

Investigation Report: V4 Telecom Pty Ltd

File No.	ACMA2018/868
Carriage Service Provider	V4 Telecom Pty Ltd ACN: 169 465 730
Type of Service or Product	Landline, mobile and internet services
Relevant Legislation	<i>Telecommunications Act 1997</i> <i>Telecommunications (Consumer Complaints Handling) Industry Standard 2018</i> <i>Telecommunications Consumer Protections Code C628:2015</i>

Findings

The Australian Communications and Media Authority (**ACMA**) finds that V4 Telecom Pty Ltd (ACN 169 465 730) (**V4**) contravened:

- > Clause 7.10.1(a) of the Telecommunications Consumer Protections Code C628:2015 (**TCP Code**) on 34 occasions between 29 June and 2 July 2018 by failing to notify customers that their telecommunications services would be moved to a new wholesale network provider.
- > Subsection 128(1) of the *Telecommunications Act 1997* (**the Act**) on 53 occasions between 8 July and 14 December 2018 in relation to six complaints by failing to comply with the following provisions of the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018* (**Complaints Standard**):
 - paragraph 7(1)(a) once on 14 December 2018
 - paragraph 7(1)(b) on six occasions between 8 July and 21 September 2018
 - subparagraph 11(b)(i) on six occasions between 8 July and 21 September 2018
 - subparagraph 11(b)(iii) once between 8 July and 21 September 2018
 - paragraph 12(a) once on 8 July 2018
 - paragraph 12(b) on four occasions between 10 and 14 July 2018
 - paragraph 13(1)(g) on five occasions between 8 July and 21 September 2018
 - paragraph 13(1)(k) once between 11 July and 20 July 2018
 - paragraph 13(1)(l) twice on 20 July 2018
 - subsection 14(1) once between 13 and 20 July 2018
 - subsection 15(2) twice between 9 July and 22 August 2018
 - paragraph 20(1)(b) on six occasions between 8 July and 1 October 2018
 - paragraph 20(1)(g) on five occasions between 8 July and 1 October 2018
 - paragraph 20(1)(h) on six occasions between 8 July and 1 October 2018
 - paragraph 21(a) on six occasions between 8 July and 1 October 2018.

Background

1. In July 2018, the Telecommunications Industry Ombudsman (**TIO**) identified an alleged systemic issue after receiving approximately 123 complaints in 19 days from customers of V4 about a lengthy service outage. The TIO referred the matter to the ACMA.
2. On 31 July 2018, the ACMA gave the TIO a compulsory notice seeking information under section 522 of the Act requiring it to provide details about the complaints.
3. The TIO responded on 13 August 2018 with details of its communications with V4. The TIO stated that V4 advised it was involved in a dispute with one of its wholesalers that had resulted in an outage. To resolve the issue V4 decided to move its customers to another wholesaler. V4 advised the TIO that it was experiencing issues transferring some services to the new wholesaler because the customers lived in areas where the National Broadband Network (**NBN**) was available. Those customers were unable to receive a service on the legacy copper network and had to migrate to the NBN.
4. On 14 September 2018, the ACMA commenced an investigation under paragraph 510(1)(c) of the Act into V4's compliance with the Complaints Standard and the TCP Code. The ACMA gave V4 a notice under section 521 of the Act requiring the provision of information and documents relating to a sample of 34 of the TIO complaints, and information about the migration to the new wholesaler (**the Notice**). On 14 September 2018, the ACMA also gave a notice to V4's new wholesaler seeking information about the services and information it provided to V4 during the migration.
5. On 1 October 2018, V4 responded to the Notice providing copies of documents it kept relating to each of the 34 complaints, including file notes and call recordings. The wholesaler responded on 2 October 2018 with details about the information it exchanged with V4 during the migration, and a copy of its records about the migration of various services to its network.
6. On 18 February 2019, the ACMA gave V4 its preliminary findings that V4 had contravened:
 - > clause 7.10.1 of the TCP Code on 34 occasions between 29 June and 2 July 2018
 - > subsection 128(1) of the Act on 65 occasions between 8 July and 14 December 2018 by failing to comply with the Complaints Standard.

The ACMA invited V4 to make submissions in response.

7. On 19 March 2019, V4 responded and stated that it did not follow its normal procedures when managing individual complaints as it was focussed on resolving the outage for each customer affected. It also stated that the high volume of calls that it received during the outage stretched its resources beyond capacity. V4 submitted that any breaches were unintentional and caused by the unusual circumstances.
8. V4 submitted additional evidence, including copies of the complainants' invoices showing applied credits, and emails it exchanged with one customer.¹ As a result of this additional evidence, 12 of the potential breaches specified in the preliminary finding have been withdrawn from further consideration.

¹ These emails relate to Customer 2 in Attachment A.

9. V4's submission also included a revised complaints handling process (**CHP**). The revised CHP is not the subject of the ACMA's final finding.

Findings and Reasons

Clause 7.10.1 of the TCP Code

10. Clause 7.10 of the TCP Code is titled "Move to different wholesale network provider". Relevantly, clause 7.10.1 states:
- 7.10.1 If a Supplier proposes to move its Customers to an alternate wholesale network provider, the Supplier must:*
- (a) **Notification of move:** before the move is initiated, notify all its Customers in the manner in which the Supplier normally communicates with them:*
- (i) that the Customer's Telecommunications Service will be moved to the new wholesale network provider;*
- (ii) of any details then known to the Supplier regarding how the Customer's Telecommunications Service may be the subject of a materially adverse effect regarding its features, characteristics or pricing as a result of the move;*
- (iii) of any impact this move has on the Customer's use of existing equipment;*
- (iv) of any change in the contact details of the Supplier;*
- (v) of the proposed date by which the move will be completed;*
- (vi) that the Supplier will use reasonable efforts to notify the Customer of the completion of the move on the day it occurs;*
- (vii) of the appropriate contact details for lodging an inquiry or a Complaint about any aspect of the move; and*
- (viii) of the applicable termination rights for that Customer that may result from the move, including the applicable notice period and contract termination charges for that Customer;*
11. V4 supplies internet, landline and mobile services to the public. As such, it is a carriage service provider (**CSP**) as defined in the Act, and therefore a 'Supplier' for the purposes of the TCP Code.
12. On page 1 of its response to the Notice, V4 stated that it contacted the new wholesaler to move the disrupted services on 29 June 2018. It then submitted landline, internet and mobile services for migration to the new wholesaler between 2 and 4 July 2018.
13. V4 provided a copy of the text it sent out as bulk alerts via email and SMS on 29 and 30 June 2018 to its customers about the service outage. However, those bulk alerts did not mention the proposal to move services to a different wholesaler nor did they include other notification details about how customers' telecommunications services may be impacted or affected as set out in subparagraphs 7.10.1(a)(ii) to (viii). V4 stated on page 5 of its response to the Notice that it did not organise for advance notification to its customers who were on the former wholesaler's platform as it did not anticipate the actions of the former wholesaler to disconnect its customers.
14. V4 argued that clause 7.10.1 of the TCP Code does not apply in these circumstances as the clause relates to a 'voluntary, planned movement of services from 1 wholesaler to

another,' and that in this case the move was unplanned and unexpected. However, the ACMA holds the view that V4 has incorrectly interpreted clause 7.10.1 of the TCP Code. The clause applies if a Supplier 'proposes to move its Customers'. This does not suggest that the move must be planned in advance, merely that after the decision is made and before the move is initiated the Supplier must provide notification of the move and the other matters specified in subparagraphs 7.10.1(a)(ii) to (viii).

15. The bulk alerts sent on 29 and 30 June 2018 demonstrate that V4 had the capability to send notifications to its customers on short notice. The ACMA is of the view that V4 had the time and opportunity to notify its customers about the proposal to move their services to a new wholesaler between deciding to take the action on or before 29 June 2018 and submitting the first services for migration on 2 July 2018.
16. Therefore, the ACMA finds that V4 contravened clause 7.10.1(a) of the TCP Code on 34 occasions, corresponding to each of the TIO complaints referred to in paragraph 4, between 29 June 2018 and 2 July 2018 by failing to notify its customers of its intention to move their services to an alternate wholesale network provider and of the other notification matters specified in paragraph 7.10.1(a) of the TCP Code.

Section 128 of the Act

17. Section 128 of the Act states that if an industry standard that applies to participants in a particular section of the telecommunications industry is registered under Part 6 of the Act, each participant in that section of the industry must comply with the standard.
18. The Complaints Standard is an industry standard determined under subsection 125AA(1) of the Act and registered under Part 6 of the Act, and it applies to CSPs.
19. V4 is a CSP that supplies internet, landline and mobile services to the public. As a participant in the section of the telecommunications industry to which the Complaints Standard applies, V4 is required to comply with the Complaints Standard under subsection 128(1) of the Act.
20. As set out below, the ACMA finds that V4 did not comply with one of sections 7, 11, 12, 13, 14, 15, 20 and 21 of the Complaints Standard on 53 occasions between 8 July and 14 December 2018.
21. Therefore, the ACMA finds that V4 contravened subsection 128(1) of the Act on 53 occasions between 8 July and 14 December 2018.

Paragraph 7(1)(a) of the Complaints Standard

22. Paragraph 7(1)(a) of the Complaints Standard requires CSPs that offer to supply telecommunications products to consumers under a consumer contract to establish a complaints handling process (**CHP**) that includes the minimum requirements for consumer complaints handling set out in sections 8, 9 and 10 of the Complaints Standard.
23. On 14 December 2018, the ACMA accessed the CHP that was available on V4's website, www.v4.net.au. The ACMA reviewed the CHP and formed the view that V4 contravened paragraph 7(1)(a) of the Complaints Standard on 14 December 2018 for the reasons set out below.

Provision of Complaints Standard	Requirement	ACMA findings and reasons
8(1)	A complaints handling process must:	
8(1)(b)	be made available to the public on the CSP's website in a concise form that sets out the minimum requirements for complaints handling referred to in paragraphs (d) to (m), and sections 9 and 10;	<p>The CHP omitted various of the matters referred to in paragraphs (d) to (m) and sections 9 and 10, namely:</p> <ul style="list-style-type: none"> • paragraph 8(1)(k) • section 9 • paragraph 10(b) • paragraph 10(d) • paragraph 10(g). <p>Therefore, the ACMA finds that V4 did not include the minimum requirements in paragraph 8(1)(b) of the Complaints Standard in the CHP on 14 December 2018. Further detail is provided below.</p>
8(1)(k)	require members of its personnel to:	
8(1)(k)(i)	clarify with a consumer if they wish to make a complaint where the consumer has made contact and expressed dissatisfaction through one of the channels referred to in paragraph (h) or paragraph (i), and the member of the personnel is uncertain if the consumer wishes to make a complaint; and	<p>The CHP did not include any information requiring personnel to clarify with a consumer whether they wished to make a complaint.</p>
8(1)(k)(ii)	provide consumers with help to formulate, make and progress a complaint, and set out steps to assist members of its personnel to help consumers with special needs or disabilities, and consumers from non-English backgrounds or those suffering financial hardship;	<p>The CHP did not set out steps to assist members of its personnel to provide consumers with help to formulate, make and progress a complaint, nor did it set out steps to assist members of its personnel to help consumers with special needs or disabilities, and consumers from non-English backgrounds or those suffering financial hardship.</p> <p>Therefore, the ACMA finds that V4 did not include the minimum requirements in paragraph 8(1)(k) of the Complaints Standard in the CHP.</p>
9	A complaints handling process must identify the relevant time periods associated with each	The CHP did not provide:

	step in the process, including the response times for managing a complaint set out in sections 13, 14, 15, 16 and 17.	<ul style="list-style-type: none"> timeframes for completing all necessary actions to implement a proposed resolution to a complaint, as required by paragraph 13(1)(j) timeframes where there is any delay in the resolution of urgent complaints as required by subsection 14(3) timeframes for advice regarding prioritisation, escalation and external dispute resolution as required by subsection 15(1) information regarding the timeframes for giving written confirmation of frivolous or vexatious complaints as required by subsection 16(4) timeframes for attempting to contact a complainant where the CSP has been unable to contact the complainant to discuss the complaint as required by section 17. <p>Therefore, the ACMA finds that V4 did not include the minimum requirements in section 9 of the Complaints Standard in the CHP.</p>
10	A complaints handling process must:	
10(b)	include an internal process for escalating a consumer's complaint, which is clear, accessible and transparent for consumers;	<p>While the CHP stated that complainants can speak to a customer service representative about making a complaint urgent or a priority, it did not include an internal process for escalating the complaint in that event.</p> <p>Therefore, the ACMA finds that V4 did not include the minimum requirement in paragraph 10(b) of the Complaints Standard in the CHP.</p>
10(d)	set out a description of how escalated complaints will be managed;	<p>The CHP did not set out a description of how escalated complaints will be managed.</p> <p>Therefore, the ACMA finds that V4 did not include the minimum requirement in paragraph 10(d) of the Complaints Standard in the CHP.</p>
10(g)	include a process for classifying complaints into different categories, which clearly describes each category of complaint.	<p>The CHP stated that 'A record of your complaint, including a description of its category, is kept on your file.' However, the CHP did not clearly describe any categories.</p> <p>Therefore, the ACMA finds that V4 did not include the minimum requirement in paragraph 10(g) of the Complaints Standard in the CHP.</p>

Paragraph 7(1)(b) and Parts 3 and 5 of the Complaints Standard

24. The ACMA has considered information provided by V4, the new wholesaler and the TIO in relation to six of the 34 complaints that are the subject of the investigation. The ACMA finds that, considering these six complaints, V4 contravened the Complaints Standard on a total of 52 occasions between 8 July and 1 October 2018, as follows:

- > paragraph 7(1)(b) on six occasions between 8 July and 21 September 2018 in relation to Customers 1-6 by failing to comply with the minimum requirements for consumer complaints handling as set out in its CHP² in relation to:
 - paragraph 8(1)(h)
 - paragraph 8(1)(m)
- > subparagraph 11(b)(i) on six occasions between 8 July and 21 September 2018 in relation to Customers 1-6 by failing to ensure that its personnel dealing directly with consumers or complaints manage and resolve complaints in an effective and efficient manner in accordance with the minimum requirements for consumer complaints handling in relation to:
 - paragraph 8(1)(h)
 - paragraph 8(1)(k)
 - paragraph 8(1)(m)
 - section 9
- > subparagraph 11(b)(iii) once between 8 July and 21 September 2018 in relation to Customer 4 by failing to ensure that its personnel dealing directly with consumers or complaints can identify and record a complaint
- > paragraph 12(a) once on 8 July 2018 in relation to Customer 4 by failing to acknowledge a complaint received by telephone immediately
- > paragraph 12(b) on four occasions between 10 and 14 July 2018 in relation to Customers 1, 3, 5 and 6 by failing to acknowledge a complaint received by email within 2 working days of receiving the complaint
- > paragraph 13(1)(g) on five occasions between 8 July and 21 September 2018 in relation to Customers 1, 3, 4, 5 and 6 by failing to provide confirmation of a proposed resolution of a complaint within 15 working days of receiving the complaint
- > paragraph 13(1)(k) once between 11 July and 20 July 2018 in relation to Customer 6 by failing to provide confirmation to a consumer that their complaint has been resolved, as soon as practicable after the CSP completes its investigation of the complaint

² As stated in paragraph 23, above, when assessing the contraventions of paragraph 7(1)(a) of the Complaints Standard, the ACMA considered the CHP that was available on V4's website on 14 December 2018. However, in assessing the breaches of paragraph 7(1)(b) and Parts 3 and 5 of the Complaints Standard, the ACMA has relied on the copy of the CHP provided by V4 in response to the Notice on 1 October 2018, as that was the version of the CHP in effect at the time the complaints were made. It is noted that the CHP provided on 1 October 2018 is essentially the same in all material respects as the CHP accessed on 14 December 2018.

- > paragraph 13(1)(l) twice on 20 July 2018 in relation to Customers 3 and 6 by allowing a complaint to be closed without the consent of the consumer and without complying with subsection 15(2), section 16 or section 17
 - > subsection 14(1) once between 13 and 20 July 2018 in relation to Customer 6 by failing to advise a consumer of a delay to proposed timeframes for managing or handling their complaint as soon as possible after becoming aware of the delay
 - > subsection 15(2) twice between 9 July and 22 August 2018 in relation to Customers 3 and 4 by failing to advise a consumer about its internal escalation process and options for external dispute resolution after the consumer communicated that they were dissatisfied with the progress or resolution of their complaint or enquired about their options to pursue the complaint further
 - > paragraph 20(1)(b) on six occasions between 8 July and 1 October 2018 in relation to Customers 1-6 by failing to keep systematic records of complaints which include a unique reference number or other measure that will ensure the CSP can subsequently identify the complaint
 - > paragraph 20(1)(g) on five occasions between 8 July and 1 October 2018 in relation to Customers 1, 3, 4, 5 and 6 by failing to keep systematic records of complaints which include a description of the proposed resolution of the complaint, including any associated commitments and the date this is communicated to the consumer
 - > paragraph 20(1)(h) on six occasions between 8 July and 1 October 2018 in relation to Customers 1-6 by failing to keep systematic records of complaints which include a description of the CSP's reasons for its proposed resolution
 - > paragraph 21(a) on six occasions between 8 July and 1 October 2018 in relation to Customers 1-6 by failing to keep records that are sufficient to demonstrate its compliance with the requirements under Parts 2 to 5 of the Complaints Standard for at least two years from the date of creating the record.
25. The reasons and evidence on which this view is based are set out in **Attachment A** on a case-by-case basis, for each of the six complaints assessed.