



Telecom Decision CRTC 2011-323

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Request for dispute resolution by Triton Global Business Services Inc. related to the billing and collection service provided by MTS Allstream Inc.

File number: 8622-T125-201102475

In this decision, the Commission sets out its determinations regarding a request for dispute resolution by Triton Global Business Services Inc. (Triton) relating to the billing and collection service provided to it by MTS Allstream. Specifically, the Commission determines that Triton was in breach of Article 5.4 of the Billing and Collection Services Agreement (BCS Agreement) and section 1.2 of the Billing and Collection Technical Guidelines, and has failed to demonstrate that it has taken appropriate steps to remedy the situation with respect to proper validation. As such, the Commission determines that MTS Allstream has valid grounds, pursuant to Article 12.2 of the BCS Agreement, to terminate service to Triton.

Introduction

1. The Commission received an application from Triton Global Business Services Inc. (Triton), dated 2 February 2011, seeking interim and final relief on an expedited basis to resolve a dispute between itself and MTS Allstream Inc. (MTS Allstream) concerning MTS Allstream's Billing and Collection Service (BCS).
2. Triton requested that the Commission establish an expedited hearing process to determine whether MTS Allstream's actions purporting to terminate the BCS Agreement (also referred to as the Agreement) between the two parties were legal. Triton also requested interim relief in the form of an order requiring MTS Allstream to resume providing it with BCS pursuant to the Agreement, pending a final determination in the matter. MTS Allstream did not support Triton's requests for interim relief and an expedited hearing process.
3. On 11 March 2011, the Commission issued Telecom Order 2011-181, which granted Triton's request for interim relief (i.e. MTS Allstream was directed to resume providing BCS to Triton in accordance with MTS Allstream's Carrier Access Tariff and the BCS Agreement). On that same date, the Commission issued an Organization and Conduct letter to advise the parties that the Commission would conduct an expedited hearing to determine whether MTS Allstream has valid grounds, pursuant to the BCS Agreement and the BCS Tariff, to terminate service. This public hearing took place on 15 April 2011.¹

¹ Pursuant to its Organization and Conduct letter, the Commission issued interrogatories to MTS Allstream and Triton on 1 April 2011.

4. The public record of this proceeding is available on the Commission's website under www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

The parties

5. Triton, registered as a Canadian carrier, provides interexchange telecommunications services in Canada. More specifically, it provides operator services to its customers including collect calling services, third-party billing, and casual calling. MTS Allstream is an incumbent local exchange carrier (ILEC) that offers, among other things, BCS.
6. Triton and MTS Allstream originally signed a BCS Agreement in 2003. The Agreement has continued for successive month-to-month periods under the same general terms and conditions contained therein since 2003 until it was recently terminated by MTS Allstream, effective 12 January 2011.

Issues

7. A BCS Tariff establishes the rates, terms, and conditions for the billing and collection of eligible calls which are completed over the service provider's network. Essentially, the ILEC provides for the billing and collection of any charges to the customer on behalf of the service provider, and then remits that money to the service provider. The terms and conditions are governed by the BCS Tariff, the BCS Agreement, and the Billing and Collection Technical Guidelines (the Guidelines).
8. The Commission has identified the following issues to be addressed in this decision:
 - I. Was there a breach of the same provision of the BCS Agreement on two separate occasions?
 - II. Is termination of the BCS Agreement justified?
- I. Was there a breach of the same provision of the BCS Agreement on two separate occasions?**

Background

9. As noted above, MTS Allstream terminated its BCS Agreement with Triton effective 12 January 2011. MTS Allstream indicated that it had terminated the Agreement, pursuant to Article 12.2 of the Agreement, on the basis that Triton had breached section 1.2 of the Guidelines by failing to properly validate calls on two separate occasions, one occurring in late 2007, and the other occurring in the fall of 2010.
10. Article 1.2 t) of the BCS Agreement defines 'Validation' as the process whereby the service provider (Triton) must access a database or databases to determine the requirements to proceed with a call and adhere to such requirements. Section 1.2 of the Guidelines states that the service provider must ensure, for third-party billing and

collect calls, that proper processes are in place to validate the telephone line number, and that third-party billing and collect calls must be validated in the appropriate database and warm-body verified (i.e. positive acceptance by the end-user customer) with the biller's customer. In addition, Article 5.4 of the Agreement states that the service provider can only submit to the biller (MTS Allstream) third-party billing and collect calls that have been validated.

11. Article 12.2 of the BCS Agreement states that

Where one Party (the Party in default) has received notification from the other Party (the Party not in default) pursuant to Article 12.1 of this Agreement and notwithstanding that the Party in default has remedied such breach or has performed said obligation, in the event at any time thereafter that such Party in default is found by the Party not in default to have breached or to have failed to perform in respect of the same provision(s) of this Agreement under which notification was first provided pursuant to Article 12.1, the Party not in default will have the right at its sole discretion to terminate this Agreement, in whole or in part, as specified in Article 12.8.

Parties' positions

12. The parties agreed on the record of the proceeding that to properly validate a call Triton must first query the Line Information Data Base (LIDB) to determine whether the telephone number is listed as blocked for certain types of calls. Then, if the number is not blocked, Triton may connect the call but only if the warm-body verification is successful.
13. Triton acknowledged the 2007 breach cited by MTS Allstream, noting that it related to its failure to do warm-body verifications. Triton also acknowledged that it was notified of this breach pursuant to Article 12.1 of the BCS Agreement, and stated that it had rectified the problem within the time provided.
14. Triton also acknowledged, at the hearing, that it had forwarded at least some calls in 2010 to MTS Allstream for billing which had not been validated, and that the problems identified by MTS Allstream may have been caused by third-party carriers terminating traffic in Canada through Triton. Triton admitted during cross-examination that, in several instances, rather than querying each call in the LIDB as required, it only performed one query per number per day. In addition, Triton's responses to the Commission's interrogatories confirmed that the LIDB showed the code 263 (number blocked for specific types of calls) for several of the telephone numbers, yet the associated calls were completed and sent to MTS Allstream for billing.
15. However, Triton was of the view that the alleged breach in 2010 was not of the same nature as that in 2007. Triton stated that the breach in 2007 related to a failure to conduct warm-body verifications and involved a failure of Triton's software. In contrast, Triton stated that the alleged breach in 2010 related to a failure to query the LIDB, which would involve a very different remedy than that in 2007.

16. Triton argued that the purpose of Article 12.2 of the Agreement is to permit termination for a second offence of the same nature (i.e. where the service provider has had the opportunity to remedy the problem pursuant to Article 12.1), within the context of a long-term contractual relationship for a mandated service, and should be interpreted in this light. Therefore, Triton argued that the two instances cited by MTS Allstream do not constitute a breach of the same provision sufficient to trigger the termination rights established in Article 12.2 of the BCS Agreement.
17. MTS Allstream argued that the 2007 breach had been recognized by both parties and thus was not in dispute. With respect to the alleged breach in 2010, MTS Allstream was of the view that it related to the same provision of the BCS Agreement as did the breach that had occurred in 2007, namely that both breaches related to Triton's failure to appropriately validate calls.

Commission's analysis and determinations

18. Based on the acknowledgments by Triton and the evidence on the record of this proceeding, the Commission finds that Triton did breach Article 5.4 of the BCS Agreement and section 1.2 of the Guidelines in both 2007 and 2010.
19. The Commission notes that Article 1.2 t) of the BCS Agreement defines the process of 'Validation' as a single concept, and includes all requirements involved to validate a call. Consequently, the Commission considers that the failure to validate calls in both 2007 and 2010, irrespective of whether the failure related to conducting warm-body verification or querying the database, constituted a breach of the same provision of the BCS Agreement.
20. Accordingly, the Commission finds that Triton was in breach of the same provision of the BCS Agreement in both 2007 and 2010, sufficient to trigger the termination provisions in Article 12.2 of the BCS Agreement.

II. Is termination of the BCS Agreement justified?

21. Triton argued that dispute resolution pursuant to Article 13 of the Agreement is a precondition to termination, as there was a dispute as to whether there was a breach. Triton noted that it was provided insufficient information at the time of termination to know exactly what the problem was, and therefore was not provided with an opportunity to remedy it. Further, Triton argued that it had made several attempts to engage MTS Allstream in discussion on this matter, noting that it was facing termination of an important agreement and that it needed time to find out more details as to the alleged breach so as to properly address the matter.
22. At the expedited hearing, Triton suggested that the problem could possibly be attributed to a third-party carrier not properly querying the LIDB before processing these calls. Triton suggested that the goal of this proceeding should be to establish a process to test Triton's systems to identify and rectify any outstanding problems, not to terminate the contract.

23. Triton noted that it has taken steps since this problem was identified to upgrade its gateway access service with AT&T SNET² LIDB, stating its belief that there would not be a re-occurrence of the problems experienced in the fall of 2010. Triton also noted that it had instituted a procedure for pre-checking call records before they are sent to MTS Allstream in order to ensure that an MTS Allstream customer does not get billed for a call that should not have been processed.
24. MTS Allstream argued that its termination of the BCS Agreement was motivated by the desire to protect itself and its customers. MTS Allstream noted that the Agreement is designed to guard against unvalidated calls which is an important provision concerning operational standards and consumer safeguards. MTS Allstream suggested that Triton acted with disregard for the provisions in the BCS Agreement.
25. MTS Allstream requested that termination of the BCS Agreement between itself and Triton be reinstated effective within seven days of the Commission's determination in this matter. MTS Allstream argued that Triton had done nothing to remedy its breach, and that it only found out on the date of the hearing what steps Triton intended to now take to rectify the problem.

Commission's analysis and determinations

26. The Commission recognizes that without mandated access to MTS Allstream's BCS, Triton may not be able to offer its service on a national basis which may result in less competition in the market and a withdrawal of services provided by Triton to the end-user. The Commission notes that both parties stated on the record of this proceeding that there are billing and collection alternatives available to Triton such as credit cards or other billing arrangement methods. In addition, Triton noted that, if the Commission does not decide in its favour, it may in fact investigate these alternatives or it may decide to discontinue service in MTS Allstream territory. Finally, the Commission notes that no evidence was provided in regards to the negative impact on consumers should Triton discontinue its service on a national basis.
27. The Commission also recognizes the importance of complying with the operational standards and consumer safeguard provisions associated with the BCS Agreement, including the negative impact on the MTS Allstream customer who instituted blocking on their telephone number, if the instructions are not followed appropriately.
28. Despite Triton's assurances that an MTS Allstream customer will not get billed for a call that should not have been processed, the Commission notes that this would not address consumer safeguard provisions aimed at protecting privacy, personal information, and other forms of unauthorized activity.
29. The Commission is concerned that MTS Allstream did not enter into discussion with Triton as soon as a problem was identified in September 2010 in order to obtain the facts necessary to conclusively identify the problem and work towards a solution. The

² AT&T SNET stands for American Telephone and Telegraph Southern New England Telephone.

Commission considers that such discussions by MTS Allstream would have been important for the immediate protection of its customers. In the Commission's view, it was not until the oral hearing that the pertinent facts surrounding this dispute were understood.

30. While it considers that MTS Allstream could have acted more reasonably in resolving this dispute, the Commission does not consider that the dispute resolution provisions in Article 13 of the Agreement are a precondition to terminating the Agreement pursuant to Article 12.2.
31. Irrespective of whether Triton's third-party carriers are properly querying the LIDB, the Commission notes that it is Triton who is ultimately responsible for all outsourced activities to ensure that the terms and conditions of the BCS Agreement are respected. The Commission also notes that the solution provided by Triton to pre-check call records before they are sent to MTS Allstream in order to double-check whether to send the records for billing and collection will not demonstrably resolve the problem of blocked calls getting through to the customer who has subscribed to call blocking. The Commission considers that this is indicative of Triton's failure to properly recognize the importance of validation in protecting consumers, and its responsibility to ensure that this proper validation takes place.

Conclusion

32. In light of the above, the Commission determines that MTS Allstream has grounds to terminate the BCS Agreement between itself and Triton pursuant to Article 12.2 of the Agreement. Therefore, the interim relief ordered in Telecom Order 2011-181 is of no force and effect as of 10 days from the date of this decision.

Secretary General

Related document

- *Triton Global Business Services Inc. – Request for interim relief concerning billing and collection service*, Telecom Order CRTC 2011-181, 11 March 2011