August 1, 2012

855 York Mills Road
Don Mills, ON
M3B 1Z1

RE: CCTS Complaint #180521

On June 1, 2012, we issued a Recommendation regarding the above complaint. As Rogers rejected our Recommendation, I am required to issue a Decision under Section 11 of our Procedural Code ("the Code").

Our Recommendation

After investigating ████████ complaint we determined that:

- ████████ alleged that he was being overbilled for his Rogers wireless services and that Rogers was not respecting the contract.
- Rogers did not provide any evidence to support its position that it billed ████████ account correctly.

In the absence of any evidence to the contrary, we had no choice but to conclude that ████████ claim was accurate and recommended that Rogers credit the difference between the amount that has been billed for the cost of his monthly service plans and the amount that he ought to have been billed, i.e. $83.46 ($73.46 for the first three months). We also recommended that Rogers either:

- Allow him to continue with his service at the rate of $83.46/month for the remainder of his contract; OR
- Allow him to terminate his contract before his term's expiry, without penalty (or credit the termination fee if his service has already been cancelled).

Rogers' Objection

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. Rogers provided its objections in an email to CCTS dated June 8, 2012. In it, Rogers informed us that:

- The August 2011 invoice includes the Service Agreement ("Agreement") which outlines the details of the plan to which ████████ agreed.

- It billed ██████ according to this agreement.
- The agreement is based on the account notes that were inputted in its system when ██████ visited a Rogers' retail location and requested that his price plan be changed to the plan outlined in the agreement.
- It sent ██████ an "account change confirmation" letter on July 28, 2011.

In order to support its objection to the Recommendation, Rogers provided us with a copy of the account notes and the invoices. We provided ██████ with Rogers' response. ██████ provided us with a copy of the contract that he signed in-store.

Analysis

We reviewed the account notes from July 28, 2011 which confirm that the plan which was applied to ██████ account was a $50 family plan for two devices.

The service agreement provided by Rogers and the signed contract provided by ██████ both outline the same $50 rate plan, but also outline that ██████ subscribed for a 500MB shared data service plan at a cost of $25 month, for a total of $75/month plus applicable taxes.

We compared these amounts to the invoices and confirm that ██████ account was billed in accordance with the above mentioned plan. However, the monthly invoices also include additional charges for usage which was incurred outside of the plan's allotments.

We reviewed the email confirmation that was sent to ██████ on July 28, 2011 which states the following:

Plan allotments:
- o 200 Shared weekday minutes
- o Unlimited Eve/Wknd Mins (Starting 9pm)
- o Unlimited Sent & Received Messages Text, IMS, Email, Picture & Video.
- o Unlimited Canada-Wide Between Us Calling
- o 2500 Call Forwarding Mins
- o Conference Calling
- o Call Waiting
- o (Service agreement Term 36 months)

Upon further review of the monthly invoices, we determined that the vast majority of the charges that were above the agreed monthly service charges resulted from international text messaging. The service agreement demonstrates that ██████ was provided with unlimited text messaging at no extra cost, but also indicates that international text messaging was not included in his plan. Both appear in a different column on the signed contract.

We note that some of the additional charges derived from long distance calling, third party charges and Directory Assistance charges. After reviewing the signed service agreement dated July 28, 2012, we determined that the above mentioned additional charges were not included in ██████ plan allotments and confirm Rogers' right to charge these amounts.

██████ does not dispute that he incurred this usage.

In light of this and as we have determined that Rogers billed ████████ correctly for the cost of his monthly service, we feel that Rogers reasonably performed its obligations towards ████████.

Decision

Section 11.5 of our Procedural Code states that in formulating a Decision the Commissioner shall consider whether there is substantial doubt as to the correctness of the original Recommendation.

Both Rogers and ████████ provided new evidence which demonstrates that Rogers billed ████████ correctly for the cost of his monthly service and that any amounts that were billed above this amount were attributable to usage that is not included in ████████ plan and that he does not dispute incurring.

Consequently, we feel that the charges that were billed are valid and our Decision is that Rogers is under no obligation to credit any of the monthly service charges that were in dispute, adjust the cost of ████ ████ monthly service going forward or allow him to terminate his contract before his term's expiry, without penalty (or credit the termination fee if his service has already been cancelled).

Further to Section 11.7 and 11.8 of our Procedural Code, ████████ may accept or reject this Decision within 20 days of receipt. Should he decide to reject the Decision, ████████ may pursue this complaint through any other forum and Rogers shall be fully released from the Decision. A copy of our Procedural Code is attached for reference.

Sincerely,

Howard Maker

Attachments:
  (1) Procedural Code
  (2) Recommendation