



January 28, 2021

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

[REDACTED]
Comwave Network Inc.
response@comwave.net

Re: CCTS Complaint #1039930A

On October 14, 2020, we issued a Recommendation regarding the above complaint. As Comwave rejected our Recommendation, I am required to issue a Decision under Section 13 of our Procedural Code (“the Code”).

Our Recommendation

[REDACTED] alleged that Comwave blocked the porting of his business phone numbers to a competitor, suspended/disconnected his services without his consent, applied an illegitimate Early Cancellation Fee (ECF) to his account, and continued to bill him monthly service charges following the suspension.

Following investigation, we concluded that Comwave failed in its obligations to [REDACTED] [REDACTED]. In particular, we concluded that there was no proper basis for Comwave to block the porting of the phone numbers, that Comwave had no proper basis for disconnecting the services (particularly in the face of [REDACTED] [REDACTED] specific instructions not to do so), that it was not entitled to charge the ECF in question, and that it should not have continued to bill monthly fees to the customer following its disconnection of the services. We recommended that Comwave cancel the account, credit the disputed ECF and all charges billed after February 10, 2020, and correct any derogatory credit reporting which may have resulted from this dispute.

Objection to the Recommendation

Under Section 13 of the Procedural Code, a party may reject a Recommendation. That party is required to explain why he or she considers it to be unacceptable or inappropriate. The Commissioner is then required to determine whether there is substantial doubt as to the correctness of the Recommendation.

CCTS issued its Recommendation on October 14, 2020, and [REDACTED] accepted it the next day.

However, Comwave rejected the Recommendation on October 20, 2020. In its objection, Comwave indicated that our Recommendation was “biased and not based on law”.

Specifically, Comwave stated that CCTS did not provide a legal explanation as to why the business contract between Comwave and [REDACTED] was void. Comwave maintains that a valid contract exists between the involved parties.

In its objection to the Recommendation, Comwave informed us for the first time that it had provided equipment to [REDACTED] for use with the service, that had yet to be returned. Comwave also informed us that it had filed a Statement of Claim in the Ontario Small Claims Court against [REDACTED] that same day. It further alleged that the CRTC has historically suspended its decisions when complaints were brought to court and asked that we do the same with this complaint: “The CRTC has a long-standing position that when matters are before the courts, they will suspend decisions such as to allow the courts to hear the case and make a determination”.

Comwave also conceded that although it claimed during our investigation that the blocking of the porting request was legitimate, it now recognized that [REDACTED] should have been allowed to port his services to a competitor upon request.

Analysis of the Objection

The Small Claims Court Proceedings

Comwave suggests that CCTS end its investigation of the complaint without issuing this Decision, to allow the legal proceedings it has initiated to take their course. Comwave alleges that the Recommendation is biased and has no legal standing. However, it has not provided evidence to explain the reason(s) why it believes the Recommendation to be biased.

Section 2.2.(f) of the CCTS Procedural Code states that the Commissioner shall “provide the services of his or her office in a non-legalistic manner”. Section 16.1 of the Code states that “the discussions, documents and correspondence of the Customer, the Participating Service Provider, and the Commissioner created for, arising from or in relation to a complaint shall be deemed to be without prejudice and shall not be disclosed or used in any subsequent legal or other proceeding”. It is clear from these provisions that the CCTS and the court are two separate and independent entities, each with its own mandate. As such, the CCTS will not suspend its own process simply because Comwave

has decided, at the very final stage of the CCTS investigation of this complaint, to file a claim in court¹.

During the course of our investigation, Comwave claimed on multiple occasions that it had commenced legal proceedings against [REDACTED] but failed to provide copies of the legal documents as we requested. Following the issuance of our Recommendation on October 14, 2020, Comwave requested a meeting with CCTS to discuss this matter. The meeting took place on November 9, 2020. During this meeting, Comwave repeated the claim that it had previously commenced legal proceedings against its customer, and CCTS granted Comwave's request for an extension of time to allow Comwave to provide copies of the court documents, as well as other information and documents supporting its objection to the Recommendation. Comwave provided a written response to CCTS on November 18. This response demonstrated that Comwave used this extension of time to commence a Small Claims Court action against [REDACTED] which it did on November 16, 2020.

In my opinion, there is no basis for Comwave to request that CCTS stay the final phase of this investigation – the issuance of this Decision – pending the outcome of its Small Claims Court action. The following sections of this Decision detail our analysis of Comwave's objection to the Recommendation, concluding with my final Decision.

The Blocked Porting Request, Service Suspension, Early Cancellation Fees and Monthly Charges

Pursuant to the Procedural Code and the standard of review set out in section 4.1 thereof, CCTS investigated [REDACTED] complaint in order to determine whether Comwave reasonably performed its obligations and followed its usual policies and operating procedures in its dealings with the customer.

Comwave claims that CCTS failed to consider a valid 3-year term contract between it and [REDACTED] it in its Recommendation. Comwave previously indicated that the customer's breach of this fixed-term agreement authorized it to block the port request, suspend the account, and to charge Early Cancellation Fees and monthly service fees following the account suspension.

The CCTS did review the signed contract dated January 22, 2019, as well as the Terms of Service that formed part of the contract² ("the original Terms"). The contract in question includes 1 Premium

¹ Had legal proceedings been commenced by either party prior to the submission of the complaint to CCTS, section 10.2 of the Procedural Code would have prevented CCTS from accepting the complaint for investigation.

² Comwave's Terms of Service changed since [REDACTED] signed the contract in January 2019. CCTS took into account the Terms that were in effect when the contract was signed. CCTS' reason for doing so is outlined later in the Decision.

HPBX line with 3 add-ons (unlimited Canada/US calling, fax to email feature and a toll-free number) on a 3-year term. Both parties agree that a few months later, [REDACTED] added 3 additional HPBX lines to his account. Although [REDACTED] believed that the additional lines were added on a month-to-month basis, Comwave claimed that they were also bound to fixed terms. We asked Comwave on numerous occasions to support its claim by demonstrating to us that the customer consented to be bound to 3-year contracts for these additional lines. Comwave referred us to its Business Terms of Service during our review process. It did not inform us, but we discovered, that the Business Terms of Service provided to us by Comwave differ from those attached to the original contract signed by [REDACTED] in January 2019. Although the new version of the Business Terms of Service (“the revised Terms”) states that all terms and conditions are subject to change at the sole discretion of Comwave, without any prior notice to its customers, we found no such provision in the original Terms. In fact, multiple sections of the revised Terms are entirely different, including section 1.07, which allows Comwave to suspend a customer’s service if it “[...] reasonably believes that the contact (sic) will not be honoured by the Customer”. As the original Terms did not permit Comwave to make unilateral changes to the Terms, [REDACTED] could not have consented to the changes. Comwave was unable to provide any other evidence of [REDACTED] consent to the revised Terms, but was able to demonstrate [REDACTED] consent to the original Terms at the time of signup. Accordingly, we relied on the original Terms in our analysis of the complaint. Our Recommendation was that the services for which [REDACTED] originally subscribed were indeed subject to 3-year terms, but that Comwave could not demonstrate that [REDACTED] consented to add the additional lines on a 3-year term. As a result, we maintain our previous determination that [REDACTED] cannot be held responsible for Early Cancellation Fees (as well as continuing monthly service fees) for these additional lines.

Both parties agree that Comwave blocked [REDACTED] porting attempt in late January 2020 and that, in spite of [REDACTED] specific request that Comwave not suspend his services (which it had threatened to do), Comwave did suspend the account on February 10, 2020. Comwave states that it did so because “the customer was assessed as credit risk”. However, the original Terms do not allow Comwave to suspend an account based on credit risk. We also found no evidence of a suspension request from [REDACTED] in fact, the reviewed information and documentation shows that he expressly asked Comwave not to terminate his services. In our considered view, it is not reasonable for [REDACTED] to be held liable for the ECFs on the added lines, given the absence of evidence that he consented to add them on a 3-year term. And we see no reason to hold him liable for the monthly charges incurred after the account suspension, considering that Comwave had no contractual grounds to suspend the service.

The same analysis applies to Comwave’s blocking of [REDACTED] porting request. As detailed in our Recommendation, Comwave’s actions violated the regulatory standards for porting services between providers. As described above, Comwave has now conceded that it should not have blocked the porting request.

Finally, regarding Comwave's claim that it provided [REDACTED] with equipment that remains in his possession, we brought the matter to [REDACTED] attention and he confirmed on October 22, 2020, that he does in fact still have the provider's hardware. He is willing to return all pieces of equipment in dispute to Comwave.

Decision

Section 13.2 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.

Comwave has not provided any information, document or analysis that create any doubt as to the correctness of the original Recommendation.

However, although we note that [REDACTED] was not able to provide any supporting documentation to substantiate his claims of direct losses³, CCTS is of the view that [REDACTED] suffered significant inconvenience resulting from Comwave suspending his business services, which we have concluded it did without authority. For this reason, I am slightly modifying the Recommendation with the added provisions that Comwave compensate him for this inconvenience⁴ and that all equipment belonging to Comwave in [REDACTED] possession be returned to Comwave.

In summary, my Decision is that [REDACTED] will promptly return all Comwave's equipment in his possession to Comwave at his own expense. Comwave must:

- Cancel the account immediately;
- Credit the Early Cancellation Fees, the post-February 10, 2020, monthly service charges, and the Late Payment Fees on [REDACTED] account which stood at \$6,598.47 on November 4, 2020⁵.
 - and
- Correct all negative reporting (if any) to the credit bureau regarding this account.

³ As mentioned in the Recommendation issued on October 14, 2020.

⁴ As permitted under section 14.2 of the Procedural Code.

⁵ Date of the last invoice received by [REDACTED]. We note that the outstanding balance may have changed since then. We expect all charges billed since the suspension of the services to be waived. We recognize that requiring Comwave to waive the full amount owing means that Comwave does not receive the benefit of the ECF that we concluded it is entitled to charge on the original line (which we estimate at \$286.80). This amount represents our assessment of the amount which is to be credited by Comwave to compensate [REDACTED] for his inconvenience.

Further to Sections 13.4, 13.5 and 13.6 of our Procedural Code, [REDACTED] may accept or reject this Decision within 20 days of receipt. We ask that he inform us of his decision as soon as possible. If [REDACTED] accepts this Decision, it becomes binding upon Comwave (Procedural Code, section 13.3).

Should [REDACTED] decide to reject this Decision, he may pursue this complaint through any other forum and Comwave shall be fully released from the Decision.

A copy of our Procedural Code is attached for reference.

Sincerely,

Howard Maker
Commissioner