



Howard Maker
Commissioner
P.O. Box 81088
Ottawa, Ontario
K1P 1B1
1-888-221-1687

December 2, 2009

[REDACTED]

[REDACTED]

Re: CCTS file number 10461

On September 18, 2009, we issued a recommendation regarding the above complaint. Due to an error in the mailing address, [REDACTED] did not receive a copy of the recommendation until November 5, 2009 at which point he exercised his right under our Procedural Code (the Code) to reject the recommendation. As such, I am required to issue a Decision under Section 11 of the Code.

Our Recommendation

After investigating the complaint, we found that Bell's Terms and Conditions of Wireless Service (the Terms) allowed it to disconnect [REDACTED] service if, in its reasonable opinion, he consumed excessive network capacity. [REDACTED] had consumed approximately 33.7 GB of bandwidth in December 2007, approximately 27.8 GB in January 2008, and 20 GB in the 22-day period leading up to his disconnection. According to Bell, during this period of time, [REDACTED] data consumption was equal to that of almost 13,000 average subscribers. On these facts we found it difficult to take issue with Bell's conclusion that his usage was excessive and therefore saw no basis upon which to interfere with Bell's conduct. A copy of our recommendation is attached.

[REDACTED] Objections and Our Analysis

[REDACTED] 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 [REDACTED] explanations and provide our analysis thereof.

- 1) ██████ states that he was not provided with the usage data that Bell disclosed to us during the course of our investigation so that it could be independently confirmed as accurate.

We did not provide this data to ██████ during our investigation. However, the data was provided to him by Bell on his monthly bills and there is no indication that he has ever disputed it, either with Bell or with us, until now. He has provided us with nothing that would cause us to conclude that Bell's usage data may be inaccurate. For these reasons we are prepared to rely on the usage information provided by Bell.

- 2) ██████ claims that the issues of excessive and unlimited usage were not properly evaluated and Bell's network limitations were stressed rather than its contractual obligations.

Bell's network limitations were not considered in the analysis of this complaint. Rather, the analysis centered on whether Bell reasonably met its contractual obligations under the Terms of Service.

In our recommendation, we summarized both ██████ and Bell's positions. In doing so, we made reference to Bell's opinion that its network limitations had to be taken into consideration. However, a review of the recommendation clearly demonstrates that Bell's overall network capacity was not considered. Instead, we:

- a) Reviewed the Terms applicable to ██████ service;
- b) Clarified that our role in addressing the complaint is to determine whether Bell had reasonably performed its obligations as described in the Terms but not to comment on the appropriateness of the Terms themselves;
- c) Reviewed whether it was reasonable for Bell to consider ██████ usage as excessive; and
- d) Commented on the disclaimer Bell used to inform customers of its excessive usage clause.

- 3) ██████ believes that concern for "consumer rights" did not appear to be reflected in the recommendation particularly since Bell engaged in "misleading advertising". He states that Bell's actions were "contractually negligent".

As set out in the recommendation, our role is to determine whether Bell's actions were permitted by the Terms of Service. Bell's advertising provided, although not in the clearest possible way, that there were limitations to the use of the service. We concluded that the Terms permitted Bell to terminate the service in the event of "excessive use", and that it was reasonable for Bell to have formed the opinion, in the circumstances, that ██████ use was objectively excessive, notwithstanding the fact that the term "excessive" was not explicitly defined. This view was supported by other provisions in the Terms that clarify that users are prohibited from using the service in such a way that would lead to extremely high amounts of bandwidth consumption.

██████ usage, as described above and in the recommendation, was substantially higher than the average user as well as the 5 GB "industry standard" that seems to now be the high end of the permissible wireless data consumption.

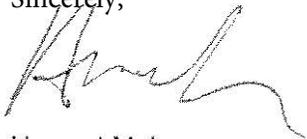
Our Decision

The reasons for [REDACTED] objection to the recommendation are insufficient to persuade me that the original recommendation was unreasonable or inappropriate. I conclude that it was reasonable for Bell to have determined that [REDACTED] usage was excessive and to terminate his service on this basis, further to the Terms. In light of the above, I see no reason why our original recommendation should be modified.

Further to sections 11.6 to 11.9 of the Code, [REDACTED] may accept or reject this Decision within twenty business days. Should [REDACTED] decide to reject this Decision, he may pursue this complaint in any other forum and Bell will be fully released from the Decision.

A copy of the Code is attached for ease of reference.

Sincerely,



Howard Maker
Commissioner

Enclosures: 1. CCTS recommendation
2. CCTS Procedural Code



Josée Thibault
Director, Inquiries & Complaints
P.O. Box 81088
Ottawa, Ontario
K1P 1B1
1-888-221-1687

September 18th, 2009

[REDACTED]

[REDACTED]

Re: CCTS Complaint # 10461

We have now completed our investigation of [REDACTED] complaint against Bell Mobility ("Bell") regarding the provision of wireless internet service.

The Complaint

[REDACTED] says that in August 2007 he entered into a thirty-six month contract with Bell for its "Mobile Connect – Unlimited Plan" (described on his bill as "Email & Int PC/Voy Uld Bus 36M") at \$75 per month. He purchased a mobile internet card to obtain wireless internet access.

[REDACTED] was satisfied until mid-January 2008 at which time he says he was informed by Bell that he was "over using" the unlimited plan and that it was being cancelled.

[REDACTED] says that he was given no alternative but to move to a different plan, causing his monthly cost to increase from \$75 per month to between \$120 and \$400 per month.

We note that on September 8, 2009, subsequent to his move to a different plan, [REDACTED] wireless internet service was again suspended for excessive usage. In a telephone conversation with him, [REDACTED] information CCTS that he uses his wireless internet connection for a myriad of personal uses as well as video conferencing and participation in webinars.

█ seeks to have Bell respect the original contract and provide him with unlimited wireless internet at the agreed-upon rate of \$75 per month.

Bell's Position

Bell says that █ activated his wireless card on October 24, 2007, having selected the \$75 Unlimited Email & Internet Plan on a thirty-six month term. Bell confirms that in January 2008 it contacted him to inform him that he was consuming excessive amounts of data and to present him with an alternative rate plan. It was unable to contact █ so it terminated the account. Days later they did make contact and after discussions █ agreed on January 29, 2008 to subscribe to a new plan that limited bandwidth consumption to 1 GB per month, with additional tiered charges for consumption over 1 GB. As a result Bell reversed the cancellation fee charged when the service was terminated (\$400) and waived the reconnection fee (\$20). In February, as a goodwill gesture, Bell moved █ to the "Connection Card Flex" plan to provide him with a plan that would better reflect his significant usage. This plan permitted him to use up to 5 GB of data per month for \$100, plus \$0.10 for every extra MB consumed. By doing so, Bell was able to re-rate his high data use, and credited him for \$3,617.45 in usage charges.

Bell relies on the Bell Terms and Conditions of Wireless Service ("the Terms") to support the removal of █ 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".*

Bell says that in its opinion, █ data usage was excessive. In December 2007 █ used approximately 33.7 GB of bandwidth and in January 2008 he used approximately 27.8 GB. According to Bell, during this period of time, █ data consumption was equal to that of almost 13,000 average subscribers. This usage came to Bell's attention and caused it to take the steps that it did.

Concerning the subsequent suspension which took place on September 8, 2009, Bell states that it suspended █ service because he had consumed 20 GB of data in the 22 day period leading up to the suspension. Bell notes that this usage is roughly 4,900 times the usage of an average Bell wireless internet subscriber.

Bell explains that wireless telecommunications supports only a fraction of the volume of usage as compared to wireline facilities and █ usage must be assessed in relation to the capacity of the wireless platform he was using. If a substantial number of users behaved in the same manner as █ the network would cease to function

properly. Termination of his service ensured that other users would continue to enjoy access to the network.

Our Analysis

We are concerned about the apparent lack of fairness to customers who signed up for unlimited wireless internet access plans. Bell's advertising of this service (we obtained copies of some of the 2007 advertising) showed the various tiers of service available to customers. The unlimited tier was the "premium" service, and the only one advertised as having no limitation on "included data". It was aggressively promoted and described as "*unlimited high speed internet*". This text was qualified by a footnote, identified by a tiny number, the text of which was buried in six lines of footnote text, which says: "*Subject to acceptable use restrictions in Terms of Service, including consuming excessive network capacity or causing our network to be adversely affected. See bell.ca/acceptable_use_for_details". Bell advises that this links the reader directly to the Terms.*

However, the Terms constitute the agreement between the parties for the delivery and use of the service. As drafted, they provide Bell with very broad authority to terminate the service on the basis of excessive use. If in Bell's "*reasonable opinion*" the customer used excessive network capacity, it is authorized to terminate the service immediately.

Our role is not to rewrite the Terms, but simply to ensure that the service provider reasonably performed its obligations under them. In this case, that involves an assessment of whether it was reasonable for Bell to have formed the opinion, based on [REDACTED] usage, that such usage was "excessive".

Nothing in the Terms defines "excessive". However, the "*Use of Service*" provisions of the Terms contains one instructive provision: users are prohibited from using the service "*for multi-media streaming, voice over internet protocol or any other application which uses excessive network capacity that is not made available to you by Bell Mobility*". This provision gives the impression that the service is not intended for use with applications that are known to consume extremely high amounts of bandwidth.

In the abstract, trying to determine what is "excessive", simply in terms of the amount of data used, is nearly impossible. But Bell's data shows that [REDACTED] usage alone, in December 2007, was equal to the total bandwidth consumption of nearly 13,000 Bell subscribers. His usage in September 2009 represented an amount roughly 4,900 times greater than the average subscriber. On this measure, it is difficult to take issue with Bell's conclusion that [REDACTED] usage was excessive.

Recommendation

In light of the foregoing, we see no basis upon which to interfere with Bell's conduct in this matter and we therefore recommend no action by Bell.

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 (enter customer's name) and (enter TSP name) to sections 10 and 11.

Sincerely,

Josée Thibault
Director, Inquiries and Complaints

Enclosures