



Howard Maker
Commissioner
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December 2, 2009

[REDACTED]

[REDACTED]

Re: CCTS file number 11920

On September 21st, 2009, we issued a recommendation regarding the above complaint. [REDACTED] [REDACTED] accepted our recommendation but Bell exercised its right to reject it under our Procedural Code (the Code). As such, I am required to issue a formal Decision under Section 11 of the Code.

Our Recommendation

After investigating [REDACTED] complaint, we determined that it was not reasonable for Bell to have concluded that [REDACTED] internet usage was excessive. By disconnecting him from the unlimited wireless internet service for which he had contracted with Bell, the latter failed to comply with its Terms and Conditions of Wireless Service (the Terms). We noted that although Bell did not provide guidelines for excessive use to subscribers, usage of up to 5 GB appeared to be the "industry standard" for the high end of permissible wireless data use.

We recommended that Bell provide [REDACTED] with compensation of \$1,400. This compensation was to reflect the difference between the monthly rate at the time of disconnection (\$60) and the monthly rate that he would reasonably be expected to pay for Bell's 5 GB plan (\$100) for the duration of his current term. It would also compensate him for the inconvenience incurred as a result of having to troubleshoot technical problems with Bell when the reason that his service was not working was because it had already been disconnected for excessive use. A copy of our recommendation is attached.

Bell's Objections and Our Analysis

Bell has rejected our recommendation. Under section 11 of the Code, the party objecting to the recommendation is required to explain why he or she considers it to be unacceptable or inappropriate. In this section, we describe Bell's explanations and provide our analysis thereof.

- 1) Bell believes that the data it provided to CCTS clearly demonstrates that ██████████ usage was excessive and that such usage directly impacted its wireless network in an adverse manner. It therefore believes that it acted reasonably in terminating ██████████ service.

Bell did not provide us with any additional information to support its claim that ██████████ usage was excessive. As noted in our recommendation, no guidelines as to what constitutes excessive usage are made available by Bell. The "industry standard" appears to allow users to consume up to 5 GB of data. In the two months preceding the disconnection of his service, ██████████ used 0.08 GB and 0.65 GB of data respectively and experienced an uncharacteristic increase of 4.6 GB of data usage at the time of the disconnection. Since ██████████ usage was below "industry standard" maximums, we remain unpersuaded that his usage can be reasonably described as "excessive". Bell also provided nothing to support its claim that this usage had any actual, practical effect on its wireless network.

- 2) After Bell disconnected ██████████ service, it offered him an alternative wireless data rate plan. We discussed this in our Recommendation. Bell argues that the offer constituted privileged settlement discussions between it and its customer and therefore cannot be relied upon by CCTS in formulating our recommendation.

We do not believe that Bell's offer to migrate ██████████ service to a different plan constitutes "settlement discussions" to which any legal privilege would apply. Even if the particular offer made by Bell is to be considered a part of settlement discussions, we note that Bell's various tiers of service and prices are publicly available on its website. Also, as previously stated, it appears that usage of up to 5 GB is the "industry standard" for permissible usage.

- 3) Bell objects to CCTS recommending that ██████████ be compensated for any inconvenience as he has not provided evidence that he incurred financial loss or out-of-pocket expenses, nor evidence of the actual amount of time spent with Bell's support team in resolving his dispute.

We believe that it is likely that ██████████ experienced some degree of inconvenience when he was required to work with Bell's technical support team to search in vain for a technical cause for his service malfunctioning, when the reason that his service did not work was because it had already been disconnected for excessive use. We also believe that ██████████ suffered inconvenience when his unlimited wireless internet service was disconnected by Bell, contrary to its Terms.

However, we note that there is doubt as to the extent of the troubleshooting required and of ██████████ inconvenience in this regard. As such, our Decision does not require that Bell provide him with compensation based on inconvenience.

- 4) Bell believes that CCTS has incorrectly calculated the amount of compensation reasonably attributable to [REDACTED] loss of unlimited wireless internet service. According to Bell, [REDACTED] has suffered no monetary loss (that CCTS has measured by comparing the two different prices) as he was never required to pay the higher price for his service. Rather, it believes that if we are of the opinion that Bell failed to comply with its Terms in disconnecting [REDACTED] service, his loss is limited to his "loss of the bargain" and that this would best be remedied by restoring his service on the most comparable offering, with a minimum contract period, and by applying a credit to ensure that the prices actually paid by [REDACTED] aligns with the original rate provided.

Bell also stated that if [REDACTED] does not wish to subscribe to its service, and in order to resolve this matter, it is willing to provide him with a one-time credit equal to \$750. [REDACTED] found this offer to be unsatisfactory.

Bell agreed to provide unlimited wireless internet service to [REDACTED] for a period of 36 months. It did not follow through with the agreement. We conclude that the loss suffered by [REDACTED] is the loss of the ability to obtain unlimited wireless internet service at the rate that he was originally promised (\$60 per month). In calculating the value of his loss, we must consider what [REDACTED] would reasonably be expected to pay for service, the fact that usage of up to 5 GB seems to be the "industry standard" of permissible data usage, and that he no longer wishes to obtain service from Bell.

Therefore, in our opinion, the only reasonable way to measure his loss in monetary terms is to compare what he was paying at the time of disconnection (\$60 per month) with what he would have been required to pay to replace it.

Our Decision

In our Recommendation, we stated that the cost of Bell's 5 GB plan is \$100 per month. However, a further review of Bell's tiered price plans demonstrate that the cost of its 5 GB plan was reduced to \$85 per month in November 2009. As such, we believe that the amount of compensation payable to [REDACTED] must be amended to consider the reduction in price.

We recognize that [REDACTED] would have been required to pay \$100 per month for the duration of his contract had he subscribed to the 5 GB plan at that time. However, we feel that we can't ignore the market value of the service during the entire time period in question in formulating a resolution that fairly measures [REDACTED] loss.

[REDACTED] service was disconnected in September 2008. At the time of disconnection, he had 35 months remaining on his current contract term since it had recently been renewed. [REDACTED] would have reasonably been expected to pay \$100 per month for the 5 GB service between September 2008 and November 2009 but only \$85 per month between November 2009 and the end of his contract in August 2011. He had been paying \$60 per month prior to the disconnection of his service. The difference in price is therefore \$40 per month for the period of September 2008 to November 2009 and \$25 per month for the period of December 2009 to August 2011, for a total of \$1,100¹.

¹ This represents a difference in price of \$40 per month for 15 months (September 2008 to November 2009) and \$25 per month for 21 months (December 2009 to August 2011).

In light of the reduction in price, we amend our Recommendation and conclude that Bell should provide compensation of \$1,100.00 to [REDACTED]

Further to sections 11.7 and 11.8 of the CCTS Procedural Code, [REDACTED] may accept or reject this Decision within 20 business days. Should [REDACTED] decide to reject this Decision, he may pursue this complaint through any other forum and Bell shall be fully released from the Decision.

A copy of the CCTS Procedural Code has been attached for ease of reference.

Sincerely,

Howard Maker
Commissioner

Enclosures 1. CCTS recommendation
 2. CCTS Procedural Code



Josée Thibault
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1-888-221-1687

September 21, 2009

[REDACTED]

[REDACTED]

RE: CCTS file number 11920

We have concluded our investigation of the complaint received from [REDACTED] concerning his unlimited wireless internet service with Bell Mobility (Bell).

The Complaint

[REDACTED] informs CCTS that he had been using unlimited wireless internet service from Bell for a number of years when he received a call from a Bell representative informing him that his current contract term was coming to an end. At this time, [REDACTED] purchased a new device and renewed his contract for another 36 months.

[REDACTED] states that he purchased a new device because he had been experiencing some difficulties with his old one. He states that his old device had "compatibility" issues and that he spent many hours with Bell technical support. As part of this troubleshooting, [REDACTED] informs us that the Bell representative asked him to download some documents.

Soon after the contract renewal, his new device ceased to function. [REDACTED] contacted Bell and worked with a representative until early in the morning but they could not fix the problem. He called Bell the following day and was advised that the reason his service was not functioning was because he had been disconnected for excessive usage of data.

[REDACTED] believes that the increase in usage was the result of his attempt to download documents, at the request of the Bell representative.

[REDACTED] is seeking compensation of \$2,400 for the amount of time he spent trying to resolve this matter, which he estimates to be approximately 8 hours.

Bell's Position

Bell confirms that on August 28, 2008 [REDACTED] unlimited wireless internet contract was renewed, at the same monthly price, for 36 months.

On September 8, 2008 [REDACTED] service was disconnected for the excessive consumption of approximately 4.6 GB of data in the preceding month. Bell provided CCTS with the notes found on [REDACTED] account which states that he should be transferred to a tiered price plan ("Tiered pp \$65 to \$100...1GB to 5GB").

Bell relies on the Bell Terms and Conditions of Wireless Service ("the Terms") to support the removal of [REDACTED] from the unlimited plan. Section 19, entitled "Use of Service" provides in relevant part that the service may not be used:

"if such use consumes excessive network capacity in Bell Mobility's reasonable opinion, or causes our network, or our ability to provide service to others, to be adversely affected".

It also provides that "Bell Mobility may immediately suspend or terminate all or part of your Service if you breach any of these "Use of Service" provisions".

Regarding [REDACTED] troubleshooting, Bell states that a request to download documents is not common practice. It suspects that the technician was trying to get him to download something in order to troubleshoot his connection.

Analysis

We note that [REDACTED] contract for unlimited wireless internet was renewed less than two weeks prior to his disconnection for excessive usage. Until this time, he had been using his unlimited wireless internet service for approximately two and a half years without any problem.

Regarding [REDACTED] actual data usage, we note that in the two months preceding his disconnection, [REDACTED] data usage was approximately 0.08 GB and 0.65 GB respectively. It then increased to an uncharacteristic amount of 4.6 GB at the time of disconnection. We note Bell's comments that it is possible that its technical support representatives requested that [REDACTED] download documents in order to help troubleshoot the problem he had with his old device. Such actions may or may not have contributed to the uncharacteristic increase in data consumption.

According to the applicable Terms, Bell must demonstrate that [REDACTED] usage was excessive or caused its network or its ability to provide service to others to be adversely affected.

We note that Bell has not provided [REDACTED] with any guidelines regarding what is considers "excessive usage".

At the time of disconnection, Bell's memos indicate that [REDACTED] should be migrated to a tiered price plan ("Tiered pp \$65 to \$100...1GB to 5GB") that would allow up to 5 GB of usage.

Bell's proposed resolution of [REDACTED] excessive usage was to transfer him to a tiered price plan which would potentially allow him to consume more data (up to 5 GB compared to his peak consumption of 4.6 GB) at a higher monthly rate (\$100 compared to \$60). We do not think that it is reasonable to categorize [REDACTED] usage as excessive or as adversely affecting Bell's network or its ability to provide service to others since the proposed resolution does not limit consumption but rather allows for potentially more consumption than that used at the time of the disconnection. Bell is simply suggesting that it charge him more on a monthly basis.

Therefore, in these circumstances we do not believe that it was reasonable for Bell to conclude that [REDACTED] was guilty of excessive usage, particularly when:

- the solution to the "excessive usage" proposed by Bell allows for an even higher amount of data to be consumed; and
- there is a reasonable possibility that the data usage in question occurred at the instigation of Bell technical support.

Recommendation

In light of the above, we find that Bell failed to comply with its Terms in disconnecting [REDACTED] unlimited wireless internet service.

[REDACTED] has decided to cancel his wireless internet service with Bell and subscribe to that of a competitor. He has, however, retained his Bell cellular service.

Although guidelines for excessive use are not provided to subscribers, we note that usage of up to 5 GB is permitted by Bell as its tiered plans allow this amount of consumption. We also note that 5GB appears to be the "industry standard" for the high end of permissible wireless data use. Thus in assessing what [REDACTED] lost as a result of being disconnected improperly, we use the cost of the 5 GB plan as a point of reference.

The difference between his monthly rate at the time of disconnection and the monthly rate for the 5 GB plan is \$40. Since [REDACTED] was disconnected within one month of renewing his contract, he had 35 months remaining on his term. We therefore recommend that Bell provide [REDACTED] with compensation of \$1,400 to reflect:

- the difference between the monthly rate at the time of disconnection (\$60) and the monthly rate that he would reasonably be expected to pay for Bell's 5 GB plan (\$100) for the duration of his current term; and
- compensation for the inconvenience incurred as a result of spending a number of hours troubleshooting with Bell's technical support representative when the reason that [REDACTED] service was not working was because it had already been disconnected.

Bell may provide this compensation as a credit to [REDACTED] existing cellular account.

Attached is a copy of the CCTS Procedural Code which contains important information with respect to recommendations made by CCTS, including information about acceptance of recommendations by a complainant and a telecommunications service provider. In particular, we refer ██████████ and Bell to sections 10 and 11.

Sincerely,

Josée Thibault
Director, Inquiries and Complaints

Enclosures