

Investigation Report

File No	ACMA2024/1344
Entity	Eureka Telecommunications Western Victoria Pty Ltd
ACN	658 805 979
Scope of Investigation	Compliance with subsection 128(1) of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>
	Compliance with the service provider rule at clause 1 of Schedule 2 to the <i>Telecommunications Act 1997</i>
	Compliance with subsection 101(1) of the <i>Telecommunications Act 1997</i>

Findings

The Australian Communications and Media Authority (the **ACMA**) finds that Eureka Telecommunications Western Victoria Pty Ltd (ACN 658 805 979) (**Eureka Telco**) has contravened:

- a) subsection 128(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **TCPSS Act**);
- b) the service provider rules set out at clause 1 of Schedule 2 to the *Telecommunications Act 1997* (the **Tel Act**) and
- c) subsection 101(1) of the *Tel Act*,

by failing to join the Telecommunications Industry Ombudsman (**TIO**) scheme.

Background

2. On 20 June 2024, the ACMA received a referral from the TIO alleging that Eureka Telco had failed to join the TIO scheme in accordance with subsection 128(1) of the TCPSS Act.
3. The TIO became aware that Eureka Telco may be required to join the TIO scheme following receipt of a complaint on 22 February 2024 about a dispute regarding the payment of a modem.
4. The TIO advised the ACMA that it attempted to contact Eureka Telco on several occasions between 27 February 2024 and 16 May 2024 regarding its obligation to join the TIO scheme (see **Appendix 1**).
5. On 28 June 2024, the ACMA attempted to contact Eureka Telco via telephone on 1300 933 038 and 1300 990 293 and was unable to leave a voice message on either number. On the same date, the ACMA emailed Eureka Telco at sales@eurekatelco.com.au advising Eureka Telco to respond via email by 5 July 2024 to confirm that it had commenced the process to join the TIO scheme or had submitted a request for exemption via the approved form. The ACMA did not receive a response from Eureka Telco.
6. On 16 July 2024, the ACMA telephoned Eureka Telco on 1300 933 038 and was able to leave a message with a customer service representative. The ACMA requested a call back from Eureka Telco's director, whom the ACMA understands from ASIC records to be [REDACTED]. The ACMA did not receive a call back. On the same date, the TIO confirmed to the ACMA that Eureka Telco had still not become a member of the TIO scheme.
7. On the basis of the above facts, the ACMA commenced an investigation on 16 July 2024, and on 19 July 2024 sent its preliminary findings report to Eureka Telco inviting it to respond by 5 August 2024.

8. Having received no response from Eureka Telco, the ACMA emailed Eureka Telco at sales@eurekatelco.com.au on 6 August 2024 and telephoned on 1300 933 038 on 13 August 2024 to attempt to speak with [REDACTED]. [REDACTED] returned the ACMA's call on 14 August 2024, advising that Eureka Telco would join the TIO scheme by 20 August 2024 and confirm via email to the ACMA that this had been done.
9. When asked when it began offering telecommunications services, Eureka Telco advised the ACMA on 20 August 2024 that it began migrating customers over a 3-month period between January 2024 and March 2024.
10. On 20 August 2024, the TIO confirmed that Eureka Telco had joined the TIO scheme on that date.

Legislative framework

11. Under paragraph 510(1)(aa) of the Tel Act, the ACMA may investigate a potential contravention of the TCPSS Act, where it has reason to suspect that a person may have contravened that Act.
12. Subsection 128(1) of the TCPSS Act requires each carrier and eligible carriage service provider (**CSP**) to enter into a scheme known as the TIO scheme. For the purpose of Part 6 of the TCPSS Act, an 'eligible CSP' includes a CSP who supplies standard telephone services and carriage services that enable end users to access the internet (subparagraphs 127(a)(i) and (iii) of the TCPSS Act), or an intermediary who arranges for the supply of these services (subsection 127(b) of the TCPSS Act).
13. When a CSP contravenes subsection 128(1) of the TCPSS Act, they also contravene the service provider rule set out at clause 1 of Schedule 2 to the Tel Act, which provides that service providers must comply with the TCPSS Act, and subsection 101(1) of the Tel Act, which provides that service providers must comply with the service provider rules that apply to them.

Findings and reasons

14. Eureka Telco is an 'eligible CSP' as it supplies standard telephone services and carriage services that enable end-users to access the internet.
15. On its website,¹ Eureka Telco offers NBN internet plans and voice services to residential and business customers. An extract of Eureka Telco's website is at **Attachment A**.
16. On the basis of the content of Eureka Telco's website, the ACMA considers that it is reasonable to assume that it supplies standard telephone services and carriage services that enable end users to access the internet.
17. On 20 August 2023, the TIO confirmed that Eureka Telco had joined the TIO scheme on that date.
18. For the above reasons, the ACMA is of the view that Eureka Telco is an eligible CSP. By not joining the TIO scheme from January 2024 to 20 August 2023, Eureka Telco has contravened subsection 128(1) of the TCPSS Act and, thereby failed to comply with the service provider rule set out at clause 1 of Schedule 2 to the Tel Act, and subsection 101(1) of the Tel Act.

¹ <https://www.eurekatelco.com.au>, accessed 15 August 2024.

Appendix 1 – Summary of TIO attempts to contact Eureka Telco

Date	Action
27 February 2024	The TIO sent a 'first notice email' and application to join the TIO scheme to sales@eurekatelco.com.au . The TIO has advised the ACMA that it did not receive a response to this email.
27 March 2024	The TIO sent a 'second notice email' and application to join the TIO scheme to sales@eurekatelco.com.au . The TIO has advised the ACMA that Eureka Telco replied from sales@eurekatelco.com.au on 28 March 2024 and stated that it is a reseller, not a carrier or carriage service provider, and therefore does not consider it is required to be a member of the TIO scheme.
11 April 2024	The TIO replied to Eureka Telco at sales@eurekatelco.com.au , advising that resellers of carriage services are required to join the TIO scheme. The TIO has advised the ACMA that it did not receive a response to this email.
9 May 2024	The TIO telephoned Eureka Telco on 1300 933 038 and 1300 990 293 but was unable to leave a voice message via either number. The TIO also sent a 'final reminder' email and application to join the TIO scheme to sales@eurekatelco.com.au . The TIO has advised the ACMA that it did not receive a response to this email.
16 May 2024	The TIO mailed an application to join the TIO scheme to Eureka Telco at the postal address L1, 35-37 Peel St South, Bakery Hill, VIC, 3350. ²

² The ACMA notes this address is listed on Eureka Telco's website as its contact address. See <https://www.eurekatelco.com.au/contact/>, accessed 14 August 2024.

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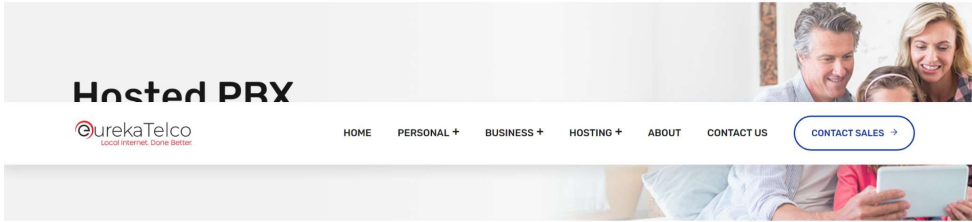
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