



Australian
Communications
and Media Authority

Subsection 102(2) of the *Telecommunications Act 1997*

Direction in relation to subsections 14(2), 14(3) and 15(1) of the *Telecommunications Service Provider (NBN Service Migration) Determination 2018*

TO: Optus Internet Pty Limited ACN 083 164 532

OF: Building C, Level 4
1-7 Lyonpark Road
Macquarie Park NSW 2113

BACKGROUND

The Australian Communications and Media Authority (**the ACMA**) is responsible for monitoring and enforcing compliance by carriage service providers (**CSPs**) with their obligations under the *Telecommunications Act 1997* (**the Telecommunications Act**).

Optus Internet Pty Limited ACN 083 164 532 (**Optus**) is a CSP as defined in section 87 of the *Telecommunications Act*, and under subsection 101(1) of the *Telecommunications Act*, it must comply with the service provider rules applicable to it. The service provider rules, set out in section 98 of the *Telecommunications Act*, include those set out in a service provider determination in force under section 99.

The *Telecommunications Service Provider (NBN Service Migration) Determination 2018* (**the Service Migration Determination**) is a service provider determination in force under section 99 of the *Telecommunications Act* that is applicable to Optus.

The ACMA has investigated whether Optus contravened the service provider rules by not meeting its obligations under the Service Migration Determination. The ACMA found that between 21 September 2018 and 31 December 2020 Optus did not comply with the Service Migration Determination. Specifically, Optus did not comply with:

- > Subsection 14(2) – by failing on 24,039 occasions to confirm the maximum attainable speed or perform or arrange for the performance of line capability testing as required.
- > Subsection 14(3) – by failing to notify 34,258 customers in relation to the maximum attainable speed on their NBN service as required.
- > Subsection 15(1) – by charging up to 34,258 customers for an NBN service in circumstances where it was not permitted to do so.

The investigation followed Optus advising the ACMA on 12 July 2021 of issues regarding its compliance with the Service Migration Determination. The investigation was confined to the period between 21 September 2018 and 31 December 2020 as this was the period of the internal review undertaken by Optus.

DIRECTION

The ACMA, being satisfied that Optus has contravened the service provider rules set out in the Service Migration Determination as described above;

DIRECTS Optus, under subsection 102(2) of the Telecommunications Act, to take the following action directed towards ensuring that Optus does not contravene or is unlikely to contravene the Service Migration Determination in the future as required by subsection 101(1) of the Telecommunications Act:

Implementing effective systems, processes and practices

1. Optus must implement and maintain effective systems, processes, and practices for ensuring compliance with subsections 14(2), 14(3) and 15(1) of the Service Migration Determination. For the purpose of complying with, and to the extent necessary to comply with subsections 14(2), 14(3) and 15(1) of the Service Migration Determination, until 31 March 2024, these systems, processes and practices must include:
 - (a) systems, processes and practices to provide a high level of accuracy and integrity in the ingestion, matching and analysis of data received from NBN Co;
 - (b) systems, processes and practices to ensure that the notifications required under subsection 14(3) of the Service Migration Determination advise the consumer:
 - i. of the maximum attainable speed of the part of the network unique to the consumer;
 - ii. if there is a lower speed tier plan offered by Optus, that they may, at no cost, move to a lower speed tier plan at a lower price that reflects the maximum attainable speed; and
 - iii. that they are free to exit the consumer contract which Optus has entered into with the consumer, without cost;
 - (c) systems, processes and practices to ensure that line capability tests and, where necessary, the notifications provided to consumers are provided within the timeframes required under subsections 14(2) and 14(3) of the Service Migration Determination; and
 - (d) systems, processes and practices to ensure that consumers are not charged for a next-generation NBN broadband service (as defined in the Service Migration Determination) unless the requirements set out in subsection 15(1) of the Service Migration Determination are met.

Governance processes

2. Optus must implement and maintain processes to ensure that:
 - (a) any material changes to the notifications sent to customers under subsection 14(3) of the Service Migration Determination are reviewed and signed off by relevant Optus personnel and teams that may be affected by the changes or have responsibility over systems and processes that may be affected by the changes, which must include an Optus staff member with senior managerial responsibility; and
 - (b) any material changes to systems relied on to ensure compliance with subsections 14(2), 14(3) or 15(1) of the Service Migration Determination are reviewed and signed off by relevant Optus personnel and teams that may be affected by the changes or have responsibility over systems and processes that may be affected by the changes, which must include an Optus staff member with senior managerial responsibility.
3. Optus must implement and maintain processes to:
 - (a) monitor the ingestion, matching and analysis of NBN line capability data received from NBN Co; and
 - (b) ensure that where NBN line capability data is unable to be matched to Optus data in the first instance, the exception is identified and resolved within 2 weeks of being identified.

Independent audit

4. Optus must appoint, in accordance with paragraph 5, a qualified and independent person (**the Independent Auditor**) to audit and report in writing on:
 - (a) the extent to which the systems, processes and practices described in paragraphs 1 to 3 are effective in achieving compliance with subsections 14(2), 14(3) and 15(1) of the Service Migration Determination;
 - (b) recommendations as to the improvements or maintenance of those systems, processes and practices directed towards ensuring Optus's compliance with subsections 14(2), 14(3) and 15(1) of the Service Migration Determination; and
 - (c) the effectiveness, accuracy and implementation of Optus's program to contact and offer remedies to customers affected by Optus's non-compliance with subsections 14(2), 14(3) and 15(1) of the Service Migration Determination from 21 September 2018 to the date of this direction.
5. By no later than 10 business days after the date of this direction, Optus must seek written approval from the ACMA to:
 - (a) appoint a nominated person to be the Independent Auditor; and
 - (b) endorse the terms of reference for the audit.
6. Within 5 business days after the ACMA has given its approval, Optus must appoint the person to be the Independent Auditor at its own cost.

7. If the ACMA refuses to approve the person for such appointment, or endorse the terms of reference, Optus must repeat this process within 5 business days of receiving the ACMA's refusal, until it obtains the ACMA's written approval.
8. Optus must require that the Independent Auditor's written report referred to in paragraph 4 be completed by no later than 30 June 2022.
9. Optus must prepare a written response to any recommendations in the audit report referred to in paragraph 4 and implement all reasonable recommendations. Where it regards any recommendation in the audit report as unreasonable, it must record the reasons for its view in the written response.
10. Optus must provide a copy of the audit report referred to in paragraph 4, and the written response referred to in paragraph 9, to the ACMA by no later than 31 July 2022.
11. By the end of each month starting in July 2022, Optus must provide to the ACMA a written progress report on implementation of the reasonable recommendations referred at paragraph 9 until such time as the reports demonstrate all recommendations have been fully implemented.

ADMINISTRATIVE ARRANGEMENTS

12. Any approval required or permitted to be given by the ACMA under this direction must be in writing and may be given or made by any ACMA Authority member or by any ACMA staff member who is a member of the Senior Executive Service.

TAKE NOTE

13. Section 98 of the Telecommunications Act sets out the service provider rules which are applicable to a CSP. The service provider rules, set out in section 98 of the Telecommunications Act, include those set out in a service provider determination in force under section 99 of the Act.
14. Subsection 101(1) of the Telecommunications Act provides that a service provider must not contravene the service provider rules that apply to it.
15. If a service provider has contravened, or is contravening, a service provider rule, under subsection 102(2) of the Telecommunications Act, the ACMA may direct a service provider to take specified action directed towards ensuring that the service provider does not contravene a service provider rule, or is unlikely to contravene a rule, in the future.
16. Subsection 102(4) of the Telecommunications Act provides that a service provider must not contravene a direction given under subsection 102(2). A corporation that has contravened subsection 102(2) of the Telecommunications Act may be ordered by the Federal Court to pay to the Commonwealth such pecuniary penalty as the Court determines to be appropriate, up to a \$250,000 per contravention (section 570 of the Telecommunications Act).

REVIEW RIGHTS

17. Optus may request that the ACMA reconsider its decision to give this direction by application in writing made within 28 days of being informed of the decision, in accordance with section 558 of the Telecommunications Act.

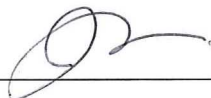
18. If Optus is dissatisfied with the ACMA's decision upon reconsideration then, in accordance with section 562 of the Telecommunications Act, Optus has the right to seek review of the reconsideration decision by the Administrative Appeals Tribunal.

CONTACTING THE ACMA

19. Should you require further information, please contact:

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Manager, Telecommunications Compliance and Enforcement Section
Australian Communications and Media Authority
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Dated this 11 day of March 2022



Signature of Member

JAMES CAMERON

Name



Signature of Member / General Manager

CATHY RANSFORD

Name