



Howard Maker
Commissioner
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April 22, 2009

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
Regulatory Advisor
TELUS Communications Company
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: CCTS Complaint # 05178

On January 30, 2009 we issued a recommendation regarding the above complaint. TELUS accepted the recommendation but, as is her right under our Procedural Code, [REDACTED] rejected the recommendation and has provided her explanation. Thus I am required to issue a formal Decision under Section 11 of the Code.

The Recommendation

TELUS was providing [REDACTED] with both telephone and internet service. [REDACTED] cancelled the telephone service as a result of recurring billing problems that TELUS was unable to correct; however, she intended to retain her internet service. TELUS cancelled her internet service as well. We concluded that TELUS could have done more to attempt to avoid the cancellation of the internet service, but that the problem arose in part as a result of confusion between TELUS and [REDACTED]'s new telephone service provider as to their respective roles in the process for "porting" telephone service – in an environment in which industry guidelines failed to specifically address the issue. As a result of the events, TELUS had billed [REDACTED] for cancellation fees related to the internet service that she did not wish to cancel. Prior to our recommendation, TELUS resolved the original telephone service billing concerns, but insisted that [REDACTED] remained liable for the early cancellation fees related to the internet service. After investigation, we recommended that TELUS:

- waive the early termination and late payment charges that it continued to seek to collect from [REDACTED];
- waive repayment of the amount it sought to recover in connection with the computer that [REDACTED] received as part of her subscription to the internet service; and
- ensure that [REDACTED]'s credit rating had not been negatively affected given that TELUS had referred this matter to collections.

A copy of our January 30, 2009 letter is attached.

TELUS agreed to accept our recommendation but [REDACTED] rejected it. She objected to our failure to recommend that TELUS pay her monetary compensation for the inconvenience she encountered in her dealings with TELUS. She feels that the extent of her efforts to work with TELUS to correct her telephone billing and to retain/restore the disconnected internet service warrant an award of monetary compensation.

In our recommendation we acknowledged that [REDACTED] had suffered a degree of inconvenience as a result of the loss of her internet service and her extensive dealings with TELUS. However, we declined to award compensation on the basis that TELUS could not be faulted for its handling of the matter given the lack of clarity in the relevant industry guidelines and industry practice.

Our Decision

Under section 11 of our Procedural Code, the party objecting to a recommendation is entitled to explain why he or she considers it to be unacceptable or inappropriate. I have reviewed the additional information provided by [REDACTED]. I conclude that it is insufficient to persuade me that the original recommendation was unreasonable or inappropriate.

After receiving our recommendation, TELUS informed us that it:

- accepts our recommendation;
- has reviewed our recommendation with its customer service and operational teams to ensure that its internal processes are revised to prevent any recurrence of the problems that arose in the porting process;
- apologizes to [REDACTED] for her inconvenience;
- has credited her account with the \$120 cancellation fee and has written off the remaining balance of \$61.32; and
- has made no derogatory credit bureau entries arising from this dispute.

In my view this represents a fair and reasonable resolution of this dispute.

Further to section 11.6 to 11.9 of the CCTS Procedural Code, [REDACTED] may accept or reject this Decision within twenty (20) business days. Should [REDACTED] decide to reject this Decision, she may pursue this complaint in any other forum and TELUS shall be fully released from the Decision.

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

Sincerely,

Howard Maker
Commissioner

Enclosures: 1. CCTS letter dated January 30, 2009
2. CCTS Procedural Code



Josée Thibault
Director, Inquiries & Complaints
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[REDACTED]

30 January 2009

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
Regulatory Advisor
TELUS Communications Company
[REDACTED]
[REDACTED]
[REDACTED]

Re: CCTS Complaint # 05178

On April 16, 2008, we received a written complaint from [REDACTED] regarding the telephone and Internet services provided to her by TELUS Communications Company (TELUS).

The Complaint

[REDACTED] has concerns about the billing for her telephone service and about the unwanted disconnection of her Internet service. She states that on September 24, 2007 her phone service was added to her pre-existing Internet service with TELUS. Her Internet contract was tied to an offer of \$400 towards a computer purchase. A cancellation penalty of \$120 as well as the repayment of the \$400 would be required if she ended her contract early.

[REDACTED] believes that she was overcharged for her telephone service in the first invoice she received in December 2007. Throughout December and January, [REDACTED] attempted to resolve the matter directly with TELUS, but was unsuccessful. On February 2, 2008, [REDACTED] wrote to TELUS, using the billing payment address provided on her invoices, informing TELUS of her decision to change her telephone service provider, but noting her satisfaction with her Internet services and intention to retain the Internet services.¹ She states in the letter that she will be changing her home telephone service provider as of the month of February, adding "I will

¹ The letter included her account number (236725154) and was addressed to "Telus, PO Box 7575, Vancouver BC, V6B 8N9". This is the address provided on TELUS' invoices from at least January to June 2008.

continue to pay for my Internet service and plan to keep the service until the contract is finished.”

██████████ states that she began experiencing problems with her email in late March 2008. On April 9, 2008, she wrote a second letter to TELUS, seeking correct billing for her telephone service.² In this letter she states “[i]f this matter isn’t resolved promptly then I will be forced to cancel my Internet service also.”

After sending the letter, ██████████ called TELUS and was told by a TELUS representative that her emails were being blocked due to an outstanding balance owing. The same representative reviewed the amount owing and determined that it should be \$225.76. He then promised to have the email working again in four hours. ██████████’s services were not restored. She called TELUS the next day and was told that her account was with a collection agency for an outstanding balance of \$400 and that no record existed of her call the previous day.

██████████ emailed TELUS at executivecustomerrelations@telus.com on April 11, 2008 to seek a resolution to her problem. In the email she requests the cancellation of her Internet services and a corrected bill for the amount owing on her account. She states that she would take the matter to the Better Business Bureau (BBB) or the Canadian Radio-television and Telecommunications Commission (CRTC) if she did not receive a response. Although she did make an initial complaint to the BBB, she cancelled it when she learned of CCTS. She has no pending complaint before the CTRC or the BBB.

TELUS called ██████████ on April 11, 2008, which was the first time that she learned that her Internet services had already been cancelled. She says that she was told that this was done automatically when her telephone was ported to a different service provider and that it was her new service provider’s responsibility to inform her to tell TELUS that she wished to retain her Internet service. ██████████ states that when she told this representative that she had sent a letter requesting to retain her Internet service, the representative responded “you should have called, mail gets lost”. She was informed that she would be billed a termination charge as the Internet service ended prior to the expiration of her contract. ██████████ disputes this charge as she feels that her Internet service was cancelled against her wishes.

██████████ states that TELUS has continued to call her since March 2008, with offers for telephone service. Despite her many requests to have TELUS stop these calls, the calls have continued, along with mailed offers.

She states that she has contacted her new telephone service provider with regard to TELUS’ statement that the new provider ought to have told her to inform TELUS that she wished to retain her Internet service. She states that the new provider reviewed its records and found a note written to tell ██████████ to remind TELUS that she wished to keep her Internet service. She states that she was told by the new provider that it has no record that this call was made.

² The letter again included her account number and was addressed to “Darren Entwistle President and CEO, Telus, PO Box 7575, Vancouver BC, V6B 8N9”.

██████████ states that she continues to be harassed by a collections agency, although she sent a letter to TELUS on August 15, 2008 requesting that all collections actions be halted until her complaint with CCTS is complete.³

██████████ believes she owes approximately \$183.73 to TELUS for telephone and long distance services and that she will pay for any remaining charges related to service she received from TELUS if TELUS can provide her with proof of that amount being for unpaid service.

██████████ was originally hoping to regain her TELUS Internet service and so remained without any Internet service for a month, however, she is no longer willing to remain a TELUS customer. She is frustrated that TELUS continues to contact her to get her to sign up with them again and she is worried about the effect the current actions by a collections agency will have on her credit rating.

██████████ is seeking (1) a letter of apology from TELUS for the stress it caused her by disconnecting her Internet service, (2) the exemption from any penalties and termination fees, (3) assurance that she will not have to repay TELUS the \$400 towards her computer and (4) monetary compensation for inconveniences to herself and her family because of the time she has spent dealing with TELUS. ██████████ states that she has had to manage without Internet service and her attempts at resolving the matter have required numerous letters and phone calls. She also states that the costs of having no Internet service were numerous. ██████████ was homeschooling her child and the Internet could no longer be used for this purpose. Her contact with friends, her shopping, her personal emailing and her banking were also negatively affected. She notes that her pre-existing disability and chronic pain exacerbate the difficulty of all of her communications when handling this complaint.

TELUS' Position

TELUS states that the porting order it received from ██████████'s new service provider for the transfer of her telephone service never indicated that her Internet service was to remain with TELUS.

The porting order from the new provider was given to TELUS on February 14, 2008. TELUS states that it confirmed the request on February 16, 2008, by adding in the "Confirmation" field the statement: "Firm Order With Exceptions". In the "Remarks" field of the document, TELUS added "Customer must contact ISP provider". TELUS states that it was the obligation of the complainant's new telephone service provider to inform her that she must contact TELUS to confirm that she wanted to retain her Internet service.

TELUS claims that its actions in this case are based on industry standards for "porting." TELUS has referred CCTS to documents produced by the CRTC Interconnection Steering Committee (CISC).

³ CCTS has a copy of the letter as well as a copy of the registered mail confirmation. It was sent to the same address as her previous letter.

Specifically, TELUS has provided us with the "Master Agreement for Interconnection between Local Exchange Carriers (LECs)", version 29, dated June 29, 2007, as approved per "Telecom Decision CRTC 2007- 62". In this document, TELUS refers to paragraphs 8 to 10 of the section titled "Contact with Customers" within Schedule D:

8. Each LEC at all times shall be the primary contact and account control for all interactions with its customers relating to the specific services it provides to the customers. LEC customers include active LEC customers as well as those for whom service orders are pending.

9. All LECs shall ensure that any of their personnel who may receive customer inquiries, or otherwise have opportunity for customer contact: (a) provide appropriate referrals to customers who inquire about another LEC's services or products; and (b) do not in any way disparage or discriminate against another LEC, or its products or services.

10. LECs shall not use any customer-specific information disclosed through the ordering process by another LEC to aid in their marketing or sales efforts.

TELUS states that its decision not to contact the complainant itself about whether she wished to continue her Internet service was in accordance with CISC's Canadian Local Ordering Guidelines (CLOG), version 6. TELUS has provided us with Section 13 of CLOG, titled "LSR [Local Service Request] Procedures for Customers with Digital Subscriber Line (DSL) Internet Service (IS)" and issued March 28, 2007. TELUS has not directed us to any particular provision within this document. We note that Version 6 did not come into effect until April 12, 2008, after the time of this porting order and thus the prior version 5.3 ought to be used to review the process as this was the version in effect at the time that [REDACTED]'s porting order was made.

With reference to the CLOG, TELUS states that the onus was on the new telephone service provider to contact [REDACTED] and advise her to call TELUS regarding her Internet service. According to these rules, TELUS states that it was not permitted to contact [REDACTED] itself as it believes that it is prohibited from contacting the customer in the time between the receipt of the local service request from another provider and the migration of that service.

TELUS states that it received no response from the new provider with regard to its added notes on the service request. TELUS believes that it was the responsibility of the new provider to request information from TELUS regarding the other services [REDACTED] had with TELUS.

TELUS also was unable to locate any record of receipt of [REDACTED]'s letter dated February 2, 2008, which requested the retention of her Internet service.

TELUS cancelled [REDACTED]'s Internet service on April 2, 2008 – 30 days after the porting order. TELUS states that once the telephone was disconnected, the Internet account no longer had an account number to which the service could be billed. TELUS claims that their policy of cancelling Internet orders within 30 days of a port of phone service (unless the client advises otherwise) is a general operating practice within section 1.1(j)(q) of the CCTS Procedural Code and is therefore not within the mandate of CCTS.

TELUS states that during the phone conversation of April 11, 2008, a TELUS manager offered to reinstate the complainant's Internet services but that she declined. TELUS therefore claims that a termination liability contract fee of \$120 should remain on [REDACTED]'s account since her May 2008 invoice. [REDACTED] denies ever having been offered the reinstatement of her Internet services, let alone ever having declined this offer.

TELUS states that [REDACTED]'s Internet contract was available on its website and confirms that first use of the service constitutes an agreement to the relevant terms and conditions. TELUS adds that notes on [REDACTED]'s account indicate that she was aware of the cancellation fee at the time of ordering her service in September 2006.

TELUS has now resolved [REDACTED]'s original telephone billing issue. TELUS notes that the complainant was overbilled by \$74.80 in her December 2007 bill. TELUS states that the error was corrected and the account was credited on April 10, 2008, adding that "TELUS apologizes for this billing error that this client's account has received." As a goodwill gesture, TELUS is offering to credit all late payment fees from December 2007 to June 2008 (\$18.64) plus the Internet charges in February and March 2008. The total credit being offered, with taxes included, is \$101.81. After this credit is applied, TELUS states that [REDACTED] owes \$181.32. TELUS states that it will not be providing [REDACTED] a bill for this amount as the matter has already gone to the collections agency.

TELUS refuses to waive the termination liability charge, referring to section 54 "Term and Termination" of its Internet Services Account Agreement. This section includes the statement that [REDACTED] "will be required to pay TELUS a termination charge [...] in addition to any other amount then owing to TELUS, if [she terminates] this Agreement prior to the end of the term or if TELUS terminates the Services for any of the reasons listed below." The reasons listed by TELUS in section 54 include:

TELUS may suspend the Services if you contravene any provision of these Service Terms, including your obligation to pay for the Services as charges become due. TELUS may terminate the Services (i) immediately and without notice, where TELUS determines that you are using the Services contrary to the acceptable use provisions of this Agreement, (ii) upon three days written notice to you, if any amount owing under this Agreement or any other agreement for services provided to you by TELUS is in arrears, (iii) if you do not remedy any other breach of these Service Terms within 15 days of receiving written notice of the breach from TELUS, (iv) if you become a bankrupt or, if you are a business customer, a receiver or receiver-manager is appointed to manage the affairs of your business, or (v) for any reason, upon 30 days written notice to you.

Although TELUS regrets the inconvenience cause to [REDACTED], it refuses to compensate for any intangible costs, pursuant to its "Limitation of Liability" in sections 50 and 51 of the same agreement.

Analysis

In this case, it took TELUS four months to resolve the billing problems related to her telephone service. TELUS' delay in resolving the telephone matter led to ██████████'s decision to cancel her telephone service, which subsequently resulted in the loss of her Internet service. She did not immediately obtain service from another provider as she was clearly expecting to regain service with TELUS.

Her telephone services were switched to a new provider in late February 2008. The new provider has confirmed that it was aware of ██████████'s intention to retain her Internet service with TELUS and did wire her home to allow for TELUS' DSL Internet service to continue.⁴ The new provider has informed us that its "standard practice [was] to advise the customer to contact the incumbent local exchange carrier [ILEC, in this case TELUS] to make arrangements for their DSL services pursuant to [TELUS'] comments on the [order]." The new provider states that it verbally made such comments and thus has no record of them.

CCTS received conflicting information from both TELUS and ██████████'s new service provider regarding the appropriate industry practice for the porting of local service for customers with DSL Internet service and therefore engaged experts at the Canadian Radio-television and Telecommunications Commission (CRTC) to clarify the process. Further to these discussions, CCTS concludes that the appropriate process was for the new service provider to send a porting request to the old service provider. The old service provider is to complete the migration of the telephone service and to ensure that DSL service continued to function properly. CCTS determines that neither service provider was required to inform ██████████ that she had to contact TELUS in order to ensure that her Internet service continued to function.⁵

The information provided to us by ██████████'s new telephone service provider states that it did prepare her home in a manner so that she could retain her Internet service on a "dry loop" after changing her telephone service and that it was the practice of the new provider in this situation to inform the customer that she should contact TELUS to make arrangements for her Internet service, despite the absence of such a requirement. The new provider, however, has no records of this having occurred, rather, the only record is a complaint from ██████████ that the new provider did not inform her of such a requirement.

There is no evidence to suggest that ██████████ had been informed, by either TELUS or her new telephone service provider, that she should call TELUS in order to ensure the retention of her Internet service. TELUS believes that it met its burden of informing ██████████ by putting a note on the new telephone service provider's order request that stated "Customer must contact ISP provider".

We note that, in any regard, ██████████ did send a properly addressed letter to TELUS on February 2, 2008, stating her intention to retain her Internet service, despite requesting to cancel her telephone service. Although TELUS claims to have not received the letter, ██████████

⁴ The new provider states that it followed the industry procedure in the Canadian Local Ordering Guidelines (version 5.3), Section 13-7, Scenario 3.

⁵ See the attachment entitled "Interpretation of CLOG version 5.3" for further information.

believed she had notified TELUS of her intentions with her Internet service. Thus, even if there existed a requirement for her new service provider to inform her that she had to contact her old provider and that such information was indeed relayed to [REDACTED], she was likely under the impression that she had already informed TELUS of her wishes.

With regard to Schedule D in the "Master Agreement for Interconnection between Local Exchange Carriers (LECs)," TELUS has referred us to sections 8 to 10. We note that this document is in reference only to appropriate treatment of telephone service and does not discuss the actions that need to be taken with regard to the Internet service by TELUS. We also note that no part of this document restricts TELUS from contacting the complainant in order to confirm whether she wishes to retain her Internet service.

TELUS claims that it could not contact the complainant directly at the time of porting her telephone number, however TELUS has not provided CCTS with any documentation to explain why this was so. Nonetheless, TELUS did not cancel [REDACTED]'s Internet service at the time of porting her telephone number but instead cancelled her Internet service on April 2, 2008. TELUS has provided us with no explanation for why it did not contact [REDACTED] in this intervening month to confirm her interest in retaining her Internet service. It would be in both parties' interest to have TELUS make this confirmation and it was reasonable that TELUS would do so, rather than leave the task to the new service provider, who may be a competitor of TELUS and who did not have an obligation to inform the customer of such a requirement.

As [REDACTED] informed TELUS in her letter of February 2, 2008 that she wished to retain her Internet service, and, as there was no requirement on TELUS' part to discontinue providing [REDACTED] with Internet service subsequent to the porting of her telephone service, CCTS believes that the cancellation of her Internet service was done at TELUS' sole initiative.

TELUS compensated [REDACTED] for two months of Internet service during the time she paid for and did not receive service. After crediting this service plus late payment fees, the outstanding amount due on [REDACTED]'s account is \$181.32. This amount includes the termination fee of \$120 plus tax. While [REDACTED] is willing to pay for any service she received that she has not yet paid for, she is not willing to pay any fees that are in relation to the termination of her service.

Recommendation

The practice for the porting of a telephone number to a new service provider when Internet service is to remain with the old service provider is such that the old service provider is to ensure the continued functioning of the Internet service. Although the industry guideline states that the customer is to contact the old service provider to confirm their desire to retain Internet service, it does not specifically state that any particular service provider is to inform [REDACTED] that she had this responsibility.

In our view, it would have been appropriate for TELUS to have confirmed [REDACTED]'s intention to retain her Internet service after the completion of the telephone porting. TELUS has indicated that it believed it was prohibited from contacting [REDACTED] in the time between the

receipt of the porting request and its completion. We could find no evidence of such a prohibition, however, if such a prohibition did exist, it does not reasonably explain why TELUS did not contact ██████████ in the month between the completion of the porting request and the disconnection of her Internet service.

TELUS' assumption that ██████████ was not retaining her Internet service caused her to be charged a \$120 termination fee and lost TELUS a customer. Further, the termination of her Internet service was done contrary to industry practice, as confirmed by the CRTC. Section 54 of TELUS' Internet Services Account Agreement allowed TELUS to terminate ██████████'s Internet service, under paragraph (v) "for any reason, upon 30 days written notice". As no written notice was provided to ██████████, and in the absence of a requirement by TELUS to terminate her Internet service, CCTS finds that the Internet service was terminated by TELUS contrary to its Internet Services Account Agreement.

In our view, it is reasonable and appropriate to expect TELUS to contact a customer about her intention to retain Internet service with TELUS where the cancellation of her service would incur a termination fee.

██████████ never sought the cancellation of her Internet service until after TELUS had already cancelled her service on April 2, 2008.

As ██████████'s Internet service was terminated by TELUS and in view of the fact that she has already obtained Internet service through another provider, it is our recommendation that TELUS waive the termination charge of \$120 plus tax and late payment charges. TELUS may apply this credit to ██████████'s current account balance. We further recommend that TELUS also ensure that ██████████'s credit rating has not been affected due to the actions of a collection agency in this matter and that it not seek the repayment of the \$400 previously provided to ██████████ as part of her service agreement and for the purchase of a computer as the termination of Internet service was not done further to her request but further to TELUS' own initiative, contrary to its Internet Service Account Agreement.

Inconvenience Analysis

Pursuant to section 12.2 of CCTS' Procedural Code, we cannot award a monetary remedy "that is in the nature of indirect or consequential damages". Any monetary remedy must be commensurate with "any loss, damage or inconvenience actually incurred by the Complainant and arising from the facts on which the complaint is based." In deciding whether to award compensation for "inconvenience" and, if so, the amount of compensation, we consider several factors, including: the severity of the issue and related costs, the responsiveness of the service provider, the reasonableness of any offers made by the service provider, the reasonableness of the complainant in communicating with CCTS and the service provider and the total number of hours spent by the complainant in pursuing a resolution.

There is little doubt that ██████████ has suffered inconvenience as she was without Internet service in spite of her request to keep this service with TELUS. However, CCTS finds that this inconvenience was the result of inconsistencies within industry guidelines and practices as the

problems encountered by [REDACTED] arose directly from the lack of clarity contained in these guidelines. As such, CCTS makes no additional recommendation with regards to compensation.

Attached is a copy of the CCTS Procedural Code (Code). The Code 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 [REDACTED] and TELUS to sections 10 and 11.

Sincerely,



Josée Thibault
Director, Inquiries and Complaints

Enclosures

Interpretation of CLOG version 5.3

Due to the conflicting information received from TELUS and [REDACTED]'s new service provider, as well as the seemingly unclear guidelines for the porting of telephone service for customers with DSL Internet service, we spoke with the appropriate experts at the Canadian Radio-television and Telecommunications Commission (CRTC) in order to clarify the current industry practice.

Further to these discussions, we note that the appropriate section of CLOG version 5.3 that should have been followed in [REDACTED]'s situation is section 13-7, Scenario 3. We note that Scenario 3 is to be used when a stand alone porting request is made but that its title, *Potential Customer Move*, is somewhat misleading as the requesting customer does not need to be moving to a new residence in order for this Scenario to apply. Rather, the fact that the porting request involves a stand alone telephone service that is not provided on a leased loop is the criterion that requires the use of Scenario 3.

TELUS claims to have ported [REDACTED]'s telephone service in accordance with industry standards and informed the new service provider that the "customer must contact ISP provider". We note that Scenario 3 indeed states that the customer must contact their ISP (i.e. their old service provider) "...to confirm/modify the existing DSL...", however, does not contain a requirement for the new service provider to actually inform the customer that they must contact their old service provider. Instead, Scenario 3 indicates that the old service provider is to simply migrate the voice service to the new service provider and disconnect DSL service pending re-qualification at a new service address. The CRTC confirmed that the industry practice at the time was to omit the step of disconnecting DSL service should re-qualification at a new service address not be required (i.e. when the customer was not moving to a new service address) and to merely ensure that DSL service continued to function properly, most likely through the provisioning of a dry-loop service.