



November 17, 2011

[REDACTED]

RE: CCTS Complaint #131318

On November 1, 2011, we issued a Recommendation regarding the above complaint. As [REDACTED] [REDACTED] rejected our Recommendation, I am required to issue a Decision under Section 11 of our Procedural Code ("the Code").

Our Recommendation

After investigating [REDACTED] complaint, we determined that:

- it was likely that the security breach occurred through [REDACTED] telephone equipment;
- Rogers did not provide, install or maintain [REDACTED] telephone equipment;
- Rogers had no contractual obligation to ensure the security of [REDACTED] telephone equipment nor to notify it of any fraudulent activity;
- Rogers took some measure to limit the extent of the fraudulent activity;
- Rogers offered to credit a large part of the fraudulent charges;
- Rogers was only seeking to recover from [REDACTED] the amount that it had to remit to international carriers for the cost of the fraudulent calls.

Accordingly, we recommended that the dispute be resolved on the basis of the credit offer made by Rogers.

[REDACTED] Objections

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.

██████████ provided its objections in an email to CCTS dated November 16, 2011. In the email message, ██████████ states that while it recognizes that Rogers has not breached its contractual obligations, it has breached its moral obligations. ██████████ alleges that despite its knowledge of the prevalence of this type of fraud, Rogers failed to act upon it by notifying its customers of the risks of such fraud. For this reason, ██████████ maintains that it should not be held liable for any of the fraudulent charges.

While we acknowledge the devastating effects that the billing of such fraudulent charges might have financially on a small business, we do not have the mandate to enforce moral obligations.

The standard of review that CCTS applies to resolve complaints is set out fully in section 4 of our Procedural Code (attached). In particular, our review is intended to determine whether a service provider has "reasonably performed its obligations pursuant to the applicable contract". In this case, we have determined that Rogers has done so.

With regard to ██████████ comments regarding Rogers' alleged failure to provide fraud prevention information to customers, we have already addressed that remark in our Recommendation, by noting that:

- some fraud information was available on Rogers' website prior the occurrence of the fraudulent calls; And
- That Rogers' Terms of Service specifically address the possibility of long distance fraud.

Decision

Section 11.5 of our Procedural Code provides that in formulating a Decision the Commissioner shall consider whether there is substantial doubt as to the correctness of the original Recommendation. As ██████████ did not provide new information or raise a substantive doubt as to the correctness of the original Recommendation, we are of the view that there is no basis upon which to modify it and hereby confirm it.

Further to Section 11.7 and 11.8 of our Procedural Code, ██████████ may accept or reject this Decision within 20 days of receipt. Should it decide to reject this 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
Commissioner

Attachments: Recommendation & Procedural Code