



Telecom Decision CRTC 2010-448

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Ottawa, 30 June 2010

Bell Canada – Application to review and vary the decision to allow Cybersurf Corp. to withdraw its application regarding a billing dispute and disconnection notice

File number: 8662-B2-201004655

In this decision, the Commission determines that it is not appropriate to rescind approval of the withdrawal of Cybersurf Corp.'s (Cybersurf) application regarding a billing dispute between Cybersurf and Bell Canada, and that a final determination with regard to that application will not be rendered. Further, the Commission determines that the interim order it issued regarding Cybersurf's application is no longer in effect, as of the date of this decision.

Introduction

1. The Commission received an application by Bell Canada, dated 12 March 2010, requesting that the Commission review and vary the determinations in its letter issued 11 February 2010 with respect to Cybersurf Corp.'s (Cybersurf) application for relief against Bell Canada regarding certain billing practices and disconnection.
2. Bell Canada and Cybersurf have been engaged in a billing dispute for several years. On 29 October 2008, as a result of that dispute, Bell Canada served Cybersurf with a notice of disconnection. On 26 November 2008, Cybersurf filed a Part VII application (the application) asking the Commission to adjudicate the dispute and to direct Bell Canada, on an interim basis, to withdraw the notice of disconnection.
3. On 29 January 2009, the Commission issued an interim order (the interim order) that, among other things, directed Bell Canada to withdraw the disconnection notice pending a final Commission determination on the issues raised in the application.
4. On 7 January 2010, Cybersurf filed a letter with the Commission requesting permission to withdraw the application. The Commission subsequently issued its 11 February 2010 letter, granting Cybersurf's request and determining that the interim order would remain in effect.

5. In its application, Bell Canada requested that the Commission rescind its approval of the withdrawal of the application and make a final determination addressing all matters raised therein. Bell Canada alternately requested that, if the Commission upholds the withdrawal of the application, it determine that the interim order is of no further force or effect.
6. The Commission received comments regarding Bell Canada's application from Cybersurf. The public record of this proceeding, which closed on 4 May 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.
7. The Commission has identified the following issues to be addressed in this decision:
 - I. Should the Commission rescind approval of the withdrawal of the application and render a final determination?
 - II. If not, should the Commission determine that the interim order is no longer in effect?
- I. Should the Commission rescind approval of the withdrawal of the application and render a final determination?**
8. Bell Canada claimed that the Commission erred in principle by allowing Cybersurf to withdraw the application prior to a final determination. Bell Canada submitted that the parties had invested significant time and effort in developing a comprehensive record and that, as a matter of procedural fairness, they were entitled to a final determination.
9. Bell Canada was of the view that Cybersurf had benefited from interim orders postponing disconnection for almost a year and that Bell Canada had been prejudiced in pursuing contractual remedies in civil court due to the Commission's process. Bell Canada submitted that withdrawal of the application allowed Cybersurf to inappropriately manipulate procedure, and thus gain an unjust advantage and undermine the integrity of the Commission's dispute resolution process.
10. Bell Canada argued that the Commission also erred by taking into account the existence of a civil proceeding, which the company claimed was an irrelevant factor. Bell Canada submitted that the Commission was the venue chosen by both parties to resolve the billing dispute, and that neither party was actively pursuing civil relief.
11. Cybersurf was of the view that the application had been overtaken by a number of issues and claims for relief that were before the court, and that the Commission has less expertise than the court in relation to these issues. Cybersurf submitted that, accordingly, the provincial superior court is the appropriate forum for resolving all the issues between the parties.

Commission's analysis and determination

12. The Commission notes that it has the power to control its own procedure, subject to the requirements of natural justice. Accordingly, it is within the Commission's discretion to refuse or allow the withdrawal of an application.
13. With regard to the application, the Commission notes that the dispute between Bell Canada and Cybersurf has been complex and lengthy. The Commission further notes that the issues in dispute are essentially commercial in nature and do not involve telecommunications policy matters. In the Commission's view, in matters of this nature, civil court proceedings offer several advantages over the Commission's process, including examination and cross-examination of witnesses and an assessment of evidence based on the credibility of witnesses, which could allow for more accurate results regarding the amounts owed.
14. Accordingly, the Commission considers that in the specific circumstances of this case, the dispute between Bell Canada and Cybersurf would be best resolved in a civil court.
15. In light of the above, the Commission determines that it is not appropriate to rescind approval of the withdrawal of the application and that, hence, it will not render a final determination.

II. Should the Commission determine that the interim order is no longer in effect?

16. Bell Canada submitted that allowing the withdrawal of the application while maintaining the interim order was a clear error in law. Bell Canada argued that the withdrawal of the application terminated the proceeding and that the Commission lacked the jurisdiction to keep the interim order in effect.
17. Cybersurf submitted that it sold its assets to Distributel Communications Limited (Distributel), effective 1 June 2009, and that it is therefore no longer directly affected by the threat of disconnection. Cybersurf requested that, barring any comment from Distributel, Bell Canada's request for relief from the interim order be granted.

Commission's analysis and determination

18. The Commission notes that Cybersurf did not object to Bell Canada's request to rescind the interim order and that Distributel did not provide any comment. Further, the Commission notes that the interim order's aim was to preserve the rights of the parties pending a final Commission determination on the application. Given its determination in this decision not to rescind approval of the withdrawal of the application, the Commission considers that it is no longer appropriate to maintain the interim order. Accordingly, the Commission determines that, effective the date of this decision, the interim order is no longer in effect.

19. To the extent that Cybersurf continues to have subscribers, in cases where Bell Canada is entitled to terminate service, subscribers must receive sufficient notice that their telephone service from Cybersurf will no longer be available. Bell Canada and Cybersurf are directed to take reasonable measures, prior to the disconnection of subscribers, to ensure that these subscribers have sufficient time to transfer their local service to another provider. The notice to subscribers should, at a minimum, specify the date of disconnection and indicate that the subscriber is required to make arrangements with another service provider to ensure that their service, including access to 9-1-1 and other emergency services, is not interrupted as a result of the disconnection.

Secretary General