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12 May 2006

Jason Fink
Investigation Officer
Telecommunications Industry Ombudsman
PO Box 276
Collins Street West
MELBOURNE VIC 8007

Telstra reference: 1-64960155
TIO reference: 06/005234-1

Dear Jason

Level 2 TIO Complaint: Mr Gary Looney
Service Information: 0880914680

Thank you for your letter of 26 April 2006 regarding a complaint by Mr Gary Looney.

The TIO has raised this complaint because Mr Looney claims that the matter remains unresolved following attempts to negotiate a resolution with Telstra Corporation. The TIO has spent time examining this case and believes that Telstra Corporation may be in a position to provide additional information to assist with the resolution of this complaint.

In that letter, the Telecommunications Industry Ombudsman (TIO) requested Telstra:

- To provide Telstra's perspective of the complaint.
- If Telstra decides Mr Looney's claims have merit, how does Telstra propose resolving the complaint?
- If Telstra is of the view that there is no merit to some or all aspects of the complaint, please provide reasons for its view, identifying any facts in dispute.

1. SUMMARY OF COMPLAINT

I refer to the Level 2 Complaint raised on behalf of Mr Gary Looney regarding ISDN service 0880914680. In response to the claims made by Mr Looney, Telstra advises the following.

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2. TELSTRA'S RESPONSE TO THE COMPLAINT

Telstra has thoroughly investigated this matter and having completed its review, has provided the following information and its perspective on the complaint.

In summary, Telstra would advise the TIO that it initially received this complaint back on 17 January 2006 as a TIO Level 1 complaint when it was lodged in Telstra's complaint database and given reference number 1-64960155. This matter was referred to Telstra's BigPond Customer Relationship Team (BCRT) for case management.

This team is a specialist group, which exclusively case manages customers who have not been able to obtain satisfaction through normal channels of inquiry. A Resolution Officer was assigned to the issue to ensure that this matter could be resolved quickly and efficiently.

Mr Looney's complaint matter refers to ISDN service on 0880914680. Mr Looney claims that he was given incorrect or inadequate advice about the availability of Broadband Internet services whereby initially he was advised that only a dial up connection was available in his area. Subsequent advice was that a CDMA wireless Broadband connection would be available. He was then advised that the wireless connection was not suitable in his area, and that the only possible connection was through ISDN. Telstra regrets to learn that Mr Looney is dissatisfied with Telstra's customer service and feels that Telstra has misinformed him.

Telstra advises that BigPond staff are trained to listen to a customer's requirements, and offer the best resolution for the customer's needs, also considering their locale. While Telstra BigPond regrets that Mr Looney believes that he was provided with misinformation at point of sale, it is not clear what information was provided by Mr Looney to Telstra staff with regard to his requirements. However, the notes on Mr Looney's Telstra telephone account 1228004010 clearly state that Mr Looney was advised of the following: (See supplied Flexcab Billing notes as extract supplied below)

"16/12/05 C876316_ FURTHER TO PREVIOUS NOTES, REFER ORDER FOR ISDN # N 99/99/99
45434568. GARY HAS BEEN QUOTED DIFFERENT SPEEDS R
EGARDING ISDN SO I CONFIRMED THE SPEED OF 128 CAN
ONLY BE ACHIEVED THRU THE USB PORT, IF THE CONVE
RSION DID HAPPEN AND GARY COULD NOT DOWNLOAD HIS
IMPORTANT FILES HAVE COVERED OFF WITH THE ADVICE
THAT IF THE ISDN DID NOT WORK SATISFACTORILY & AT
THE SPEED THAT HAS BEEN QUOTED PROVIDING GARY RE
Q CANCELLATION WITHIN A REASONABLE TIME, WE WOULD
REBATE, ANITA @ ONE NORTH CP 1800247998
16/12/05 C876316_ SPOKE TO GARY RE ISDN CHARGES & ADVISED THAT IS H N 99/99/99
E DID GET ISDN CONNECTED & DID NOT ACHIEVE WHAT I
S GUARANTEED WE WOULD BE ABLE TO REBATE CHARGES &
INSTALL COSTS IF THAT WAS NECESSARY, ANITA @ ONE;
NORTH,CP 1800247998
14/12/05 C880156_ $209.00 FEE TO BE WAIVED APPROVED STL 0754753200 P 99/99/99
IAN COOPER
14/12/05 C880156_ CUST ORIGINALLY RANG TO HAVE B/B CONN.ADV.ONLY CO P 99/99/99
ULD HAVE DIAL-UP.CUST WENT AHEAD TO HAVE NEW LINE
CONN. IN MEANTIME,CUST RANG B/B WHO ADV.HE COULD

HAVE WIRELESS B/B.BIGPOND WILL PROVISION THIS FO
R CUST. DID DISCONN.OF LINE AND WAIVED CONN.FEE A
S GOODWILL GESTURE.CUST HAPPY WITH THIS.IF BILL I
SSUES FOR $209.00. PLEASE WAIVE FEE"

The information provided by Mr Looney states that he had wanted Broadband and was advised that only Narrowband (dial up) was available, and accordingly he had a telephone line connected for ISDN (a faster dialup service). Mr Looney states that apparently he was then advised that Wireless Broadband may be available to his premises. In response to this, the ISDN was disconnected on 14 December 2005, one day after its installation and all charges associated with the ISDN line were waived.

Eight days later, on 22 December 2005, at Mr Looney's request, the ISDN was reconnected with Telstra account 1169556110. Mr Looney subsequently contacted Telstra, advising that the ISDN was not suitable for his needs. Telstra respectfully notes at this point that the ISDN service had already been cancelled by Mr Looney and all charges waived, and that Mr Looney then chose to reconnect this service later the same month. This is the second time that Mr Looney has stated that the ISDN is not suitable. In February 2006, Mr Looney was reimbursed costs incurred on the ISDN service to that date of this notification. This totalled $214.53.4

Mr Looney has stated that he was telephonically advised by Telstra staff that Wireless Broadband may be available, and accordingly, he subsequently purchased a laptop for its connection, Telstra has attached information regarding Wireless Broadband coverage for Mr Looney's suburb of Menindee to this submission; this would be the same information available to any Telstra staff member. It is to be noted that the street in which Mr Looney lives is not on the map. This map indicates that Wireless Broadband is likely to be available, but not at true Broadband speeds. The signal would be supplied by CDMA towers at slower speeds (typical connectivity speeds of 80-100kbps, bursting up to 144kbps). Mr Looney's correspondence (complaint notes 18 January 2006) states that he was advised that Wireless through CDMA was available in his area (this is the slower speed available to him), and this is correct. Mr Looney also stated on 18 January 2006 that he had subsequently discovered that live streaming requires speeds of approximately 500kbps, which the Wireless would not provide. However, it is not clear if Mr Looney specified when he contacted Telstra staff, if live streaming was required.

The attached coverage information clearly stipulates that coverage is indicative, and not guaranteed. A number of factors can affect connectivity, including topography. This is why Telstra BigPond has a returns policy for Wireless Broadband, as coverage cannot be guaranteed until tested at the premises.

Telstra BigPond advises that the Internet services available at Mr Looney's residence are:

- Dial up
- ISDN (which he currently has)
- Broadband Regional Connect (ISDN) for upload and 1-Way satellite for download)
- Broadband Wireless provided through CDMA towers, but not at true Broadband speed. This can only be available if Mr Looney has mobile coverage at his premises.
- 2-Way satellite service (free installation of this product was refused by Mr Looney)

He purchased a laptop computer suitable for a wireless computer.

Mr Looney has stated that on the basis of a previous phone call to Telstra advising that Wireless Broadband through CDMA was possibly available, he later travelled to Broken Hill to purchase a suitable computer and that on that same trip, was advised subsequently by Telstra Shop staff that Wireless was not available. Telstra would like to note at this point that whilst Wireless may have been available, no order was created, and so this cannot be determined. Because of this information, Mr Looney wanted compensation for the computer purchase and wanted the provision of an alternate Broadband product. Telstra BigPond is unsure why the computer was not immediately returned for a full rebate, if it was discovered on this same trip that only the slower speed Wireless service would possibly be available.

Telstra BigPond is also unsure why Mr Looney purchased the laptop based on the possibility of a service being available, as he placed no orders with BigPond for Wireless Broadband. The sole BigPond Internet applications placed by Mr Looney has been for the dial up facility associated with his ISDN service.

The original amount claimed for the computer was $1,000.00 which was later revised > to $700.00. As denoted in the supplied complaint notes dated 27 January 2006, Mr Looney advised that he had no receipts for any of the costs incurred, including the computer. He stated: "it is typical behaviour of the company to ask for receipts in such circumstances, maybe they wish to make a tax deduction." In response to this, Telstra advises that prior to reimbursement for any costs incurred; it is common business practice to request a receipt to prove validity of monies spent.

The extensive complaint notes dated 3 February 2006 confirm that Mr Looney believed that he would be unable to support his claim of $1000 for the computer. Mr Looney has stated that he onsold the computer, but has provided no evidence of this.

The handwritten receipt supplied subsequently by Mr Looney is attached. However, Telstra advises that regardless of whether Mr Looney is able to provide such receipts, Telstra BigPond denies any liability for the cost of the laptop computer.

He was advised that ISDN would allow live broadcasts.
The ISDN service provided does not allow for live broadcasts.

Telstra BigPond advises that Mr Looney initially advised that he wished to have a faster Internet service for video conferencing for his business; this is what ISDN was originally designed for. However, the complaint notes dated 24 January 2006 advise that Mr Looney wished to watch overseas TV programs not locally available. Accordingly, Telstra BigPond advises that only ADSL and Cable Broadband would provide the speeds for live streaming, and Mr Looney's exchange is not ADSL-enabled, nor is cable available.

The ISDN service is very slow, often dropping to 64kb/s.

Telstra advises that the notes on the customer's telephone account 1169556110 dated 9 February 2006 confirm that faults have been recorded against the ISDN service, but that no Customer Service Guarantee is available for data services such as ISDN (this includes any delays in installation). Furthermore, the complaint notes dated 18 January 2006 from Stewart Lines of Telstra state: "It seems that the reason that the

speed occasionally slows is due to a power source problem specific to the premises." The complaint notes dated 24 January 2006 confirm this.

Telstra would like to draw the TIO's attention to the fact that Mr Looney lives in a bus and the power supply to his computer and ISDN service is provided by a power cord that runs across the ground for approximately 20 meters before being connected up a pole. This is confirmed in the attached e-mail from Lee Caruana. Realistically, the existence of such a power supply would impact on the performance of his ISDN service.

Telstra BigPond advises that the maximum speed of 128kbps is attained only if both channels (data and telephone) are used simultaneously. If a telephone call is made/received, the speed will drop to 64kbps, as only one channel will be available. The attached complaint note dated 13 February 2006 indicates that Mr Looney was aware that an incoming call will drop the speed of his connection.

Telstra has offered a resolution by requesting that Mr Looney sign an indemnity where he will receive $700 for the lap top computer purchased and a further good customer relations credit of $214.53 to cover call charges and installation fees on the ISDN service.

Telstra advises that this is not the sole offer or resolution provided to Mr Looney. Telstra also notes that the $214.53 has already been rebated.

On 27 January 2006, Telstra originally offered to rebate Mr Looney's computer costs ($1000 at that time), providing proof of the cost of purchase was provided, and also offered to cancel the ISDN with no penalties and install 2-Way Satellite for free. Telstra BigPond advises that the normal minimum cost of 2-Way Satellite installation to Mr Looney's premises would be $1398.00. Mr Looney is not eligible for any subsidised Satellite installation as ISDN is available to his premises. This offer had a closing date of 10 February 2006. It was dependent on Mr Looney providing documentation to prove the monies spent on the computer, and that his computer was compatible with 2-Way Satellite (arrangements were made for him to take his computer to Broken Hill for testing compatibility, prior to installation). Under this offer Mr Looney would be required to pay standard rates for the Satellite service. This is confirmed in the complaint notes dated 30 January 2006 and 31 January 2006. Discussion with Mr Looney occurred on 14 February 2006, and notes to this effect, are saved to the complaint. These confirm that Mr Looney decided to retain his ISDN service, and refused the offer of free installation of 2-Way Satellite. It is noted at this point that Mr Looney was unable to substantiate who sold the computer to him. The later offer of resolution offered to remove the ISDN and charge no cancellation fee, and provided a closing date for the offer.

Telstra BigPond advises that a Release and Indemnity form is standard practice, and that these offers were accompanied by such forms.

Mr Looney has advised that the R & I forwarded to him contained an incorrect name at the end - "Greg" instead of "Gary" Looney, and wished for this to be amended.

Telstra apologises to Mr Looney for this oversight and respectfully advises that the R&I forms could be re-sent again but feels that this would only be necessary should Mr Looney be prepared to accept Telstra BigPond's offer of the $700.00 credit to his telephone account for the costs of the laptop computer. Accordingly, if he wishes, an

appropriate Release and Indemnity form can again be sent to him but, Telstra notes that Mr Looney declined the offer in the R&I in the first instance.

He will accept the offer to reimburse his costs for the lap top computer $700.00 and a further $214.53 to cover call charges and installation on the ISDN service although he feels that Telstra applied undue pressure on him when making its offer.

Telstra BigPond refutes this statement. The details evident in the attached complaint copy indicate that Mr Looney was provided with revised resolution options, associated with Release and Indemnity forms, and that these were altered in response to Mr Looney's suggestions. However, it is also to be noted that the offers included expiry dates. The attached complaint notes dated 23 February 2006 indicate that on this date Mr Looney was prepared to accept Telstra's offer, and accordingly the date for the return of the Release and Indemnity forms was extended to 6 March 2006. BigPond advises that the resolution offered to Mr Looney was that if he wished to cancel his ISDN service, then the early termination fees would be waived, so long as the request to cancel was made prior to the offer closure date. As Mr Looney stated he would retain the ISDN services, the waiver of Early Termination Fees was no longer offered,

As mentioned previously, Mr Looney has already had the $214.53 waived, and the balance of the offer is to rebate Mr Looney the $700.00 costs claimed for the computer.

He wants this money paid to him as a cash payment.

As denoted in the supplied complaint notes, the CEO's office has offered to rebate the costs incurred to Mr Looney's Telstra telephone account. Telstra BigPond believes that this offer is fair and reasonable. As stated, BigPond accepts no liability for the costs of Mr Looney's laptop and accordingly, our offer of $700.00 is a gesture of goodwill only and will only be offered as a non-refundable credit to the customer's telephone account.

He wants to be released from his ISDN contract without the imposition of termination fees.

As further denotes in the supplied complaint notes, the CEO's office has already offered to allow Mr Looney out of his ISDN contract and to waive any associated cancellation fee; this was associated with the offers of resolution previously tendered, which had expiry dates on the offers, as is standard practice. The CEO's office also offered Mr Looney free installation of 2-Way satellite. Mr Looney declined this and stated that he would prefer to retain his ISDN service. Accordingly, it was felt that it was no longer reasonable to allow the future waiver of the cancellation fee as he has chosen to retain the product. The complaint notes dated 24 February 2006 state:

> *E-mail response received from cust on 23.02.06 at 7:40pm in reply of my final and formal Release and Indemnity Agreement issued to cust on behalf of Telstra in an attempt to amicably resolve this matter with cust. His e-mail indicates to have rejected our offer... based on the fact that he states he wants to keep his ISDN and he wants the assurance that he can cancel whenever he wants and not incurr a fee. This request of his, is based on his allegation that ISDN does not meet his needs. If this*

was true, cust would not want to keep his ISDN or he would go to another SP as he has previously suggested so many times.

Should Mr Looney accept BigPond's offer of the $700.00 credit to the telephone account for the costs of the laptop computer, an appropriate Release and Indemnity form will again be sent to him.

3. TELSTRA'S POSITION

In conclusion, upon full investigation of this matter and based on the information forwarded in this submission, Telstra Corporation does not believe that Mr Looney's claims have merit in relation to this case scenario and further believes that Mr Looney's complaint matter has already been thoroughly addressed via its own complaint management process and resolved effectively in Mr Looney's favour.

Telstra Corporation would again propose that should Mr Looney be willing to accept Telstra BigPond's offer of the $700.00 credit to the telephone account for the costs of the laptop computer, an appropriate Release and Indemnity form will accordingly be sent to him.

Otherwise, Telstra has already waived the referred to amount of $214.53 and has already offered to allow Mr Looney out of his ISDN contract and to waive any associated cancellation fee for finalisation of this matter.

Telstra appreciates Mr Looney bringing this matter to our attention as Telstra aims to provide the best possible service to all of our valued customers. The service we offer can only benefit through feedback from our customers.

We trust the above information is sufficient in providing you with Telstra's position in regards to the above matter. Should you require additional information relevant to any of the documentation that was sourced to provide Telstra's approach in this regard, please do not hesitate to contact us further.

Telstra requests that this matter now be closed.

Yours sincerely