



## Telecom Decision CRTC 2010-184

Ottawa, 25 March 2010

### **On Call Internet Services Ltd. – Application for urgent and expedited relief from service suspension and disconnection by TELUS Communications Company**

File number: 8661-O40-200911778

*In this decision, the Commission determines that On Call Internet Services Ltd. (On Call) and TELUS Communications Company (TCC) should adhere to the terms of the 14 February 2008 letter agreement (the agreement) or amended terms agreed upon by both parties until the arbitrator and the British Columbia Supreme Court render a decision with regard to the agreement, or the parties agree to annul the agreement.*

*In addition, the Commission directs TCC, as of the date of this decision, to process new service orders from On Call without requiring a deposit as long as On Call meets its obligations specified in the agreement or an amended agreement agreed upon by both parties.*

### **Introduction**

1. The Commission received an application by On Call Internet Services Ltd. (On Call), dated 19 August 2009, requesting urgent and expedited relief from service suspension and disconnection by TELUS Communications Company (TCC).
2. On Call and TCC have been engaged in a billing dispute since 1998. On 14 February 2008, they signed a letter agreement (the agreement) in an attempt to resolve this dispute. However, on 31 July 2009, TCC issued to On Call a notice of its intention to terminate services provisioned to On Call (the notice of termination) unless specified sums were paid into a trust fund contemplated by the agreement (the trust fund).
3. In reply to the notice of termination, On Call filed the above-mentioned application. Specifically, On Call requested that the Commission direct TCC to withdraw the notice of termination, process new service orders from On Call, release the funds that had accumulated in the trust fund, and settle the billing dispute. On Call also requested that the Commission conduct a public hearing with regard to the dispute and file its decision with the Federal Court of Canada.
4. The Commission received comments from TCC regarding On Call's application. The public record of this proceeding, which closed on 7 December 2009, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings" or by using the file number provided above.
5. The Commission has identified the following issues to be addressed in its decision:
  - I. Should On Call and TCC abide by the terms of the agreement?
  - II. Should the Commission grant the interim relief sought by On Call?
  - III. Can TCC require a deposit from On Call?

## **I. Should On Call and TCC abide by the terms of the agreement?**

6. The agreement sets out the terms for the following:
  - the monthly payment of a certain amount of money by On Call into the trust fund;
  - the payment of amounts undisputed by On Call from the trust fund to TCC;
  - the maintenance of a balance in the trust fund representing amounts disputed by On Call; and
  - the continued provision of services by TCC to On Call based on On Call meeting the terms of the agreement.
7. On Call submitted that it signed the agreement under threat by TCC to terminate its services. On Call added that the agreement does not comply with the regulatory requirements. For example, On Call argued that the amount of money held in trust is more than TCC could require as a deposit.
8. The agreement also included a provision that both parties would go to arbitration to resolve their dispute. On Call claimed that the arbitrator did not have jurisdiction to conduct the arbitration proceeding and lacked the impartiality to properly conduct such a proceeding. On Call stated that it had filed a petition with the British Columbia Supreme Court to challenge the arbitration proceeding.

### **Commission's analysis and determinations**

9. The Commission considers that the agreement is a private, commercial agreement concluded between two sophisticated business entities in an effort to resolve their dispute. The Commission notes that the arbitrator ruled (i) that there is a valid arbitration clause in the agreement and (ii) that the arbitrator has jurisdiction to hear the dispute. The Commission also notes that the validity of the agreement, including the arbitration proceeding, is before the British Columbia Supreme Court.
10. In the circumstances, the Commission considers that since the parties agreed to the terms of the agreement, they should abide by those terms. Further, the Commission considers that the money held in the trust fund is not a deposit for future services, but a security for TCC against past amounts disputed by On Call based on the terms of the agreement.
11. In light of the above, the Commission determines that On Call and TCC should adhere to the terms of the agreement or amended terms agreed upon by both parties, including the requirement for On Call to pay monthly amounts into the trust fund, until the arbitrator and the British Columbia Supreme Court render a decision with regard to the agreement, or the parties agree to annul the agreement.

## **II. Should the Commission grant the interim relief sought by On Call?**

12. The Commission notes that On Call requested several remedies in its application, as set out in paragraph 3 of this decision.

**a) TCC's notice of termination**

13. On 27 August 2009, the Commission issued a letter directing TCC to suspend the notice of termination, pending resolution of On Call's request for interim relief.
14. The Commission notes that the agreement provides On Call with obligations regarding the services provisioned by TCC. It also gives TCC the right to terminate services if On Call does not meet these obligations. Accordingly, the Commission concludes that, as of the date of this decision, TCC must continue to provide services to On Call as long as On Call meets its obligations specified in the agreement or an amended agreement agreed upon by both parties.

**b) New service orders from On Call**

15. The Commission notes that On Call claimed that TCC generally has not processed new service orders for more than one and a half years.
16. The Commission considers that if On Call meets its obligations as stipulated in the agreement, it would be in good standing with TCC and thus entitled to receive services.
17. Accordingly, the Commission directs TCC, as of the date of this decision, to process new service orders from On Call as long as On Call meets its obligations specified in the agreement or an amended agreement agreed upon by both parties.

**c) Funds held in trust**

18. The Commission notes that the agreement provides the terms under which the money held in the trust fund can be paid out, and considers that any money held in the trust fund should be disposed of pursuant to the terms of the agreement or amended terms agreed upon by both parties.

**d) Resolution of the billing dispute**

19. The Commission notes that the agreement, the arbitration proceeding, and the parties are before the British Columbia Supreme Court. In the circumstances of this case, the Commission finds that it is not necessary to direct either party to take further action, including participating in a public hearing, to resolve the dispute.

**e) Filing of the Commission's decision with the Federal Court of Canada**

20. The Commission notes that filing its decision with the Federal Court of Canada would be a departure from its usual approach. Further, the Commission considers that there is no indication that either party would not comply with the present decision. Accordingly, the Commission will not file this decision with the Federal Court of Canada.

**III. Can TCC require a deposit from On Call?**

21. TCC requested a deposit from On Call and claimed that failure to provide this deposit would give it the right to terminate services. TCC claimed that such a deposit is appropriate under its General Tariff, as it considers On Call a significant credit risk.

22. The Commission considers that as long as On Call abides by the terms of the agreement or amended terms agreed upon by both parties, it is not a credit risk, since undisputed amounts would be paid and the remaining money held in the trust fund would be a security for TCC against amounts disputed by On Call.
23. Accordingly, the Commission concludes that TCC cannot require On Call to provide a deposit.

Secretary General

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