

March 31, 2011

[REDACTED]

CCTS #74582 - [REDACTED]

On March 21, 2011, we issued a Recommendation regarding the above complaint. Bell has accepted the Recommendation. However, [REDACTED] has exercised his right to reject our Recommendation. As such, I am required to issue a Decision under Section 11 of the Code.

**Our Recommendation**

In our Recommendation, we indicated that Bell did not provide any evidence to demonstrate that [REDACTED] consented to have his "Fun20 Clips" feature bundle removed from his account, and that in the absence of evidence to the contrary, we feel that it is likely that he did not consent to this feature bundle's removal.

We also noted that the CWTA Code of Conduct, to which Bell adheres, provides that when a service provider changes the material terms of its customers' contracts, the provider must either allow customers to remain on the unchanged contract or permit customers to terminate their service without any additional fees for termination. As the Fun20 Clips bundle was no longer available, the option of allowing him to remain on the unchanged contract was not possible.

Consequently, we recommended that Bell allow [REDACTED] to terminate his contract before its expiry without penalty. We also indicated that we believe that the recommended remedy is sufficient to provide full redress, and we did not see any basis upon which to recommend that Bell provide any additional compensation.

**[REDACTED] Response to our Recommendation**

[REDACTED] has rejected our Recommendation. 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.

In his response, [REDACTED] states that he does not accept the Recommendation because the ability to cancel his contract prior to its expiry without penalty is no longer beneficial to him as he only has one month left in his current term. He also rejects the Recommendation because additional compensation

was not provided. [REDACTED] had requested to be provided with additional compensation since Bell had removed the Fun20 Clips without his authorization, resulting in the permanent loss of that service and because of the excessive length of time it took to repair and replace his device.

Bell did not comment on [REDACTED] rejection or the reasons for it.

### **Our Analysis and 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.

We have reviewed [REDACTED] response and do not believe that substantial doubt as to the correctness of the Recommendation exists.

[REDACTED] made two requests: to be allowed to terminate his contract before its expiry without penalty, and to receive financial compensation because of the permanent loss of the Fun20 Clips service and the amount of time it took to repair and replace his device.

Our Recommendation provided [REDACTED] with the redress he was seeking with regard to the termination of service without penalty. The fact that the dollar amount associated with the penalty is no longer as high as it would have been 8-10 months ago is irrelevant.

With regard to [REDACTED] request for compensation:

#### Amount of time it took to repair/replace his device

We reviewed Bell's Terms of Service which govern the relationship between [REDACTED] and Bell and which state that: *"The performance, quality, or suitability of your Device and any accessories or other equipment provided to you in connection with the Service are subject to the manufacturers' warranties and the specifications of Bell for the Device and such equipment, and any extended warranty you may have purchased."*

Bell's Terms of Service do not provide [REDACTED] with a guaranty regarding the timeframe required for the repair or replacement of a device. We further note that the performance of the device is subject to the manufacturers' warranty which is an agreement between [REDACTED] and the manufacturer of his device, not between [REDACTED] and Bell. As such, even if the manufacturers' warranty did provide for a timeframe for repair, the warranty holds the manufacturer of the device responsible to meet the timeframes stated, and not Bell.

#### Loss of Feature Bundle

We understand that when Bell removed [REDACTED] Fun20 Clips service, it was lost permanently since Bell no longer provides this service. The fact that Bell changed [REDACTED] contract without his consent and can no longer provide him with his original service is the basis for our Recommendation that [REDACTED] be allowed to terminate with contract without penalty.

However, we also note that Bell replaced the Fun20 Clips with its Value Bundle and that the Value Bundle was provided at the same price (\$10/month) that [REDACTED] was paying for the "Fun20 Clips"

bundle. Therefore, no financial loss for which compensation is now required was incurred by [REDACTED]

Therefore, we are still of the opinion that the recommended remedy is sufficient to provide full redress, and we see no basis upon which to award additional compensation. As such, we see no basis upon which to change our Recommendation, which now becomes our Decision.

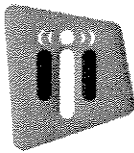
Further to Section 11.7 and 11.8 of our Procedural Code, [REDACTED] may accept or reject this Decision within 20 days of receipt. Should he decide to reject this Decision, he may pursue this complaint through any other forum and Bell shall be fully released from the Decision.

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

Sincerely,

Howard Maker  
Commissioner

Attachments    1. CCTS Recommendation  
                    2. CCTS Procedural Code



March 21, 2011

CCTS #74582 – [REDACTED]

**Subject: Results of our Investigation of your Complaint against Bell - RECOMMENDATION**

Complaint Details

- [REDACTED] states that on June 17, 2010, he brought his wireless device (Samsung M610) to a Bell retail store for repair;
- He states that as his phone was covered under an extended warranty, Bell provided him with a loaner phone; the loaner phone was not the same model as his Samsung device;
- He states that certain features that he had on the Samsung were not working on the loaner phone; he states that these features formed part of his contract and that they were no longer available on his account;
- [REDACTED] contacted Bell to resolve but was advised that his "Fun20 Clips" bundle was discontinued and no longer available and that as the such, the bundle could not be reapplied to his account;
- [REDACTED] continued to use the loaner until he eventually received a replacement handset as his original handset could not be repaired; Although he never specifies the date in which he finally received a replacement handset, [REDACTED] was upset with the amount of time it took to repair/replace his handset;
- He states that although his replacement has been satisfactory, Bell provided him with a refurbished handset;
- As a resolution, [REDACTED] requests that Bell either:
  - Reapply his original feature bundle to his account; or
  - Allow him to terminate his contract without penalty before its expiry as he feels that the removal of the bundle was a breach in contract on Bell's part; he also requests that Bell provide an unspecified amount of compensation.

Bell's Response

- Bell explains that when it provided [REDACTED] with a loaner phone, it gave him an HTC 6800 model as this was the device that was available at the time;
- It states that this device was not compatible with the video clips feature that formed part of Mr. Spudic's "Fun20 Clips" and that therefore, it applied its most similar feature bundle "Value Bundle" at the same price point [REDACTED] was paying for his "Fun20 Clips" bundle;
- Bell did not provide any evidence to demonstrate that he consented to the application of the new bundle;
- It confirms that as the "Fun20 Clips" bundle has been discontinued, it can no longer be reapplied to [REDACTED] account now that he has received his replacement phone
- Bell confirms that the video clips feature has evolved into the Bell's "Media Service Pack", which Bell offered to provide to [REDACTED] in a bundle at the same price as the "Fun20 Clips"; [REDACTED]

- declined this option; Bell states that therefore, the "Value Bundle" still remains on account;
- Bell then proceeded to offer several different options to resolve complaint – all of which were declined;
  - It offered:
    - A \$200 Hardware Upgrade credit towards the purchase of a new phone in exchange for the acceptance of a new 3 year contract;
    - A new monthly service plan that is not normally available to all subscribers;
    - Several discounts on other calling features;
  - Although confirms that he appreciates that Bell provided him with as many offers/options as it did, he was not satisfied with the offers/options as they did not include either of his requested resolutions;
  - Bell apologized for the removal of the feature and for the length of time it has taken to repair/replace the phone; at the time Bell responded to the complaint, had not yet received his replacement handset ;
  - Bell states that as per its Terms of Service, its obligation for a failure with equipment is to fulfill the warranty outlined by the manufacturer (Samsung);
  - Bell did not comment on whether the original feature "Fun20 Clips" formed part of contract, nor did it provide any documentation to demonstrate what the contract provided.

#### Analysis

We have fully examined complaint as well as Bell's response to the complaint. We note the following pertinent details:

- Although Bell provided an explanation of how the removal of the bundle occurred and offered to resolve his dispute, Bell did not comment on whether the bundle formed part of contract, did not provide any documentation to demonstrate what the contract provided, and did not confirm that consented to have his "Fun20 Clips" removed from his account;
- Therefore, in the absence of evidence to the contrary, we feel that it is likely that the "Fun20 Clips" did form part of the contract and that did not consent to its removal;
- The Canadian Wireless Telecommunications Association's Code of Conduct, to which Bell adheres, states that:
  - *"We do not change the material terms of our contracts with customers, without giving them at least 30 days' notice. In the case of such material changes that are unfavourable to customers, we either give them the right to terminate the contract without any additional fees for early termination, or allow them to remain on the unchanged contract. This does not apply to changes that are required by law or regulation or changes to those services and features that do not have a fixed term commitment."*
- Since we've determined that the "Fun20 Clips" was likely part of contract, Bell must either allow to remain on his unchanged contract or allow him to terminate his contract without penalty since the change was unfavourable to him;
- Furthermore, there is no evidence to demonstrate that Bell provided with any advance notice of the removal of the feature when the loaner phone was provided.
- Bell offered to provide with a similar feature, however he had stated that this feature does not provide all of the service that the "Fun20 Clips" provided;

- Since Bell has informed us that the “Fun20 Clips” has been discontinued, the option of allowing him to remain on the unchanged contract is not possible;

### Conclusion

- In light of the above, we recommend that Bell allow [REDACTED] to terminate his contract before its expiry without penalty;
- 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;
- Given the above factors, we believe that the remedy provided to [REDACTED] is sufficient to provide full redress, and see no basis for an award of additional compensation;
- Attached is a copy of the CCTS Procedural Code which contains important information with respect to the recommendations made by CCTS, including information about acceptance of recommendations by a complainant and a telecommunications service provider. In particular, we refer [REDACTED] and Bell to sections 10 and 11.