



November 5, 2014

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

Tbaytel

[REDACTED]
1046 Lithium Drive
Thunder Bay, Ontario
P7B 6G3

RE : CCTS file number #460950

On October 6, 2014, we issued a Recommendation regarding the above complaint. As Tbaytel rejected our Recommendation, I am required to issue a Decision under Section 11 of our Procedural Code ("the Code").

Our Recommendation

[REDACTED] and his wife travelled to Minneapolis on December 26, 27 and 28, 2013. They acknowledge a small amount of data roaming activity on their two wireless phones during their trip but dispute the amount of usage that Tbaytel attributes to them and for which they were originally billed \$4,492.64. As a goodwill gesture, Tbaytel reduced the charges to \$873. However, [REDACTED] and his wife insist that all of the charges should be credited. Additionally, [REDACTED] claims that Tbaytel failed to properly notify him and his wife at the time their devices began roaming, as notice was only provided upon their return.

After investigating [REDACTED] complaint, we determined that:

- Tbaytel failed to demonstrate the link between the usage in dispute and Mr. and Ms. [REDACTED] phones, and that
- Tbaytel also failed to demonstrate that it notified Mr. and Ms. [REDACTED] of their roaming activity while they were in the US, as required by section E.1. (i) of the CRTC's Wireless Code.¹

Accordingly, we recommended that Tbaytel credit the US data roaming charges that had not been credited.

¹ The newly enacted set of standards imposed to service providers by the Canadian Radio-television and Telecommunications Commission (Canada's telecommunications regulatory body).

Tbaytel's 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. Tbaytel provided its objections to CCTS on October 26, 2014.

Tbaytel explains that it mistakenly informed CCTS² that it was unable to demonstrate the link between the data roaming usage in dispute and Mr. and Ms. [REDACTED] phones.

In regard to the roaming notification issue, Tbaytel maintains that Mr. and Ms. [REDACTED] were notified of their roaming activity at the prescribed time. However, Tbaytel acknowledges that it is still unable to provide "hard evidence" to demonstrate that it did so.

For these reasons, Tbaytel contends that it should not have to provide any further credits in this matter.

Analysis of the Objection

In support of its revised position, Tbaytel communicated to CCTS the detailed usage information³ received from its roaming partner.

Specifically, Tbaytel provided the raw data pertaining to Mr. and Ms. [REDACTED] roaming activity.

After reviewing the submitted evidence, we conclude that it convincingly establishes the required link between the data roaming usage in dispute and the phones of Mr. and Ms. [REDACTED]

Thus, given that section 9.2 of Tbaytel's Terms of Service provides that: "The customer shall be responsible for all roaming charges as may be levied by the service carrier providing roaming privileges and service", we find that Tbaytel was correct in billing the data roaming charges in dispute to Mr. and Ms. [REDACTED]

That being said, we note that Tbaytel remains unable to submit any evidence to support the claim that it notified Mr. and Ms. [REDACTED] that their devices were roaming *at the time of their roaming activity in another country*, as required by section E.1 (i) of the CRTC's Wireless Code.⁴

Thus, our previous determination of a Wireless Code breach remains.

However, as the [REDACTED] acknowledged that they knew that their devices were roaming,⁵ the failure by Tbaytel to provide notice that they were doing so is a technical breach, and would not have induced them to stop such activity, and would not have prevented Mr. and Mrs. [REDACTED] from incurring these roaming charges.

² In its email to CCTS on September 23, 2014

³ In the form of 4 emailed attachments

⁴ The set of standards imposed to service providers by the Canadian Radio-television Commission (Canada's telecommunications regulatory body)

⁵ The only element in dispute being the measure of their roaming activity

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.

The new evidence provided by Tbaytel's establishes the missing link between the data roaming usage in dispute and the phones of Mr. and Ms. [REDACTED]. Accordingly, our Recommendation is not reasonable and must be reversed.

As such, we conclude that Tbaytel is not required to issue any further credits to Mr. and Mrs. [REDACTED].

Further to Section 11.7 and 11.8 of our Procedural Code, Mr. [REDACTED] may accept or reject this Decision within 20 days of receipt. Should he decide to reject this Decision, he may pursue this complaint through any other forum and Tbaytel shall be fully released from the Decision.

A copy of our Procedural Code is attached for reference.

Sincerely,

Howard Maker
Commissioner