



## Direction under subsection 121(1) of the *Telecommunications Act 1997*

TO: UTel Networks Pty Ltd (ACN 147 032 755)

OF: Level 1, 9 Toorak Road, SOUTH YARRA, VIC, 3141

Attention: Roger Slaney, Chief Executive Officer

I, Jennifer McNeill, delegate of the Australian Communications and Media Authority (**the ACMA**), being satisfied that UTel Networks Pty Ltd (ACN 147 032 755) (**UTel**), has contravened the *Telecommunications Consumer Protections Code (C628:2007)* (**the TCP Code 2007**) and the *Telecommunications Consumer Protections Code (C628: 2012)* (**the TCP Code 2012**) as described below;

HEREBY direct UTel, under subsection 121(1) of the *Telecommunications Act 1997* (**the Act**), to comply with the TCP Code 2012.

### Details of the contraventions

1. The ACMA has investigated UTel's compliance with clauses 8.1.3(c), 8.1.3(e) and 8.1.4 of the TCP Code 2007 and clauses 3.2.1, 4.3.1, 4.3.2, 4.3.4, 7.2, 7.3.1, 7.8 and 8.2.1(c) of the TCP Code 2012. As a carriage service provider, UTel is a participant in the section of the telecommunications industry to which the TCP Code 2007 applied and the TCP Code 2012 applies.
2. The ACMA is satisfied that UTel contravened the following clauses of the TCP Code 2007, during the period that the TCP Code 2007 was in effect:
  - (a) Clause 8.1.3(c) by failing to take all reasonable steps to ensure that the person who authorised a transfer is the authorised customer or their authorised representative, on one occasion on 29 August 2012.
  - (b) Clause 8.1.3(e) by failing to take all reasonable steps to ensure that the consent obtained is informed consent by, before seeking agreement to the transfer, informing the authorised customer or their authorised representative of one or more of the following, on 15 occasions between 23 May 2012 and 30 August 2012:
    - i. that by agreeing to the transfer of the service the authorised customer is entering into a new contract;
    - ii. the terms and conditions of the transfer;
    - iii. the identity of the gaining supplier;

- iv. the relevant terms and conditions relating to any telecommunications goods purchased from the gaining supplier for use with the telecommunications service being transferred; and
  - v. that there may be consequences arising from their existing telecommunications service contract, which the customer must check.
- (c) Clause 8.1.4 by failing at the point of sale to:
  - i. make available the information that the customer will be notified within 10 working days of the transfer taking place and the mechanism by which the customer can ascertain that the transfer has occurred; and
  - ii. check the accuracy of the transfer details with the customer;on 15 occasions between 23 May 2012 and 30 August 2012.
- 3. On 1 September 2012, the TCP Code 2007 (the original code) was replaced with the TCP Code 2012 (the replacement code).
- 4. Clauses 7.2.1(b), 7.3.1 and 7.4.1 of the TCP Code 2012 require gaining suppliers to:
  - (a) use reasonable endeavours to ensure that the person requesting the transfer is the rights of use holder of the telecommunications service to be transferred, or is authorised to do so;
  - (b) take all reasonable steps to ensure that the consent obtained from a consumer to undertake a transfer is informed consent; and
  - (c) ensure that a customer receives information about the gaining supplier and the transfer process at the time at which a transfer is proposed by or on behalf of the gaining supplier or is requested by the consumer.
- 5. The ACMA is satisfied that had UTel's conduct, as described in paragraph 2, occurred after the replacement code was registered, UTel could have been given a direction under subsection 121(1) to comply with the replacement code, in particular with respect to contravention of clauses 7.2.1(b), 7.3.1 and 7.4.1 of that code.
- 6. The ACMA is satisfied that UTel contravened the following clauses of the TCP Code 2012 during the period the TCP Code 2012 was in effect:
  - (a) Clause 3.2.1 by failing to provide accurate, relevant and current information to consumers in a timely manner on 4, 12 and 19 September 2012 and 15 October 2012.
  - (b) Clause 4.3.1 by failing to take the following actions to ensure its sales representatives promote and sell the supplier's telecommunications products in a fair and accurate manner:
    - i. ensure its sales representatives are appropriately trained on how to promote and sell its telecommunications products to consumers in a fair and accurate manner;
    - ii. ensure the conduct of sales representatives is monitored periodically and take steps to address emerging or systemic deficiencies in sales conduct; and
    - iii. monitor complaints about sales conduct of its sales representatives and to take steps to address emerging or systemic deficiencies in the sales conduct;during the period 1 to 30 September 2012.

- (c) Clause 4.3.2 by failing to take certain actions including ensuring that its sales representatives have a good working knowledge of the suppliers products to enable the provision of information about its current telecommunications products in a comprehensive and truthful manner, without exaggerating or omission of key information that is reasonably likely to be important to a consumer in reaching a purchasing decision, during the period 1 to 30 September 2012.
- (d) Clause 4.3.4 by failing to take certain actions including ensuring that a customer wants to purchase the supplier's offer of a post-paid service before completing the sale, to enable the outcome that the consumer's consent is obtained in a fair and accurate manner before the consumer enters into a customer contract, on 17 September 2012.
- (e) Clause 7.2.1 by failing to take certain actions including ensuring that a customer has provided consent to a transfer, to ensure the use of reasonable endeavours to enable the outcome that a customer is only the subject of a transfer by a gaining supplier if the consumer has provided their consent to such a transfer, on 17 September 2012.
- (f) Clause 7.3.1 by failing, before initiating a transfer, to inform the consumer of the following and not effect the transfer until the consumer subsequently agrees to the transfer:
  - i. that the consumer is entering into a new customer contract by agreeing to the transfer;
  - ii. the details of the telecommunications service being transferred; and
  - iii. the identity of the gaining supplier;on 17 September 2012.
- (g) Clause 7.8 by failing to adequately keep records to enable a customer to verify that the transfer process was undertaken in accordance with Chapter 7 of the TCP Code 2012, during September 2012.
- (h) Clause 8.2.1(c) by failing to respond to customer dissatisfaction with progress or resolution of a complaint or an enquiry about options to pursue a complaint further, with advice about the supplier's internal escalation process and the options for external dispute resolution, including the Telecommunications Industry Ombudsman, during the period 3 September to 16 October 2012.

#### **Requirement to comply with this Direction**

Under subsection 121(2) of the Act, UTel must comply with a direction under subsection 121(1) of the Act.

If UTel does not comply with this Direction, the ACMA may apply to the Federal Court for an order that UTel pay the Commonwealth a pecuniary penalty in respect of its contravention of a civil penalty provision (subsection 121(4) and section 570 of the Act).

#### **Reconsideration of a decision**

Under subsection 558(1) of the Act, UTel may apply to the ACMA for the ACMA to reconsider the decision to direct UTel to comply with the TCP Code 2012. The application must be submitted in writing to the ACMA and must set out the reasons for the application (subsection 558(2) of the Act). The application must be made within 28 days after UTel is informed of the decision (subsection 558(3) of the Act).

If UTel is dissatisfied with the ACMA's decision on reconsideration, it may:

- (a) subject to the *Administrative Appeals Tribunal Act 1975* (the **AAT Act**), apply to the Administrative Appeals Tribunal for review of the reconsideration decision, and
- (b) request a statement under section 28 of the AAT Act in relation to that decision.



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Signature

Jennifer McNeill  
General Manager  
Content, Consumer and Citizen Division  
Delegate of the Australian Communications and Media Authority

19 November 2013