



Norfolk Island Data Services

P.O. Box 909 Taylors Rd Norfolk Island, South Pacific
Phone 672 3 22427 Fax 672 3 22027
Email: accounts@nids.com.nf
NBN: 280025651

Monday 12th April 2010

Senator Kate Lundy
Chairperson
Joint Standing Committee National Capital and External Territories
11 London Circuit
Canberra ACT 2601
Australia

BY EMAIL – Official Submission to the Joint Standing Committee

Dear Senator Lundy,

We wish to make an official submission to the Joint Standing Committee National Capital and External Territories in regards to issues we are experiencing with the Norfolk Island Government and The Administration of Norfolk Island.

The issues primarily relate to re-gaining access to Norfolk Islands copper network infrastructure for the provision of internet services to our customers and the Norfolk Island Community. In short, on the eve of us introducing our VDSL2/ADSL2+ services, Norfolk Telecom doubled our line rentals fees, followed a month later by an embargo from the Norfolk Administration prohibiting us from any further DSL installs. Despite numerous attempts from us, there has been little to no communication nor effort from the Norfolk Island Government to resolve this issue.

It is apparent to us that there is no remedy for this situation under current Norfolk Island legislation. Our advice to date indicates that we require sections of the Trade Practices Act 1974 (Cth) to extend to Norfolk Island in order to remedy this situation.

Please find attached to this submission a copy of the formal complaint made through the Administration of Norfolk Islands official complaints mechanism on 12th November 2009, prior to an embargo being placed on the connection of any new leased circuit to NIDS, and subsequent correspondences relating to the same.

Thank you for your time and we look forward to hearing from you.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Sylvan Andrew and Riki Christian', written over a white background.

Sylvan Andrew and Riki Christian

Proprietors
Norfolk Island Data Services
Cybercentre
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NIDS Copy

Thursday 12th November 2009

Complaints Officer
Administration of Norfolk Island
New Military Barracks, Kingston
Norfolk Island 2899

BY HAND

Dear Complaints Officer,

Formal Complaint

We, Riki Christian and Sylvan Andrew trading as Norfolk Island Data Services (NIDS), wish to raise a formal complaint regarding the recent 100% increase in Norfolk Telecoms Leased Circuit fee as gazetted in the Norfolk Island government gazette dated 30th October 2009 under VARIATION OF TELECOMMUNICATIONS TARIFF NOTICE.

We regard the increase as blatant predatory behaviour and an abuse of market power by a government owned entity, Norfolk Telecom, which is clearly in contravention to the principles of Fair Trading, and contrary to the Trade Practices Act of the Commonwealth. It is noted that the Norfolk Island Fair Trading Act purports to be not binding on the Administration of Norfolk Island and by implication its commercial trading entities such as Norfolk Island Telecom.

This pricing increase is affecting innovation and new income streams for the Norfolk Island government in terms of Goods and Services Tax receipts and services provided to NIDS through Norfolk Telecom.

It should be noted that during the 07/08 FY NIDS contributed \$15,530.87 and during the 08/09 FY \$15,725.25 to Norfolk Telecom revenues. This financial year we will most likely contribute in excess of \$20,000 directly to Norfolk Telecom revenues. No doubt we are seen as a cash cow open to further tax contributions.

We have raised the issue with the manager of Norfolk Telecom, Mr. Kim Davies, and we are unhappy with the responses we have received, responses which are more in keeping with the socialist economies of the world.

Back ground to the issue:-

In February 2009 we wrote to the CEO of the Administration, Mr. George Plant, regarding gaining wholesale access to Norfolk Island's copper network infrastructure that is maintained by Norfolk Telecom, this being in accordance with the principles and

marketing approach of the Australian Government. To date we have not received a response.

We simultaneously began correspondence with Mr. Kim Davies in regards to the possibility of Telehousing some of our own equipment on Norfolk Telecom's premises for the purpose of providing services to our customers.

In May 2009 NIDS had installed several leased circuits for research and development purposes with a view to entering into an arrangement with Norfolk Telecom to house equipment in the future. This was due to a lack of available circuits leading to our premises in 'The Village'.

We were provided with a standard Telehousing service agreement in June 2009 and had subsequent meetings and discussions resulting in the Telehousing agreement coming into effect on 01 November 2009.

It should be noted that in September 2009 NIDS were ready to enter into the Telehousing agreement, however, at that time we were advised that we would need to wait for some equipment to arrive on the Island and be installed at Norfolk Telecom prior to commencement. The timeline given was 5th October that was pushed back to 15th October and then 1st November 2009.

We were advised on Friday 30th October 2009 that Norfolk Telecom were ready to install our equipment. The imminent pricing hijack was not advised at this time and came as quite a shock to us given the discussions that had taken place gave no indication as to a major price rise, including on the date of the gazettal notice. We consider this a breach of commercial trust.

On the 1st November 2009 by gazettal notice the fee for leases circuits was increased 100% from \$10.00 per month to \$20.00 per month.

The Issue:-

During these discussions and meetings lease circuit line pricing was discussed at \$10.00 per month - other line rental services increased by 100% on 1st July 09 - at no time was the 100% increase indicated for the leased line service.

The new \$20.00 fee, which Telecom do not charge their own customers, is now giving Norfolk Telecom an unfair competitive advantage and is effecting our business, our customers and our customers businesses.

This is further compounded when Norfolk Telecom have given themselves 'special' pricing for leased circuits bundled with their own services.

Reasons given to date by Mr. Kim Davies include such verbal indications justifying the increase on the basis that we were previously paying \$20 per month for two separate leased circuits (i.e. Norfolk Telecom to NIDS Customer \$10 and Norfolk Telecom to NIDS Premises \$10). This is ridiculous logic to apply to your pricing decision making unless you are trying to maintain an illegal monopoly.

Another reason we were given is that the leased circuits now have 24hr support. We have not requested and do not require 24hr support; nor was it discussed in any of our meetings or correspondence.

Discussions with the Finance manager of the Administration of Norfolk Island indicate that no consideration was given by the finance section of the Administration and that the decision was made arbitrarily by the incumbent manager of Norfolk Telecom – our commercial competitor.

The Remedies:-

To remedy this situation the Administration should immediately instruct Norfolk Telecom to provide Leased circuits to NIDS at \$10.00 per month without 24hr support.

Alternatively, The Administration should instruct Norfolk Telecom to apply the same pricing and policies to their own services which would result in an increase in revenues for Norfolk Telecom and allow NIDS to compete on a commercial basis.

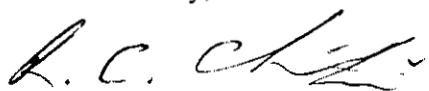
Either of the above remedies will give the Administration, the Norfolk Island Government and the community a better return on their investment for the copper network.

Should neither of these remedies be acceptable we would seek to gather from you information regarding how the decision was arrived at including supporting financial justifications and policy decisions by the Administration and/or the Norfolk Island Government.

We would greatly appreciate your earliest attention to the matter as it is affecting our business, our customers, our customers businesses and stifling technological innovations now.

We are reluctant to approach the Australian authorities to resolve this issue and trust matters can be dealt with sensibly on Norfolk Island.

Yours Sincerely,



Riki Christian and Sylvan Andrew
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Norfolk Island Government Gazette

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NORFOLK ISLAND GOVERNMENT GAZETTE NO. 46

Friday 30 October 2009

SOCIAL SERVICES ACT 1980

RE-APPOINTMENT OF MEMBER OF THE SOCIAL SERVICES BOARD

I, Owen Edward John Walsh, Administrator of Norfolk Island, under paragraph 4(3)(b) and sections 6 and 8 of the *Social Services Act 1980*, in accordance with the advice of the Executive Council, and further, in accordance with a resolution of the Legislative Assembly made on 12 October 2009, hereby re-appoint —

Dale Frances Hogden

as a community member of the Social Services Board for a period of 3 years commencing on and including 15 October 2009 to 14 October 2012.

Dated 27 October 2009

O.E.J. WALSH
ADMINISTRATOR

LEGISLATIVE ASSEMBLY ACT 1979

REVOCAION OF APPOINTMENT AND APPOINTMENT OF RETURNING OFFICER

I, Owen Edward John Walsh, Administrator, under subsection 11(1) of the *Legislative Assembly Act 1979*, with reference to subsection 36(4) of the *Interpretation Act 1979*, —

- (a) revoke the appointment of Michael Charles Elmore Evans as Returning Officer; and
- (b) appoint Yvon Adams to be Returning Officer with effect from 27 October 2009; and
- (c) determine that the terms and conditions of appointment of Yvon Adams are those applicable to her as an employee of the Administration.

Dated 27 October 2009

O.E.J. WALSH
ADMINISTRATOR

TELECOMMUNICATIONS ACT 1992

VARIATION OF TELECOMMUNICATIONS TARIFF NOTICE

I, Neville Charles Christian, Minister for Finance, under section 30 of the *Telecommunications Act 1992*, —

- (a) as set out in the Schedule, vary the telecommunications tariff notice dated 1 September 2009; and
- (b) state that this notice is to take effect on 1 November 2009.

Dated 23 October 2009

NEVILLE CHARLES CHRISTIAN
MINISTER FOR FINANCE

SCHEDULE

Delete 1.9 of the Schedule made effective from 1 September 2009; and substitute the following:

1.9	Leased Circuit – Point to Point single pair – 24 HR Support	\$20.00 per month
1.10	Leased Circuit Bundled - Point-to-Point single pair. Bundled with a Norfolk Telecom ADSL Service	\$10.00 per month
1.11	Leased Circuit Emergency/Essential - Point-to-Point single pair. Connects to emergency /essential services facilities – 24 HR Support	\$10.00 per month



THE ADMINISTRATION OF NORFOLK ISLAND

IN REPLY PLEASE
QUOTE: C08/0910

CHIEF EXECUTIVE OFFICER
ADMINISTRATION OFFICES
KINGSTON NORFOLK ISLAND

Mr. R Christian & Mr. S. Andrew
Norfolk Island Data Services
P O Box 909,
NORFOLK ISLAND 2899

16 November 2009

Dear Riki and Sylvan,

Acknowledgement of Receipt of Complaint

This letter is to confirm receipt of your letter of complaint dated 12 November.

The details of your complaint have been noted and recorded. Your complaint has been sent to the appropriate manager for action and will be dealt with as set out in our complaints handling system procedures.

You will receive a written response from the manager within 10 working days from the date of this letter.

Should you have any queries regarding this complaint, please contact me at the Administration Offices, Kingston.

Kind Regards,

Melissa Graham
Complaints Administrative Officer

Personally identifiable information concerning the complaint will be available only for the purposes of addressing the complaint within the organisation and will be actively protected from disclosure, unless the customer or complainant expressly consents to its disclosure. We will take all steps in protecting any personal information and ensuring the confidentiality of complainants.



THE ADMINISTRATION OF NORFOLK ISLAND

IN REPLY PLEASE
QUOTE: C08/0910

**CHIEF EXECUTIVE OFFICER
ADMINISTRATION OFFICES
KINGSTON NORFOLK ISLAND**

Mr. R Christian & Mr. S. Andrew
Norfolk Island Data Services
P O Box 909,
NORFOLK ISLAND 2899

23 November 2009

Dear Riki and Sylvan,

Complaint - Telecom

Further to our confirmation of receipt dated 16 November.

We initially advised that you would receive a written response from the manager within 10 working days from the date of this letter. However, this matter requires further investigation. Please note that a formal response will be sent to you within 20 working days from the date of this letter.

Should you have any queries regarding this complaint, please contact me at the Administration Offices, Kingston.

Kind Regards,



Melissa Graham
Complaints Administrative Officer

Personally identifiable information concerning the complaint will be available only for the purposes of addressing the complaint within the organisation and will be actively protected from disclosure, unless the customer or complainant expressly consents to its disclosure. We will take all steps in protecting any personal information and ensuring the confidentiality of complainants.



Norfolk Telecom

NEW CASCADE ROAD NORFOLK ISLAND 2899 SOUTH PACIFIC
TELEPHONE: (6723)22244 or 22012 FAX: (6723) 22499

08 December 2009

**Messrs Riki Christian and Sylvan Andrew
Norfolk Island Data Services
PO Box 909 Taylors Road, Norfolk Island**

Dear Sirs

Re: Formal Complaint – 12th November 2009

In response to the formal complaint that was lodged on the above date, I provide the following information.

Telehouse of Equipment

As I advised in our early discussions Norfolk Telecom was required to order an equipment rack to house the NIDS equipment because of lack of available RU space at the communication centre. This was undertaken as a matter of urgency and the rack arrived on the next available ship. However, space became available from one of our existing Telehouse customers freeing up space in another rack which was then made available to NIDS. This actually allowed the NIDS equipment to be installed in a shorter time frame.

Leased Line Charges

Norfolk Telecom changed the structure of the leased circuit charging but did not increase the leased circuit charges. The leased circuit point to point charges are common to all Norfolk Telecom customers.

Norfolk Telecom is constantly reviewing its charges, and will continue to do so. In the past 12 months Norfolk Telecom has reviewed IDD rates, ADSL rates and data allowances, monthly line rentals, and also leased circuit charge structure. I wish to make it clear that all Norfolk Telecom customers are paying the same leased circuit charges as NIDS. I further advise that the "\$10 per month with no 24 hour support" category of leased circuit charge that you requested does not exist in the current Norfolk Telecom Charges Schedule.

I am required to operate under the Norfolk Island Telecommunications Act and consider that your complaint suggesting that you or your business has been discriminated against in regard to current fees and charges payable by NIDS is not correct and not supported by any independent evidence.

I am available to discuss any further concerns on telephone 0100 should you so desire.

**Kim Davies
Manager Norfolk Telecom**



THE ADMINISTRATION OF NORFOLK ISLAND

IN REPLY PLEASE
QUOTE:

CHIEF EXECUTIVE OFFICER
ADMINISTRATION OFFICES
KINGSTON
NORFOLK ISLAND

Sylvan Andrew and Riki Cooper
Proprietors
Norfolk Island Data Services
Cybercentre
PO Box 909
Norfolk Island 2899

Tuesday, 9 February 2010

Dear Sylvan and Riki,

SUBJECT: Leasing of lines from Norfolk Telecom

As advised previously, the embargo placed on connecting any further leased lines to your premises was endorsed pending the Legislative Assembly considering the policy it wishes to follow in relation to telecommunications on the island. A preliminary discussion on this was held last Tuesday and this letter is to inform you of the policy guidance resulting from that meeting.

It was decided that a review of the whole telecommunications policy and legislation is proposed for the new Assembly to undertake.

In the interim it is proposed to maintain the non-connection of leased circuit line policy only until agreements can be entered into with your business establishing clear terms conditions and pricing on which any Telecom installed leased circuit line is to be made available for commercial re-sale of access. These agreements will be the same for any telecommunications service provider on the island. These lease line terms and conditions will cover the standards for equipment to be connected to the lease line; privacy requirements; support and a usage-based data charge and are currently being prepared by the Legal Services Unit in consultation with Norfolk Telecom, as a matter of urgency, to assist with your applications for further leased circuits.

It has been decided by the executive member that no sharing of line links is to be allowed for technical and legal reasons.

Norfolk Telecom will not accept fault complaints from your subscribers and that any such subscribers will be referred to back to you for resolution of such complaints. Under the lease arrangements you will need to provide evidence of checking your systems first before requesting Telecom technicians to check the service, there will a charge for a investigation by Telecom of a leased line fault complaint, referred by NIDS, that the fault is found not to be in the leased circuit line.

I trust that this information provides you with some surety associated with your request for further lease line circuits.

For the details of the lease agreements will shortly be available from Mr Kim Davies.

George Plant
Chief Executive Officer

A handwritten signature in black ink, appearing to be 'G. Plant', written over a horizontal line.

Cc. AEDC&CS
Minister for Finance
Minister for Commerce & Industry
Telecom Manager