

December 23, 2010

[REDACTED]

RE: CCTS File Number S9885

On October 29, 2010, we issued a Recommendation regarding the above complaint. [REDACTED] accepted the Recommendation. However, Bell exercised its right to reject it. I am therefore required to issue a Decision under Section 11 of our Procedural Code ("the Code").

Our Recommendation

After investigating [REDACTED] complaint, we determined that Bell's Terms of Service ("the Terms") do not obligate [REDACTED] to use Bell's modem, nor do they require him to rent one. We indicated that if Bell's modem was not being used, we see no reason for Bell to bill the "modem rental fees". That being said, we also noted to [REDACTED] that Bell would be unable to provide technical support or troubleshoot if [REDACTED] is not using Bell's modem. Therefore, if [REDACTED] chooses to use his own modem he does so knowing about this limitation. The full details are set out in the Recommendation.

We recommended that Bell allow [REDACTED] to return the provided modem and that Bell cease billing the monthly rental fee and waive any rental fees charged to date. A copy of our Recommendation is attached.

Bell's Objections

Bell 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. Rather than merely objecting to our Recommendation and providing its reasons, Bell provided a large amount of information, including supporting documents, which ought to have been provided in its initial response to [REDACTED] complaint. The review and analysis of this material by CCTS, as well as our review thereof with [REDACTED] have contributed both to the delay in the issuance of this Decision and the length thereof.

In its response, Bell explains that the agreement between Bell and any given customer for the provision of Internet Service is comprised of two parts: The Terms and the Internet Service plan ("the Offer") selected by the customer. It explains that the Terms are drafted broadly in order to provide flexibility to design a variety of different offers that may include a one-time modem rental fee, monthly modem rental fees or even the option to purchase a modem from Bell outright, should Bell decide to make such offers available to customers.

Bell states that the Terms are only one component of the agreement and are to be read together with the Offer. Bell's position is that under Section 2 of the Terms, if a modem is rented to the customer as part of the Offer selected and agreed to by the customer, modem rental fees may apply.

Prior to the issuance of our Recommendation, Bell provided nothing to demonstrate that [REDACTED] had selected and agreed to an Offer, nor did it demonstrate that the modem rental fees were part of the Offer. Bell has now provided material that it says supports such a conclusion.

[REDACTED] was an existing Bell DSL Internet service customer. The evidence provided to us shows that on March 26, 2010, [REDACTED] telephoned Bell and asked to upgrade his service to the Fibe 6 service. His existing service was being provided in a bundle with long distance telephone service. In order to upgrade [REDACTED] to Fibe 6, Bell cancelled his existing account and created a new one. A new modem was sent to him and he was also provided with a new user ID and password. Bell explains that in order to access the Fibe 6 service, [REDACTED] would have had to proceed through Bell's Walled Garden.

Bell further explains that when activating service through its Walled Garden, the user is presented with a host of information that includes the Terms and the Offer specific to the user. Bell has provided us with a template copy of the Walled Garden content to demonstrate what [REDACTED] would have seen when he went through the process. It also provided us with the Offer details specific to [REDACTED] plan. In order to complete the activation process, the user must agree to the Terms and the Offer by clicking on the "I agree" button. Bell's database records demonstrate that on March 31, [REDACTED] activated his service by completing the Walled Garden process. Bell explains that a user cannot access the internet on Bell's network until their service is activated in this manner.

[REDACTED] Response to Bell's Objections

Due to the fact that this new information was provided to us after the Recommendation was issued, we provided [REDACTED] with an opportunity to review and respond to it.

[REDACTED] states that at no point did he see or agree to any of the Walled Garden content prior to the activation of his service. He states that he has not made a change to the modem/router/network used with his original Bell DSL service other than assigning the new username and password Bell sent him.

[REDACTED] also noted that the Walled Garden documentation does not specifically say that the modem rental fee is mandatory. He states that the documents only show that he agreed to the Terms.

Analysis

Based on our review of the new material provided by Bell, and our discussions with [REDACTED], we are persuaded that [REDACTED] could not have accessed the Fibe 6 service without going through the Walled Garden process, which Bell's records show that he did on March 31.

The question for determination is what [REDACTED] agreed to when he completed that process and clicked on the "I Agree" button. Bell has provided template documentation to indicate that he would have been presented with the Terms, and then with the Offer. According to Bell, the Offer was as set out in the attachment to this letter.

The Offer provides that the "Current Regular Monthly Rate" for the Fibe 6 service is "\$45.90 including \$3.95/month modem fee". We read this to mean that [REDACTED] agreed to pay \$45.90 per month for the Fibe 6 service. A specific portion of the fee attributable to the modem rental is set out, but the Offer does not indicate that it is optional. If [REDACTED] is permitted to return his modem and deduct the specified cost thereof, he would be paying only \$41.95 per month, which does not accurately reflect the agreement of the parties.

This interpretation is supported by notes provided by Bell of [REDACTED] call of March 26. The notes reflect the agreement between [REDACTED] and the Bell representative on the issue of pricing as follows: "Pricing : \$45.90 less \$ 5 off for 1-12 mos less \$5 bundle disc = \$35.90 + tax"

Based on the foregoing, we conclude that [REDACTED] agreed to pay \$45.90 for the Fibe 6 service (less promotions and discounts). He has never disputed this. The rental of a modem is part of the service offered to [REDACTED] as part of this price. Although he need not make use of the modem, there is no contractual or other basis to relieve him from the responsibility of paying \$45.90 per month. There is no indication in the Offer, in the notes, or in the Terms (when read in context) that the cost of renting the modem was intended to be severable from the overall cost of the service.

Even if [REDACTED] somehow managed to connect to the Fibe 6 service without going through the Walled Garden, the same analysis applies. He is being billed the amount that he agreed to pay when he subscribed to the service by telephone on March 26.

Decision

On the facts of this case, the available evidence supports the conclusion that the cost of the modem rental fee is built into the price that [REDACTED] agreed to pay, and thus there is no basis upon which we can conclude that it is an "a la carte" option which he can refuse to pay if he chooses not to make use of the modem. We therefore cannot require Bell to provide the remedy sought by [REDACTED]

This Decision replaces the Recommendation issued on October 29, 2010. Further to Sections 11.7 and 11.8 of the CCTS Procedural Code, [REDACTED] may accept or reject this Decision within 20 business days. Should [REDACTED] decide to reject this Decision, he may pursue this matter through any other forum and Bell shall be fully released from the Decision.

A copy of the Procedural Code is attached for ease of reference.

Sincerely,

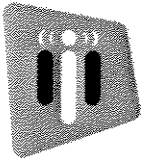


Howard Maker
per DR

Howard Maker
Commissioner

Enclosures

1. Bell "Offer"
2. CCTS Recommendation
3. CCTS Procedural Code



CCTS
COMMISSIONER FOR COMPLAINTS
FOR TELECOMMUNICATIONS SERVICES

Danny Raymond
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October 29, 2010

[REDACTED]

RE: CCTS File Number 59885

We have concluded our investigation of the complaint of [REDACTED] concerning his Bell internet service.

The Complaint

[REDACTED] recently upgraded his High-Speed internet service to Bell's Fibe service. When he upgraded his service, Bell provided him with a new modem. [REDACTED] explains that he does not require this modem in order for the Fibe service to function as he is currently using a modem that he owns and had in his possession before the upgrade occurred. Consequently, he would like to return the newly provided modem to Bell so he can avoid the modem monthly rental fee of \$3.95.

[REDACTED] states that Bell declined his request. He says that Bell told him that its Internet Service Agreement indicates that the customer agrees to pay the monthly modem rental fees in addition to the monthly service charges at all times.

[REDACTED] states that he reviewed the agreement and could not find a section of the document that precludes him from returning the modem or that precludes Bell from waiving the fee. [REDACTED] service is currently being provided on a month-to month basis as he is not committed to a fixed term contract.

Bell's Position

Bell confirms that it declined [REDACTED] request as the rental fee is clearly outlined in its Internet Service Agreement and that the agreement applies to all users of its internet plans, regardless of whether they are provided service under a fixed-term contract or on a month-to-month basis.

Specifically, Bell states that Section 3 (Fees and Charges) of the agreement, which is also referred to as the Terms of Service (“Terms”), outlines that users are responsible for any modem rental fees and that Section 20 of the agreement outlines that should it rent a modem to the customer, modem rental fees may apply. Bell also highlights that [REDACTED] spoke with one of its online representatives who explained that the fee cannot be removed from his account even though he is not using the new modem that was provided.

As [REDACTED] service is currently being provided on a month-to-month basis, Bell explains that he is entitled to cancel his service at any time without penalty, provided that he give Bell 30 days notice of account termination.

Analysis

We analyzed Bell’s Terms of Service (“the terms”) and Section 3 indicates that:

“You agree that the Service is provided to you subject to your payment of, and you shall pay, the monthly service rates, any applicable usage charges, installation fees and/or activation fees, the Service Modem Fees (defined in Section 20), if any, and other fees and charges, if any, together with all applicable taxes and charges...”

In addition, Section 20 of the terms indicates that:

“If a Service Modem is rented to you by Your Service Provider, separate and additional Service Modem fees, as described to you prior to such rental, may apply (the “Service Modem Fees”).”

[REDACTED] indicates that he read both of these sections and that his interpretation of them is different than Bell’s. He states that neither section actually requires him to use Bell’s modem and that neither section indicates that a fee applies if he is not using Bell’s rental modem.

We agree with [REDACTED] interpretation that neither of these sections requires him to use a rented modem provided by Bell. Rather, its Terms of Service state that if a modem is rented, “modem rental fees” may apply. We interpret this to mean that the rental of a modem is optional, and that modem rental fees will apply if the customer chooses to rent a modem. If Bell’s intent was to require that its customers use its modems on a rented basis, it could easily have drafted the Terms to so stipulate.

Bell also confirms that customers may use their own equipment with its internet service. However, it explains that it will not be able to troubleshoot or provide technical support should a customer choose to use equipment that was not provided by Bell. We feel that this is a reasonable course of action considering that Bell cannot be expected to maintain and monitor service being provided through equipment with which it is unfamiliar and which it may not be able to access. We also understand that technical support is provided as part of a customer’s

subscription to internet service and that if a customer opts to use his own equipment, Bell is prevented from providing this aspect of its service.

Recommendation

The Terms do not obligate [REDACTED] to use Bell's modem, nor do they require him to rent one. Consequently, if Bell's modem is not being rented or used, we see no basis upon which Bell can bill the "modem rental fees". Therefore, we recommend that Bell allow [REDACTED] to return the provided modem and that Bell cease billing the monthly rental fee and waive any rental fees charged to date.

That being said, we have determined that Bell will be unable to provide technical support or troubleshoot if [REDACTED] is not using Bell's modem. Therefore, if [REDACTED] chooses to use his own modem he does so knowing about this limitation. Should he experience problems with his internet connection he will therefore be required to seek out his own technical assistance at his own expense.

Attached is a copy of the CCTS Procedural Code (Code). The Code contains important information with respect to recommendations made by CCTS, including information about acceptance of recommendations by a complainant and telecommunications service provider. In particular, we refer [REDACTED] to Sections 10 and 11.

Sincerely,

Danny Raymond