



February 10, 2011

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

**Re: CCTS Complaint #64635 - Decision**

On January 21, 2011, we issued a Recommendation regarding the above complaint. Fido exercised its right to reject the Recommendation. As such, I am required to issue a Decision under Section 11 of our Procedural Code.

**Our Recommendation**

We reviewed Fido's Terms of Service ("Terms") and concluded that Fido's disconnection of [REDACTED] wireless service for 5 months, from March to August 2010, was not authorized under its Terms, as [REDACTED] was not in breach of her Fido agreement. To its credit, Fido had credited most of the fees it charged [REDACTED] during the period of her disconnection. As such, we recommended that Fido provide a credit of \$45.88 to [REDACTED] account, to offset the portion of the charges of the disconnection period that had remained uncredited, as well as 5 months of free wireless service (based on her current plan and features) for the inconvenience incurred.

**Fido's Objections**

Fido rejected our Recommendation. It clarified that it is not relying on its own Terms but rather on Rogers' Terms. Fido takes the position that what it describes as a "cross-default clause" in the Rogers Terms permitted it to disconnect [REDACTED] Fido service because her pre-existing Rogers home phone account had an unpaid outstanding balance.

Section 37 of Rogers' Terms states that:

"If we restrict, suspend, block or terminate your services or accounts:

We may also suspend, block or terminate, without notice or liability, your services under any

other agreement or account that you may have with us or a related Rogers entity (including accounts that may be in good standing);”

Therefore, it is Fido’s position that Rogers was within its rights to suspend without notice or liability the Fido services of [REDACTED], a customer of a Rogers entity (Fido), as an outstanding balance was owing on her Rogers account at the time.

It is Fido’s position that by refusing to consider the agreement that [REDACTED] had with Rogers or the cross-default clause, the Recommendation was flawed.

### **Our Analysis**

We have reviewed both the Fido and Rogers Terms in detail. We are familiar with the cross-default clause found in both sets of Terms and we offer no view as to the legality or propriety of the service providers including such a clause in their customer agreements. Our Decision considers only the appropriate application of the clause(s) to the facts of this case.

We are also mindful of the provisions of section 4.1 of our Procedural Code, which requires the Commissioner to *“make Recommendations and Decisions in relation to complaints with a view to determining whether the TSP Member reasonably performed its obligations pursuant to the applicable contract...”*. This provision appears to confine the Commissioner to a review of the specific contract in dispute between the customer and the service provider against which the complaint has been made. Thus we query whether we are even permitted to consider the provisions of the Rogers Terms in the context of this complaint.

Fido concedes that under its Terms it had no basis to suspend [REDACTED] service as she was not in default. It could only do so on the basis of the clause in Rogers’ Terms. So for the purposes of this analysis we examined the relevant clause in the Rogers Terms. Section 37 thereof (see above) purports to allow a “related Rogers entity” to suspend service in the event of a default under the Rogers agreement. The term “related Rogers entity” is undefined in the Terms. We note that the clause in the Fido Terms use somewhat different language – it allows enforcement of a debt to Rogers against an account at a “Fido affiliate”.

According to Fido, [REDACTED] account with Rogers was opened in September 2007, prior to the activation of her account with Fido. In our view, in order to reasonably enforce the Rogers clause against [REDACTED] the clause would have to clearly disclose to her, when entering into the agreement with Fido, that her Fido account would be subject to the clause. In our view the Rogers clause (and the Fido clause as well) are insufficiently clear to have constituted plain disclosure to [REDACTED] of the risk that her conduct on the Rogers account could impact her Fido account. Fido is not specifically identified in the Rogers Terms, and Fido has provided nothing to demonstrate that when activating her Fido account in December 2008, [REDACTED] knew or ought to have known that Fido was a “related Rogers entity” within the meaning of the cross-default clause. Although we are aware that there is a legal relationship between Rogers and Fido, that is not something that either company has advertised or made widely known. When a customer deals with Fido, (s)he deals directly with Fido in every respect. Even today, a search of Fido’s web site using the “search” tool discloses no information about any connection or relationship between the two service providers. There is no disclosure that entering into a contract with one could impact the customer’s service with the other.

For these reasons, we conclude that Fido did not reasonably perform its obligations pursuant to its contract with [REDACTED]. In the absence of doubt as to the correctness of the Recommendation, we hereby confirm it.

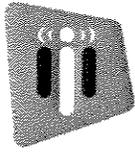
### **Our Decision**

Further to Section 11.6 to 11.9 of our Procedural Code, [REDACTED] must notify CCTS and Fido within twenty days whether she accepts this Decision. If she accepts it, Fido is required to implement it. If not, she may pursue such other remedies as she considers appropriate, and Fido will not be required to implement it.

A copy of the Procedural Code is attached for reference.

Sincerely,

Howard Maker  
Commissioner



January 21, 2011

[REDACTED]

**RE: CCTS Complaint # 64635**

We have completed our investigation of the complaint of [REDACTED] regarding the disconnection of her cell phone service by Fido.

**The Complaint**

[REDACTED] states that Fido disconnected her wireless service for 5 months, from March to August 2010, without any reason, as there was no outstanding amount owing on her account.

[REDACTED] requests compensation for the disconnection and to be released from her contract with Fido without having to pay a termination penalty.

**Fido's Position**

Fido states that it acted appropriately in disconnecting [REDACTED] wireless service because she had an outstanding balance on her Rogers home phone account<sup>1</sup>. Fido, being an affiliate of Rogers, relied on Section 37 of its Terms of Service, which in Fido's opinion allowed for the suspension of [REDACTED] wireless service with Fido. As such, Fido rejects all of [REDACTED] demands.

**Analysis**

To determine whether or not Fido had the right to disconnect [REDACTED] wireless service, we reviewed the relevant sections of Fido's Terms and Conditions ("the Terms"), which govern the use of the service.

Section 36 of the Terms state that:

<sup>1</sup> A copy of [REDACTED] Rogers' invoice for the month of March 2010 indicate an outstanding amount owing of \$539.93.

"we may restrict, block, suspend or terminate any or all of your services or accounts...without notice or liability to you if:

You are in breach of the agreement, including non-payment of your charges..."

We note the definition of "the agreement" in the preamble:

"Any Fido document describing the plans, features, services or products you have selected and other document incorporated by reference (collectively, "the Material") together with these Terms constitute our agreement with you (the "Agreement"). If there is any inconsistency between the Material and these Terms, these Terms will prevail."

The Terms specifies that the agreement is limited to Fido services. The definition of an agreement does not include agreements made with any of Fido's affiliates, including Rogers.

We note that at the time of the suspension, [REDACTED] Fido services were in good standing and Fido has not demonstrated that she had breached her Fido agreement.

Fido relies on Section 37 of its Terms, which it states allowed it to terminate [REDACTED] wireless service provided by Fido due to an outstanding balance on her Rogers home phone account. We reviewed Section 37, which states:

"If we restrict, suspend, block or terminate your Services or accounts:

You must pay any amounts owing;

We may also suspend, block or terminate, without notice or liability, your Services under any other agreement or account that you may have with us or a Fido affiliate (including accounts that may be in good standing);"

We disagree with Fido's interpretation of Section 37. In our view, that provision does not allow Fido to terminate [REDACTED] Fido services due to the non-payment of her Rogers services. The application of Section 37 by Fido is conditional upon Fido having the right to properly suspend services provided to [REDACTED] under her Fido agreement. Only in that case would Fido be entitled to take action in connection with the breach of an agreement with one of its "affiliates". [REDACTED] was not in breach of her agreement with Fido.

Fido has confirmed that the suspension of service occurred on March 9, 2010 and lasted until August 9, 2010<sup>2</sup>.

The total monthly charges for this period were \$375.62<sup>3</sup>. Although some of these charges were offset by the \$329.74 credit that was issued by Fido in August 2010<sup>4</sup>, there is still a balance of \$45.88 in charges for the period in question.

In our view the amount of that balance ought to be credited to [REDACTED] account. We are also of the view that some form of additional compensation is warranted in the circumstances.

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<sup>2</sup> information validated by Fido's agent over the telephone on December 14, 2010

<sup>3</sup> As confirmed by the review of the invoices submitted by Fido.

<sup>4</sup> As indicated on the August 21, 2010 invoice

[REDACTED] indicates that she would be satisfied with 5 months of free cell phone services to compensate her for all the inconvenience incurred<sup>5</sup>. We feel that this is reasonable in the circumstances.

### **Recommendation**

In light of all the above, we recommend that:

- Fido credit an additional \$45.88 to [REDACTED] account, as it was billed to her during the inappropriate suspension of her service;  
and
- Fido provide [REDACTED] with 5 months of free cell phone service (based on her current plan and any current features) for the inconvenience of not having a cell phone service during the period of March 9 to August 9, 2010, as the suspension was done contrary to the provisions of the Terms. At its discretion Fido may alternatively credit [REDACTED] account with the monetary value of this service.

Attached is a copy of the CCTS Procedural Code which might be helpful to the parties' understanding of the subsidiary stages of this recommendation. In particular, we refer [REDACTED] and Fido to sections 10 and 11.

Sincerely,

Philippe Mercurio  
Investigator

Enclosures

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<sup>5</sup> As confirmed during our phone conversations of December 14 and 31, 2010.