

May 13, 2011

[REDACTED]

RE: CCTS File Number 89014

On April 12, 2011, we issued a Recommendation regarding the above complaint. [REDACTED] has not responded to the Recommendation. He is therefore deemed to have accepted it. However, Fido has exercised its right to reject our Recommendation. As such, I am required to issue a Decision under Section 11 of the Code.

Our Recommendation

[REDACTED] disputed the basis upon which an Early Cancellation Fee ("ECF") was charged to his wireless account. He specified that he never agreed to the contract that was in effect when he cancelled his service.

Fido explained that [REDACTED] daughter, [REDACTED], who was authorized on the account, agreed to renew her then-current service plan on a two year contract in August 2009, when she upgraded her device. [REDACTED] did not dispute that he authorized his daughter to make account changes, but that his intent in doing so was only to allow her to make changes to things like text messaging plans. Fido indicated that as the contract was terminated on October 26, 2010, before its expiry date of August 2011, it charged [REDACTED] account an ECF.

After reviewing Fido's position, we determined that although Fido's Terms of Service allow it to charge an ECF when a customer cancels his or her contract before its expiry, the information provided by Fido failed to demonstrate that [REDACTED] or his daughter ever consented to the 2 year contract or that [REDACTED] should have been aware that a contract was applied to his account.

Therefore, we felt that Fido did not have the authority to bill [REDACTED] the ECF and recommended that Fido credit it.

Fido's Response to the Recommendation

Fido 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 its response to the Recommendation, Fido provided new information to support its position that [REDACTED] had agreed to the two year contract. It provided the call recording from August 28, 2009, which is the date it claims that [REDACTED] agreed to the two year contract. Fido claims that call recording demonstrates that:

- Fido confirmed with [REDACTED] that she was an authorized user on the account;
- On several occasions [REDACTED] was advised of, and agreed to, the new 2 year contract;
- The agreement would lock in the price of [REDACTED] monthly service plan and that as part of the agreement, she would be receiving a free Samsung device.

Fido feels that in light of this information, the ECF should be considered a valid charge.

[REDACTED] response to Fido's Objections

Although he did not respond to the Recommendation itself, [REDACTED] responded to Fido's reasons for rejecting the Recommendation. [REDACTED] feels that Fido's reasons are irrelevant as only he, the account holder, can enter into a new contract.

Our Analysis

After listening to the call recording, we are satisfied that [REDACTED] agreed to the two year contract on August 28, 2009. The recording confirms the following:

- On several occasions, [REDACTED] was advised of, and agreed to the new 2 year contract that was active on [REDACTED] when he cancelled his service;
- At approximately the 17 minute mark of the conversation, the agent confirmed that should the agreement be terminated before its expiry, the account will be charged an ECF.

The call recording demonstrates conclusively that [REDACTED] agreed to renew her monthly service plan on a 2 year agreement and that she was advised that the account would be charged an ECF should the agreement be terminated before its expiry, which it was.

[REDACTED] allegation is that in authorizing his daughter to make changes to the account, his intent was only to allow her to make changes to things like text messaging plans. Fido's Terms of Service do not address the limitations of an authorized user. Such a matter is governed by the company's internal policy. Therefore, we asked Fido to provide us with documentation to demonstrate its internal policy on the rights and restrictions of an "authorized user". After reviewing the documentation Fido provided, we confirm that as the account user, [REDACTED] was authorized to renew her monthly service on a fixed term contract.

Decision

Further to section 11.5 of our Procedural Code, the Commissioner shall, in formulating a Decision, consider whether there is substantial doubt as to the correctness of the Recommendation.

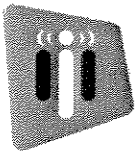
Fido provided new evidence to demonstrate that [REDACTED] who was confirmed to be an authorized co-user of the account, agreed to a 2 year contract. The call recording, which was not provided by Fido during the investigation process, clearly demonstrates that Fido obtained [REDACTED] consent to the contract. Furthermore, Fido's policy documents demonstrate that [REDACTED] was authorized to consent to the contract as an authorized user. Therefore, we feel that the ECF is valid and our Decision is that Fido is under no obligation to credit the ECF of \$180 that was charged to [REDACTED] account.

Further to Section 11.7 and 11.8 of our Procedural Code, [REDACTED] may accept or reject this Decision within 20 days of receipt. Should [REDACTED] decide to reject this Decision, he may pursue this complaint through any other forum and Fido 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

Attachments 1. CCTS Recommendation
 2. CCTS Procedural Code



April 12, 2011

CCTS #89014 - [REDACTED]

Subject: Results of our Investigation of your Complaint against Fido

Complaint Details

- [REDACTED] states that after cancelling his wireless service, Fido has charged him an Early Cancellation Fee ("ECF") of \$180;
- Although he acknowledges that he agreed to a fixed term contract many years ago, [REDACTED] states that the contract has since expired and that he has not agreed to any other fixed term contracts;
- [REDACTED] contacted Fido to attempt to resolve the matter, but had no luck in doing so;
- He states that Fido advised him that his daughter renewed the contract some time ago;
- [REDACTED] admits that he authorized his daughter to make account changes, but that his intent in doing so was only to allow her to make changes to things like text messaging plans;
- As his claim is that he never agreed to the contract that was in effect when he cancelled his service and as his original contract has expired, [REDACTED] requests that Fido credit the ECF.

Fido's Response

- Fido states that on August 28, 2009, [REDACTED] ([REDACTED] daughter who was authorized to make account changes) agreed to a two year contract when she upgraded her device and was provided with a rebate in exchange for her acceptance of the two year contract;
- In order to demonstrate that [REDACTED] agreed to the contract Fido provided a copy of its account notes as well as a confirmation letter that it claims it sent to [REDACTED] within 48 hours of [REDACTED] acceptance of the agreement;
- Fido also provided a copy of [REDACTED] September 2009 bill to demonstrate that the hardware upgrade was performed;
- Fido states that its Terms of Service state: "***If your Service is terminated prior to the end of the Commitment Period, you will pay us an ECF as specified in your Fido Service Agreement, plus taxes.***"
- As [REDACTED] terminated this agreement on October 26, 2010, prior to the end date of his contract, the ECF remains valid;
- Nonetheless, Fido offered to credit \$130 of the \$180 ECF charge;
- [REDACTED] refused this offer.

Analysis

We have fully examined [REDACTED] complaint as well as Fido's response to the complaint. We note the following pertinent details:

- We confirm that Fido's Terms of Service state that: ***"If your Service is terminated prior to the end of the Commitment Period, you will pay us an ECF as specified in your Fido Service Agreement, plus taxes."***
- However, in order for the clause to be applicable, Fido must demonstrate that consent to the agreement on which it relies to apply the charge, was given by either [REDACTED] or his daughter;
- We reviewed the confirmation letter, the bill and the account notes provided by Fido;

Confirmation letter

- The confirmation letter that Fido provided is dated April 4, 2011, the same date it provided us with a copy of the letter. It did not provide a copy of the actual letter that it claims was sent to [REDACTED] in August 2009;
- In order for us to consider this document as demonstrated consent to the agreement, Fido should have provide us with a copy of the actual letter that it claims was sent to [REDACTED] in August 2009;

Account Notes

- The account shows that on August 28, 2009 a hardware upgrade was performed and that a two year contract was applied to the account;
- The note reads: *"proactive campaign, customer on a 2years agreement + shipping Samsung sgh-f266 + using customer's Fido dollars towards the phone"*
- However, the account notes do not clearly demonstrate that [REDACTED] or [REDACTED] ever consented to the application of the contract, only that one was applied to the account;

The September 2009 bill

- The bill demonstrates that a hardware upgrade was performed and that a credit was given to subsidize the cost of the hardware;
- However, the bill does not demonstrate that [REDACTED] or [REDACTED] agreed to a 2 year contract;
- After reviewing the documents provided by Fido, we have determined that Fido failed to demonstrate that [REDACTED] or his daughter ever consented to the 2 year contract or that [REDACTED] should have been aware that one was applied to his account;
- Therefore, Fido did not have the authority to bill [REDACTED] the ECF;

Conclusion

- In light of the above, we recommend that Fido credit the ECF of \$180 that was applied to [REDACTED] account;
- Attached is a copy of the CCTS Procedural Code which contains important information with respect to the recommendations made by CCTS, including information about acceptance of recommendations by a complainant and a telecommunications service provider. In particular, we refer [REDACTED] and Fido to sections 10 and 11.