every 12 months after Telnyx Australia has undertaken the training referred to in clause 7.1 for

the term of this Undertaking.

8. Reverification of prepaid mobile carriage services

8.1. For the purposes of ensuring compliance with section 2.3 of the Prepaid Determination, Telnyx Australia undertakes to re-verify the identity of its active prepaid mobile customers that were not verified in accordance with the requirements of:

- a. Part 4 of the Prepaid Determination; or
- b. the *Telecommunications Service Provider (Customer Identity Authentication) Determination 2022*.

8.2. Telnyx Australia will re-verify active customer identities:

- a. using a method specified in Part 4 of the Prepaid Determination within 6 months of the Commencement date; or
- b. in accordance with an approved compliance plan under Part 5 of the Prepaid Determination within 6 months from the date of approval of a compliance plan.

9. Compliance Plan

9.1. Telnyx Australia undertakes to apply to the ACMA for approval of a compliance plan in accordance with Part 5 of the Prepaid Determination within 30 Business Days of the Commencement date.

9.2. Within 10 Business Days following completion of the re-verification process in clause 8 Telnyx Australia undertakes to report to the ACMA on the number of Telnyx Australia prepaid customers:

- a. that were identified as requiring re-verification;
- b. that were re-verified; and
- c. whose services were cancelled or suspended.

10. Record-keeping

10.1. Telnyx Australia undertakes to:

- 10.1.1. keep accurate, written records of the arrangements that it has in place to comply with the IPND service provider rule, Prepaid Determination and PPV Standard; and
- 10.1.2. provide copies of records referred to in clause 10.1.1 to the ACMA after written request by the ACMA.

11. Acknowledgment of publication

11.1. Telnyx Australia acknowledges that the ACMA may publish this Undertaking after giving prior written notice to Telnyx Australia.

Execution of the Undertaking

Signed /Executed by Telnix Australia Pty Ltd (ABN 79 623 603 725) by its authorised representative:



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Signature

DAVID CASEM

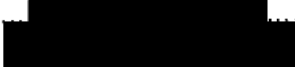
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Name

12/11/2023

Date

Accepted by the Australian Communications and Media Authority under section 572B of the *Telecommunications Act 1997*:



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Signature 

SAMANTHA YORKE

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Name, Member



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Signature

CAROLYN LIDGERWOOD

.....
Name, Member or General Manager

14 December 2023

Date