



HOWARD MAKER COMMISSIONER

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P.O. Box 81088, Ottawa, ON K1P 1B1

April 5, 2011

CCTS #84523- [REDACTED]

On March 21, 2011, we issued a Recommendation regarding the above complaint. Bell has accepted the Recommendation. However, [REDACTED] has exercised her 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 a three year contract for her Turbo Stick with a limited use plan. In the absence of evidence to the contrary, we had no choice but to conclude that [REDACTED] claims that her data plan was unlimited and was provided on a month to month basis are correct.

[REDACTED] also claimed that Bell's data usage monitoring tool makes use of her bandwidth without her knowledge. Therefore this additional bandwidth should not be counted towards her internet consumption. Based on the information presented to us we had no reason to believe that the Turbo Stick used a significant amount of bandwidth or caused additional bandwidth charges to be incurred.

We recommended that Bell credit all of [REDACTED] excess data usage, from the date of activation of the Turbo Stick until she was made aware that he data plan was not unlimited on September 27, 2010. Furthermore, in the event that [REDACTED] wishes to cancel her service, Bell should allow her to cancel with no penalty.

[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 her response, [REDACTED] stated that her primary reason for rejecting our Recommendation was because she disagreed with our views on her allegations that Bell is using her bandwidth to monitor her data usage. [REDACTED] felt that it is "necessary for CCTS to make a strong statement which condemns Bell for not deducting its own traffic prior to sending out customer bill."

██████████ has asked CCTS to consider the following resolution:

- 1) Bell should provide her with a negotiated fee for unlimited usage of her Turbo Stick for \$70 per month plus taxes.
- 2) Continue her contract with Bell deducting all of its own traffic from her bill prior to it being issued to her.

Our Analysis and Decision

We have reviewed ██████████ response. Although we can appreciate her concerns, ██████████ has not provided us with any new information concerning the merits of her complaint.

With respect to her requested resolution:

- 1) In our Recommendation we noted that ██████████ was made aware on September 27, 2010 that she was, in fact, not on an unlimited usage plan for her Turbo Stick. In fact, we have confirmed that Bell does not offer an unlimited usage plan for Turbo Stick customers. Section 4.3 of our Procedural Code says that: "Although the Commissioner may consider a TSP Member's policies or operating practices, no Recommendation or Decision may direct or require a TSP Member to change any such policy or practice." CCTS cannot require Bell to provide ██████████ with a plan that does not exist.
- 2) When activating the Turbo Stick ██████████ agreed to be bound by Bell's Terms of Service. Section 11 of the Terms states: "When your Device sends, accesses, browses, streams, download or uploads data, content or applications, you must pay additional data transport, roaming and long distance charges." Based on this provision we see no basis for waiver or deduction of any additional data charges.

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 previously stated, ██████████ has not provided us with any new information nor has she raised any substantial doubt as to the correctness of our Recommendation. We remain of the view that the remedy provided to ██████████ is sufficient to provide appropriate redress, and see no basis for any further remedy.

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

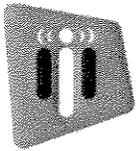
A copy of the CCTS Procedural Code has been attached for ease of reference.

Sincerely,



Howard Maker
Commissioner

Attachments 1. CCTS Recommendation
2. CCTS Procedural Code



CCTS
COMMISSIONER FOR COMPLAINTS
FOR TELECOMMUNICATIONS SERVICES

MICHAEL-JOHN DI ROCCO COMPLAINTS RESOLUTION OFFICER

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P.O. Box 81088, Ottawa, ON K1P 1B1

March 21, 2011

Via e-mail: [REDACTED]

CCTS # 84523

Subject: Results of our Investigation of your Complaint against Bell

Complaint Details

- [REDACTED] claims that Bell is defrauding her and all Turbo Stick clients because the data usage monitoring service which it uses, Novatel Wireless, uses an executable file, which is a component of NovaCore SDK, to set up a server on the customer's computer. This is used to monitor the client's usage, but also, as a server, it accesses the internet continuously, adding to the client's data usage and the client is forced to pay for it.
- She also claims that Bell is overcharging her for her monthly rate. When she was in the Bell store on June 9, 2010, she was given a plan for \$70 (plus taxes) per month for unlimited usage which is not being respected because she is being billed for her usage.
- Furthermore, [REDACTED] says she never agreed to a three year contract and would like to have the option to end her service with Bell with no penalty upon notice and return of the Turbo Stick.
- [REDACTED] would like her bills reduced to reflect \$70 (plus taxes) per month and to be provided with the service on an ongoing basis for \$70 per month for unlimited usage.

Bell's Response

- As a goodwill gesture, Bell applied a credit of \$434.52. This reduced her bill to \$100.
- A discussion with technical support confirmed that the usage made through her account is valid. Bell said that Novotel is only the manufacturer of the Turbo Stick and does not transfer information to Bell. It did not respond to the allegation that the Turbo Stick, itself, is using data.
- [REDACTED] was informed to call technical support to learn how to monitor her data usage.

Analysis

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

- Based on the information present, CCTS has no reason to believe that the Turbo Stick, itself, uses significant amounts of data or causes charges to be incurred for anything other than client usage.
- We reviewed Bell's call notes and saw a note dated September 27, 2010 stating: "cx just got wireless didn't know would get charged per mB edu customer went over her MB over 10 GB edu customer pp is as follows tier 1 is 35 for 500mb edu tier 2 is 45 for 1gb edu tier 3 is 1gb-3gb edu tier 4 is 3-5gb edu tier 5 is 70 beyond 5gb + charged are .5cents/MB..." CCTS interprets this as meaning that [REDACTED] was unaware that she would be charged for excess usage. It appears, from the note, that the Bell agent she spoke with informed her of her plan, its limits and billing,

as well as charges for excess usage. CCTS believes that [REDACTED] was made sufficiently aware, on this date, that she did not have unlimited usage on her Turbo Stick plan as she believed.

- It is Bell's responsibility to demonstrate that it reasonably performed its obligations towards the client by providing its position and supporting documents. In this case it failed to do so in several aspects:
 - [REDACTED] alleges to never have agreed to a three year contract. Bell failed to provide evidence of consent to a contract.
 - [REDACTED] alleges that her Turbo Stick plan was for unlimited data usage. Bell failed to provide evidence that her plan's data usage was limited.

In the absence of evidence to the contrary from Bell, we have no choice but to conclude that [REDACTED] claims that she was to have a \$70 per month price plan with no term are .

Conclusion

In light of the information presented to us, we recommend that Bell credit all of [REDACTED] excess data usage, from the date of activation of the Turbo Stick until she was made aware of the details of her plan on September 27, 2010. Furthermore, in the event that [REDACTED] wishes to cancel her service, Bell should allow her to cancel with no penalty.

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.