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May 28, 2015

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

Bell Aliant [REDACTED]  
810 Prince Street  
Truro, Nova Scotia  
B2N 1H1

Dear [REDACTED]

**Subject: CCTS file #545778**

On April 14, 2015, we issued a Recommendation regarding the above complaint. As Bell Aliant ("Aliant") rejected our Recommendation, I am required to issue a Decision under Section 11 of our Procedural Code ("the Code").

#### **Our Recommendation**

On June 19, 2014, [REDACTED] contacted Aliant to provide the required 30 day notice of his intent to cancel his internet and home phone services. Prior to the cancellation date, he returned the Aliant-provided modem to Aliant and made a final payment, expecting it to cover the cost of the services until disconnection. However, [REDACTED] continued to receive invoices from Aliant for services and his account was eventually referred to a third-party collection agency in December 2014.

[REDACTED] argued that he should not have been billed for internet and home phone services beyond July 19, 2014, and that as a result of Aliant's actions, was inconvenienced by daily phone calls from the collections agency and spent a significant amount of time attempting to address this issue with Aliant and the collections agency. [REDACTED] requested that Aliant credit the entire balance owing, refund him the excess that he had paid for the service (\$2.14), provide a formal written apology from Aliant and the collections agency, correct any negative impact to his credit history and pay him \$200 in compensation.

Aliant argued that it continuously provided both home phone and internet services until the port of the home phone number was successfully completed, and billed [REDACTED] accordingly.

After investigating the complaint, we discovered that while [REDACTED] had provided the required 30 day notice, [REDACTED] new service provider submitted several port requests for the home phone number, which appear to have delayed the cancellation of [REDACTED] home phone and internet services until

August 12, 2014<sup>1</sup>, when the home phone number was ported out. We concluded that it was reasonable for Aliant to bill ██████████ for home phone service until August 12, 2014, as it continued to provide the service until then.

However, nothing we reviewed demonstrated that ██████████ or the new service provider had requested that the June 19, 2014 internet service cancellation request (to become effective for July 19, 2014) be cancelled or rescheduled. In fact, he returned his modem to Aliant on July 17, 2014. Therefore, we concluded that it was unreasonable for Aliant to have billed ██████████ for the internet service beyond July 19, 2014, and it was inappropriate for Aliant to have subsequently sent the account to a collection agency when these charges went unpaid. We further concluded that ██████████ had experienced inconvenience resulting from frequent calls over a period of three months from the collection agency, and his unsuccessful attempts to explain why the debt was not properly owed.

Therefore, we recommended (in addition to certain credits already applied to the account) that Aliant credit the charges ██████████ incurred for internet services from July 20, 2014 to August 12, 2014, which Aliant agreed to do. In addition to the billing corrections, we recommended that Aliant should pay ██████████ compensation in the amount of \$100.

██████████ accepted our recommendation.

### **Bell Aliant's 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. Aliant provided its objections to the CCTS on May 1 and May 11, 2015.

Aliant explains that it had already issued a refund cheque to ██████████ for the amount outlined in the Recommendation on March 6, 2015, and confirmed that no negative credit reporting had been completed regarding this issue. Aliant states that it believed that these actions should have brought full resolution to the complaint as it understood that these were ██████████ primary concerns.

Aliant also contends that its Terms of Service do not require it to compensate its customers for inconvenience, and it advised CCTS that it did not wish to set such a "precedent".

### **Analysis of the Objections**

As detailed in section 9.2 of CCTS' Procedural Code, in the course of an investigation CCTS may continue to seek to facilitate a mutually acceptable resolution of a complaint, and in doing so, may suggest that a service provider offer credits to bring resolution to a complaint. During this investigation, CCTS' Complaints Resolution Officer did so, and believed Aliant's offer to issue the credits and confirmation that ██████████ credit rating had not been affected would bring resolution to the billing and credit reporting aspects of the complaint.<sup>2</sup> She presented this proposal to ██████████ who informed her that in addition to Aliant's offer, he was seeking compensation for his inconvenience. She advised Aliant that ██████████ had indicated that its offer was insufficient to bring closure to the matter and thus could not

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<sup>1</sup> ██████████ declined to provide CCTS with consent to investigate with his new home phone service provider the reason for the multiplicity of port requests.

<sup>2</sup> These actions would have corrected the errors the investigation uncovered.

close the file informally without the agreement of both the service provider and the customer, according to CCTS' usual process.<sup>3</sup> She presented the request for compensation to Aliant, which declined to provide compensation for inconvenience to [REDACTED]. As such, CCTS was compelled to continue the investigation to completion, including consideration of [REDACTED] request for compensation.

As the investigation revealed that Aliant was wrong to have sent the file for collection, and as the result of the collection activity was inconvenience to [REDACTED], CCTS had a duty to consider his request for compensation in addition to the billing correction. CCTS acted within its authority under the Procedural Code in concluding that compensation for inconvenience was warranted, and in concluding that \$100 would be appropriate in the circumstances.

In support of its position that it should not be required to pay compensation to [REDACTED] for his inconvenience, Aliant referred to Sections 15.0 and 16.0 of its Terms of Service<sup>4</sup>, which state "(Section 15.1) *The company shall not be liable to any customer, user or other person for damages resulting from omissions, interruptions, delays, errors or defects in transmission, or failures or defects in Bell Aliant's facilities. However, in any such case, Bell Aliant shall, on request, make a refund of charges proportionate to the length of time the problem existed....* (Section 16.1) *Except with regard to physical injury, death or damage to customer premises or other property occasioned by its negligence, Bell Aliant's liability for negligence, including negligence with regard to intercept, reference of call service and emergency service from coin telephones, and also for breach of contract where the breach results in the negligence of Bell Aliant, is limited to the greater of \$20 and three times the amounts refunded or cancelled in accordance with 13.1<sup>5</sup> and 15.1, as applicable.*"

Aliant is correct in claiming that its Terms of Service, which govern its relationship with its customers, limit its liability to pay compensation to its customers for its own errors. However, section 12.2 (a) of the CCTS Procedural Code specifically authorizes CCTS to award compensation to a customer for any "loss, damage or inconvenience" arising directly from the facts of the complaint. And section 12.2 (c) expressly provides that the Commissioner may "exercise his or her discretion whether or not to apply any limitations of liability" in the service provider's Terms of Service. In this case, I am so exercising my discretion, for the reasons detailed in the Recommendation and summarized in this Decision.

## 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.

In my view, there is no merit to either Aliant's procedural argument (that it was improperly led to believe that applying certain credits would result in full resolution of the complaint) or its argument based on the limitations of liability in its Terms of Service have merit. Thus there is no basis upon which to conclude that the Recommendation was incorrect, and accordingly I confirm it in this Decision.

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<sup>3</sup> We acknowledge that Aliant proceeded to take the necessary corrective action, as we would often expect a service provider to do without delay when an error is identified, even if it does not guarantee a mutually acceptable resolution.

<sup>4</sup> <http://www.bellaliant.net/legal-regulatory/terms-of-service/general-terms-of-service>

<sup>5</sup> This section refers to directory errors and omissions which are not applicable to this incident.

Further to sections 11.7, 11.8, and 11.9 of our Procedural Code, [REDACTED] may accept or reject this Decision within twenty days of receipt. Should he decide to reject this Decision and pursue this complaint through any other forum, Aliant shall be fully released from the Decision.

A copy of our Procedural Code is attached for reference.

Sincerely,

Howard Maker  
Commissioner