Court File No. CV-20-00635778-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

VANESSA FAREAU and RANSOME CAPAY

Plaintiffs/Respondents

and

BELL CANADA and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants/Moving Party

Proceeding under the *Class Proceedings Act, 1992*

CROSS-MOTION RECORD OF THE DEFENDANT/MOVING PARTY
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Date: June 30, 2021

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INDEX

Tab 1

Court File No. CV-20-00635778-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

VANESSA FAREAU and RANSOME CAPAY

Plaintiffs

and

BELL CANADA and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants/Moving Party

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF CROSS-MOTION

THE DEFENDANT Her Majesty the Queen in right of Ontario ("Ontario"), will make a cross-motion to the Honourable Justice Paul Perell on December 7, 8, 2021 at 10:00am or as soon thereafter as the motion may be heard, at the Superior Court of Justice at 393 University Avenue, Toronto, ON M5G 1E6.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally by videoconference.

THIS CROSS-MOTION IS FOR:

1. An order staying this action as against Ontario;

2. Ontario's costs of this motion.

3. Such further relief as counsel may request and this Honourable Court deems just.

THE GROUNDS FOR THE CROSS-MOTION ARE:

1. This motion is a cross-motion to the Plaintiffs' motion to certify the action as a class action.

2. The proposed class action is about rates that were charged for collect telephone calls made from Ontario correctional institutions. The principal factual allegations are that the rates charged were unconscionable, the rates were not disclosed to callers and recipients in advance, and Ontario took a commission on the rates paid.

3. From these basic factual allegations, the Plaintiffs allege against Ontario causes of action in: breach of the *Telecommunications Act*, breach of fiduciary duty, unlawful tax, and unjust enrichment.

4. This action against Ontario should be stayed:

   (i) The Canadian Radio-Television and Telecommunications Commission (the "CRTC") has broad jurisdiction in the area of telecommunications; and

   (ii) the essential character of the dispute is within the CRTC's exclusive jurisdiction.

5. In the alternative, if the dispute falls within an area of concurrent or overlapping jurisdiction, the Court should still stay the action and defer to the CRTC's jurisdiction and not exercise its jurisdiction to hear the matter. The adjudication of this dispute would require a consideration of the legislative scheme administered by the CRTC, and the decisions, orders and policies of the CRTC, so the Court ought not to exercise any jurisdiction to hear the matter.

6. In the further alternative, the Court should stay the proposed Plaintiffs' claim alleging a breach of the *Telecommunications Act*.

7. Ontario relies on such other grounds as counsel may advise and this Honourable Court may permit.

STATUTES AND REGULATIONS RELIED UPON:

1. Rule 21.01(3)(a) of the *Rules of Civil Procedure,* RRO 1990 Reg 194.

2. Section 106 of the *Courts of Justice Act*, RSO 1990 c C43.

3. *Telecommunications Act*, SC 1993 c 38.

4. *Canadian Radio-television and Telecommunications Commission Act*, RSC, 1985, c C22.

5. *Crown Liability and Proceedings Act, 2019*, SO 2019 c 7 Sch 17.

6. Such further statutes and regulations as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The pleadings in this action, including demands for particulars and responses thereto, and the documents referenced therein.

2. Such further and other material as counsel may advise and this Court may permit.

Date: June 30, 2021

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Lawyers for the Defendant
Bell Canada

FAREAU et al	**BELL CANADA et al**	Court File No: CV-20-00635778-00CP
and		
Plaintiffs/Respondents	Defendants/Moving Party	

ONTARIO
SUPERIOR COURT OF JUSTICE

NOTICE OF CROSS-MOTION OF THE DEFENDANT/MOVING PARTY HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

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Lawyers for the Defendant/Moving Party
Her Majesty the Queen in right of Ontario

Tab 2

AMENDED THIS August 14 2020 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À
☐ RULE/LA RÈGLE 26.02
☐ THE ORDER OF The Honourable Justice Perell
L'ORDONNANCE DU
DATED / FAIT LE July 24, 2020

REGISTRAR
SUPERIOR COURT OF JUSTICE
GREFFIER
COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-20-00635778-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

(Court Seal)

VANESSA FAREAU and RANSOME CAPAY

Plaintiffs

and

BELL CANADA and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

Proceeding under the *Class Proceedings Act, 1992*

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and $750 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and $400 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date February 5th, 2020 Issued by "CV-EFiling"
Local Registrar

Address of court office: Superior Court of Justice
330 University Ave, Toronto
ON M5G 1R8

TO: **Bell Canada**
1050 côte du Beaver Hall
Montréal, Québec
H2Z 1S4

AND TO: **Her Majesty the Queen in right of Ontario**
Crown Law Office (Civil Law)
Ministry of the Attorney General
720 Bay St. Toronto, Ontario
M7A 2S9

A. DEFINED TERMS

1. In this Fresh as Amended Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

(a) "**Bell**" means the defendant Bell Canada;

(b) "***CJA***" means the *Courts of Justice Act*, RSO 1990, c C.43, as amended;

(c) "**Class Period**" means the period of time between June 1, 2013 and the certification of this lawsuit as a class action or such other time as the Court deems appropriate;

(d) "**Class**" or "**Class Members**" means the **Consumer Class** and the **Prisoner Class**, collectively;

(e) "**Collect Call**" means telephone calls that were billed to and payable by a person other than the initiator of the call, here by a member of the **Consumer Class**, through a separate bill issued by a local carrier;

(f) "**Commissions**" means any payment made by **Bell** to the **Crown** pursuant to the **Contract**, including but not limited to, the percentage specified in section 4.01 of the **Contract** of the gross revenue generated by all calls that **Class Members** have made through the **OTMS**;

(g) "**Consumer Class**" means all persons in Canada who accepted and paid for a **Collect Call** originating from a person in custody or otherwise in an Ontario correctional **Facility** at any time during the **Class Period**;

(h) "***Consumer Protection Act***" means the *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A and its regulations, as amended;

(i) "**Contract**" means a contract between the **Crown**, as represented by the **Minister**, and **Bell** signed on January 18, 2013 numbered COS-0009 for the purposes of the **OTMS**;

(j) "***CPA***" means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;

(k) "**Crown**" means the defendant Her Majesty the Queen in right of Ontario;

(l) "**CRTC**" means the Canadian Radio-television and Telecommunications Commission;

(m) "**Defendants**" means the defendants **Bell** and the **Crown**, collectively;

(n) "**Equivalent Consumer Protection Legislation**" means: *Consumer Protection Act*, CQLR c P-40.1; *Business Practices and Consumer Protection Act*, SBC 2004, c 2; *Consumer Protection Act*, RSA 2000, c C-26.3; *The Consumer Protection and Business Practices Act*, SS 2014, c C-30.2; *The Business Practices Act*, CCSM c B120; *The Consumer Protection Act*, CCSM c C200; *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1; *Business Practices Act*, RSPEI 1988, c B-7; *Consumer Protection Act*, RSPEI 1988, c C-19; all as amended;

(o) "**Excluded Persons**" means **Bell** and its officers and directors, and their heirs, successors and assigns;

(p) "**Facility**" or "**Facilities**" means the institutions in Ontario referenced and identified in section 1.01 of the **Contract**;

(q) "***MCS Act***" means the *Ministry of Correctional Services Act*, RSO 1990, c M.22, as amended;

(r) "**Minister**" or "**Ministry**" means the Minister and Ministry of Community Safety and Correctional Services of Ontario and/or its successor the Solicitor General and the Ministry of the Solicitor General, and is used interchangeably with the **Crown** in this claim;

(s) "**OTMS**" means the Offender Telephone Management System—the system through which **Bell** provided telephone services to **Prisoners** in Ontario's correctional **Facilities**;

(t) "**Plaintiffs**" means the plaintiffs Vanessa Fareau and Ransome Capay;

(u) "**Prisoner**" means a person serving a custodial sentence in a **Facility**, a person detained on remand, awaiting trial or awaiting sentencing in a **Facility**, a person awaiting transfer to a federal correctional facility and any other person who was incarcerated at a **Facility** during the **Class Period**;

(v) "**Prisoner Class**" means all **Prisoners** whose option for making a phone call at any time during the **Class Period** was through the **OTMS**;

(w) "**Proposal**" means a proposal dated November 20, 2012 that **Bell** submitted to the **Minister** for an **OTMS**, responding to a Request for Proposals numbered COS-0009 issued by the **Minister** to procure a contract for the purposes of the **OTMS**;

(x) "**Representations**" means the representations described at paragraphs 25, 27-28; and

(y) "***Telecommunications Act***" means the *Telecommunications Act*, SC 1993, c 38, as amended.

B. RELIEF SOUGHT

2. The Plaintiffs, on their own behalf and on behalf of all Class Members, seek:

(a) an order certifying this action as a class proceeding and appointing the Plaintiffs as the representative plaintiffs;

(b) a declaration that Bell engaged in unfair practices contrary to Part III of the *Consumer Protection Act* and analogous parts of the Equivalent Consumer Protection Legislation;

(c) a declaration that it is not in the interests of justice to require that notice be given pursuant to section 18(15) of the *Consumer Protection Act* and analogous provisions of the Equivalent Consumer Protection Legislation, and waiving any such notice requirements;

(d) an order rescinding the consumer transactions between Bell and all Consumer Class members who were consumers as defined in the *Consumer Protection Act* and analogous provisions of the Equivalent Consumer Protection Legislation;

(e) a declaration that the Crown breached the fiduciary duty that it owed the Prisoner Class members;

(f) a declaration that the Commissions constitute an unlawful tax;

(g) a declaration that the Defendants violated the *Telecommunications Act* in failing to disclose in advance or display to the Class Members the rates to be charged on Collect Calls and, amongst others, any surcharge, markup, or location charges not included in the price of the call;

(h) statutory and general damages in an amount not exceeding $152,000,000 for loss and damage suffered as a result of the conduct of the Defendants particularized herein;

(i) restitution for unjust enrichment against the Defendants in an amount equivalent to the monies paid by the Class to make phone calls through the OTMS;

(j) punitive, exemplary, and aggravated damages in the amount of $10,000,000;

(k) an equitable rate of interest on all sums found due and owing to the Plaintiffs and other Class Members or, in the alternative, pre- and post-judgment interest pursuant to the *CJA*;

(l) costs of this action pursuant to the *CPA*, or alternatively, on a full or substantial indemnity basis plus the cost of administration and notice pursuant to section 26(9) of the *CPA* plus applicable taxes; and

(m) such further and other relief as this Honourable Court may deem just.

C. NATURE OF THE ACTION

3. This action arises from unconscionable telephone service rates imposed on the Plaintiffs and the Class Members.

4. Bell entered into the Contract with the Crown in 2013. Under the Contract, Bell obtained the exclusive right to provide telephone services to Prisoners in jails, detention centres, and other similar correctional Facilities operated by the Crown. Bell paid the Crown undisclosed Commissions based on a percentage of all gross monthly revenue generated from the Contract.

5. The Defendants exercised exclusive control over the OTMS to their mutual benefit and the detriment of the Class Members. The Crown provided a captive population in need of phone services, while Bell charged excessive rates and funnelled Commissions to the Crown. To maintain phone contact with family and the outside world, Prisoners had one option, and one option only: Collect Calls to landlines at exorbitant and unconscionable prices extracted from anyone who accepted the calls or otherwise paid for them.

6. Bell falsely represented that the calls cost the same as what Bell charged the general public and specifically Bell's residential customers. In so doing, Bell engaged in unfair practices contrary to section 15 of the *Consumer Protection Act* and analogous provisions of the Equivalent Consumer Protection Legislation. Bell imposed agreements on the Consumer Class

that were unconscionable and invalid contrary to statute and equity.

7. The Crown has a statutory and fiduciary duty to rehabilitate Prisoners. Phone contact between the Class Members is essential to rehabilitation. The Crown financially benefitted from the Commissions and had an interest in higher rates to generate higher Commissions. The receipt of Commissions was an explicit or tacit support of Bell's conduct. The Crown preferred its interests to those of the Prisoners and in doing so, breached its statutory and fiduciary duties to the Prisoner Class.

8. The Defendants did not disclose the cost of phone calls to Class Members, increasing the Defendants' mutual financial gain. Bell's failure to disclose or display telephone rates and related charges for the OTMS calls violated the *Telecommunications Act*. The Crown directed, authorized, consented to or participated in Bell's acts and omissions in violation of the *Telecommunications Act*.

9. The Defendants made millions of dollars from vulnerable Class Members under their control and subject to their imposed monopoly. The Defendants profited from their breaches at the expense of the Class Members and in doing so, unjustly enriched themselves at the expense of the Class Members.

10. The Commissions that the Crown received were undisclosed and unrelated to the provision of a service. The Commissions were an unlawful and unconstitutional tax imposed on the Class Members.

D. PRISONERS' RELIANCE ON TELEPHONES AND THEIR ACCESS

11. Communication between Prisoners, family members, and members of the community is fundamental to Prisoners' mental health, wellbeing, rehabilitation, and successful reintegration into society. The telephone is the primary method by which Prisoners maintain contact with others.

12. Mental illness rates are up to seven times higher in jails than in the general population in Canada. For Prisoners with mental health problems, communication with their family and support network sometimes means the difference between life and death. The Verdict of Coroner's Jury in the death of Cleve Gordon Geddes, a Prisoner with mental illness at the Ottawa-Carleton Detention Centre ("**OCDC**"), emphasized the vital importance of telephone communications for Prisoners.

13. The Crown has recognized in its Institutional Services Policy and Procedures Manual regarding the OTMS dated July 4, 2013 ("**OTMS Manual**") "that communication between the inmates and members of the community is important for rehabilitation and successful reintegration into society. The telephone is the primary method by which inmates maintain contact with others."

14. Nevertheless, during the Class Period, the Defendants only allowed Prisoners to call a person with a standard North American 10-digit landline capable of being billed for Collect Calls, provided that the recipient of the call was willing and able to accept the undisclosed exorbitant charges. Prisoners were not permitted to call cell phones, use calling cards or institutional pre-paid accounts, which are standard practices in virtually all other penal institutions in Canada. In or about May of 2020, the Defendants first enabled a debit-calling

feature to allow Prisoners to make prepaid local and long-distance calls to land or cell phones up to a certain pre-set dollar value determined by the Crown. Over the Class Period, the Defendants always had the ability to change the OTMS in the same manner as occurred in or about May 2020.

E. THE PLAINTIFFS AND CLASS

15. The plaintiff Ransome Capay is a resident of the Lac Seul First Nation and registered status member of the Lac Seul First Nation. During the Class Period, Mr. Capay's son was held in pre-trial custody at the Thunder Bay Correctional Centre and Kenora Jail, 400 and 250 kilometres from Lac Seul, respectively. Mr. Capay's son was held in solitary confinement for approximately 4.5 years, from June 4, 2012, until December 6, 2016. The Defendants' conduct ensured that the only option Mr. Capay's son had for limited social contact was phone calls to family through the OTMS. Mr. Capay was charged $1 a minute for calls limited to 20 minutes. On some days, Mr. Capay needed to speak to his son up to 5 times. Mr. Capay could spend $100 a day to maintain basic social contact with his son.

16. During the Class Period and as a result of the unconscionable rates charged through the OTMS, Mr. Capay's monthly phone bills often ranged from $700 to over $1000. In order to pay the phone bills, Mr. Capay had to take on extra work, such as chopping firewood. Paying phone bills became a source of crushing stress, anxiety, and financial difficulty for Mr. Capay and his family. The stress and anxiety was compounded by the complete lack of choice and unknown cost each month. The cost of phone calls negatively impacted Mr. Capay's ability to maintain contact with his son.

17. A court eventually found that the solitary confinement of Mr. Capay's son was in

violation of the *Charter of Rights and Freedoms* and stayed all charges against Mr. Capay's son. For 4.5 years, the defendants profited off of the complete isolation of Mr. Capay's son and the *Charter* violations.

18. Mr. Capay seeks to represent the Class.

19. The plaintiff Vanessa Fareau is a resident of Gatineau, Quebec. She spent time in at least one Facility during the Class Period. Ms. Fareau was most recently incarcerated at the OCDC, while pregnant. Ms. Fareau was not convicted, but denied bail for approximately two months. During this period of detention, Ms. Fareau faced significant challenges in maintaining contact with her family and support network, for her own wellbeing while pregnant and that of her two other children. Throughout her incarceration, Ms. Fareau experienced significant financial and emotional hardship in making phone calls to her loved ones because of the amounts charged by the Defendants through the OTMS. Even from inside the Facility, Ms. Fareau struggled to make arrangements to pay her own phone bills so that she could remain connected to her children. Ms. Fareau's phone bills were often in the range of $200-$300, or more.

20. Currently, Ms. Fareau receives Collect Calls from her nephew, who is held in OCDC. As a result, she has paid thousands of dollars for Collect Calls during the Class Period to maintain familial connections.

21. Ms. Fareau seeks to represent the Class.

22. The unnecessary and unjustifiably high cost of Collect Calls had a material impact on the Class Members' rehabilitation and finances.

F. THE DEFENDANTS

23. The defendant Bell is a communications and multimedia company headquartered in Montreal, Quebec. It is the dominant "incumbent local exchange carrier" for telephone services in most of Canada, including Ontario. Bell is a public company and subsidiary of the holding company BCE Inc. Bell is a party to the Contract with the Crown under which Bell exercised a monopoly over the provision of telephone services to Class Members at Facilities across Ontario.

24. The defendant Crown is the government of the Province of Ontario, involved in this matter through the Ministry under authority granted thereto in legislation, including the *MCS Act*, to operate correctional Facilities in Ontario.

G. THE PROPOSAL AND THE CONTRACT

25. In the Proposal to obtain the Contract, Bell acknowledged the need to "[p]rovide offenders with reasonable access to telephone services for the purpose of maintaining family, friend and community ties, and supporting rehabilitation". Bell represented in the Proposal specifically: "Bell is providing identical call rate and connection fees including all time of day and mileage discounts as are experienced by Bell residential customer" [*sic*]. These representations were false and misleading.

26. Under the Contract, Bell became the exclusive "Supplier" of telephone services to the Class Members in Facilities throughout Ontario. Section 1.01 of the Contract expressly included the Proposal as part of the Contract's terms.

27. The Contract required Bell to charge fees for all calls that "would apply to comparable calls connected and billed by the Supplier in the community of the applicable Facility". Section

4.08 provided:

> **Calling Rates**
>
> Subject to this Section 4.08 and to Section 3.05(a), the Supplier shall establish the calling rates for local and long distance calls from all telephones. The Supplier shall ensure that the local and long distance rates and connection fees for all telephones are **no higher than the published residential rates** established by the Incumbent Local Exchange Carrier (ILEC) **applicable to a comparable call connected and billed by the Supplier placed outside the Facility within the local community of the applicable Facility**. In accordance with Section 3.02(a)(5) and upon the Ministry's request during the Term of the Contract, the Supplier shall provide written documentation satisfactory to the Ministry, in its sole discretion, to demonstrate compliance with this Section 4.08. [emphasis added]

28. In public statements, Bell stated repeatedly that rates for Prisoners are the same as for the general public. Again, these statements were false and misleading, and obscured the Defendants' maximization of their profits and Commissions.

29. The Crown had extensive discretion and powers under the Contract. For example:

(a) Bell could not subcontract or assign any part of the Contract without the consent of the Crown (section 2.05);

(b) The Crown could require that Bell provide information "demonstrating that all calling charges are no higher than the published residential rates established by the Incumbent Local Exchange Carrier (ILEC) that would apply to comparable calls connected and billed by the Supplier in the community of the applicable Facility" (section 3.02);

(c) The Crown had discretion to approve or not the policies established by Bell (section 3.03);

(d) Bell could not update or vary "the Supplier's calling rates, without the Ministry's prior written consent, which consent may be arbitrarily withheld" (section 3.05);

(e) The Crown could conduct acceptance testing and verification of the telephone deliverables installed by Bell at the Facilities and express any concerns or dissatisfaction in its "sole and absolute discretion", and in response, Bell was required to make necessary adjustments within a specified number of days (sections 3.07 and 3.08);

(f) The Crown could request any reasonable changes to the OTMS, and Bell "shall comply with all reasonable Ministry change requests" (section 3.13);

(g) The Ministry had extensive powers to demand information and assess Bell's performance of the Contract (sections 3.19 and 3.20);

(h) The Crown could request, and Bell "shall provide written documentation satisfactory to the Ministry, in its sole discretion, to demonstrate compliance" with the Contract's provision that Bell "shall establish the calling rates for local and long distance calls ... **no higher than the published residential rates established by the Incumbent Local Exchange Carrier (ILEC) applicable to a comparable call connected and billed by [Bell] placed outside the Facility within the local community of the applicable Facility** [emphasis added]" (section 4.08); and

(i) The Crown could immediately terminate the Contract if Bell "makes a material misrepresentation or omission or provides materially inaccurate information to the Ministry", if Bell's "acts or omissions constitute a substantial failure of

performance", or if the Ministry issued Bell a "rectification notice … to comply with any of its obligations under the Contract" and Bell failed to comply (sections 8.01 and 8.02).

30. Instead of implementing a telephone system that enhanced Prisoner rehabilitation and was comparable to residential phone services, the Defendants' OTMS maximized Bell's profits and the Crown's Commissions, contrary to the interests of the Class Members.

H. BELL BREACHED CONSUMER PROTECTION LEGISLATION

31. Bell is located in the province of residence of each of the members of the Consumer Class who meets the definition of "consumer" under the *Consumer Protection Act* and analogous definitions of the Equivalent Consumer Protection Legislation.

32. Bell is a "supplier" under s. 1 of the *Consumer Protection Act* and analogous provisions of the Equivalent Consumer Protection Legislation.

33. The members of the Class who made or received calls through the OTMS for personal, family or household purposes on terms imposed by Bell are "consumers" as defined in s. 1 of the *Consumer Protection Act* and analogous provisions of the Equivalent Consumer Protection Legislation.

34. Every instance of an Ontario Prisoner making a phone call from a Facility to another Class Member for personal, family or household purposes constitutes a "consumer agreement", "consumer transaction" or as otherwise defined in the Equivalent Consumer Protection Legislation where Bell agreed to supply its telephone services to those Class Members for payment.

35. As detailed herein, Bell represented that the rates for calls at the Facilities were the same as its residential rates for the general public. In the Proposal, which was part of the Contract under which Bell exercised its monopoly, Bell represented that its telephone services for Ontario Prisoners would be at an "identical call rate and connection fees including all time of day and mileage discounts as are experienced by Bell residential customer".

36. This Representation was false. In reality, Bell charged the Class astronomical prices that no one else pays outside the Class—including Bell's residential customers. The OTMS call system is unique to Prisoners in the Ontario correctional Facilities. Reasonably comparable telephone services in Ontario since 2013 for residential and other public customers have been cellphones and, to a lesser extent, residential landlines, both of which cost a fraction of the exorbitant amounts that Bell charged the Class Members.

37. When a Prisoner made a local call, Bell imposed more than a $1 charge for each local call. Whenever the Crown transported a Prisoner to a Facility in a neighbouring area, Class Members were forced to pay in excess of $30 for a long-distance phone call. These calls were capped at 20 minutes.

38. No other reasonably comparable telephone service in Ontario costs anywhere near these amounts. Depending on how many calls a Prisoner made in a month, the amounts of money that Bell extracted from the Class Members could be tens of times higher than those paid by consumers outside the OTMS, including Bell's own residential customers.

39. There is no operational or security reason why telephone services have to be provided on a Collect Call basis. The Defendants in fact changed the OTMS to allow non-Collect Calls in or about May of 2020.

40. The OTMS constituted unfair, unconscionable and/or otherwise prohibited practices under the *Consumer Protection Act* and the Equivalent Consumer Protection Legislation, because, among other things, Bell knew, or ought to have known, that:

(a) the Representations were false, misleading, and deceptive;

(b) the fees imposed by Bell were not comparable to its residential and other customers outside the OTMS;

(c) the Defendants exercised exclusive control over the provision of telephone services to the Class, and the Class was not reasonably able to protect its interests because of the Prisoners Class's vulnerable circumstances as Prisoners of the state, their lack of freedom and choice, and other challenges, including a significant number of Prisoner Class members with mental illnesses;

(d) the consumer agreements and transactions between Bell and the Class were excessively one-sided in favour of Bell;

(e) the consumer agreements and transactions made between Bell and the Class Members were so adverse to the Class Members as to be inequitable; and/or

(f) because of such further conduct concealed by the Defendants and unknown to the Plaintiffs.

41. The Representations were made on or before the Plaintiffs and other Class Members entered into the consumer agreements and transactions to make phone calls on Bell's OTMS telephones. The actual charges to be imposed by the OTMS were never disclosed to the Class

Members, either orally or visually, prior to using the OTMS. The Class Members only discovered the price of phone calls when they received a bill, often weeks after a call. The Commissions paid to the Crown were never disclosed by Bell to Class Members.

42. The Plaintiffs and other Class Members who meet the definition of "consumer" under the *Consumer Protection Act* and analogous definitions of the Equivalent Consumer Protection Legislation are entitled to rescission of the consumer agreements and transactions as well as damages pursuant to section 18 of the *Consumer Protection Act* and analogous provisions of the Equivalent Consumer Protection Legislation.

43. The Plaintiffs and other Class Members are entitled, to the extent necessary, to a waiver of any notice requirements under the *Consumer Protection Act* and the Equivalent Consumer Protection Legislation, particularly given the opaque nature of the Defendants' practices impugned herein and the Plaintiffs' and other Class Members' circumstances as Prisoners with little possibility of meaningful communication with individuals outside of Ontario correctional Facilities.

I. DEFENDANTS IMPOSED UNCONSCIONABLE RATES ON THE CLASS

44. Every time a member of the Prisoner Class made a Collect Call through the OTMS to a member of the Consumer Class and that person accepted the call, both parties were required to agree to terms imposed by the Defendants. In making the call, these parties entered into agreements with Bell whereby Bell provided the telephone service and the Class Members paid for that service ("**Agreements**").

45. Given the terms imposed and the circumstances in which these Agreements were formed,

such Agreements were unconscionable and therefore invalid. The Agreements were one-sided contracts of adhesion created under unfair circumstances that imposed improvident terms on the Class.

46. The terms that Bell imposed on the Plaintiffs and Class Members were grossly unfair and improvident.

47. Class Members were afforded no independent legal advice or any other suitable advice before entering into the Agreements.

48. There was an overwhelming imbalance in bargaining power caused by the Prisoners' vulnerability and lack of any choice except the onerous terms offered by the Defendants, and the information asymmetry between the parties.

49. Without any other way to maintain phone contact with the Prisoner Class, the Consumer Class of family members and loved ones were captive to the terms of the OTMS and its unconscionable calling rates.

50. The Defendants knew the Class Members' vulnerability as Prisoners of the state, and the vulnerability of their families, loved ones and support network. The Defendants knowingly took advantage of those vulnerabilities to maximize their mutual financial gain.

J. DEFENDANTS BREACHED THE *TELECOMMUNICATIONS ACT*

51. The federal *Telecommunications Act* and the CRTC established thereunder govern the provision of telephone services in Canada, including those in Ontario Facilities.

52. Since before the commencement of the Class Period and throughout the Class Period, the

CRTC has issued decisions that direct service providers, including Bell, to make detailed rate information available to consumers and callers. For example, the CRTC has directed Bell and other telephone service providers that, as a condition of providing the services, they must make detailed information available to consumers and callers regarding the amounts charged by or on behalf of Bell with respect to payphone calls. The CRTC has stated that detailed information includes connection fees, per-minute rates, and any other fees that would be charged to the consumer.

53. The CRTC has made these orders under section 24 of the *Telecommunications Act*, which states that the "offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the [CRTC]".

54. The Defendants failed to provide information regarding the rates and other amounts charged to Class Members as directed by the CRTC. The Defendants' failure to do so constitutes a breach of section 24 of the *Telecommunications Act* and a CRTC decision made under that statute. Under section 3.01 of the Contract, Bell was required to comply with the "Requirements of Law", and the Crown had the contractual right and discretion to require that Bell comply with the law. The law required that Bell provide the specified information to Class Members when they were making Collect Calls on the OTMS. In failing to require that Bell comply with the *Telecommunications Act*, the Crown authorized, consented to or participated in Bell's omission contrary to that statute.

55. The Defendants' violations and omissions meant the Class Members could not make a meaningful choice regarding using the OTMS and incurred higher charges. The Class Members suffered loss and damage as a result of the Defendants' conduct contrary to the

Telecommunications Act.

K. THE COMMISSIONS WERE AN UNLAWFUL TAX

56. The Contract required Bell to pay to the Crown Commissions based on a percentage of the gross revenue from the OTMS.

57. These Commissions constituted an unlawful indirect tax *ultra vires* the Province of Ontario. Alternatively and if the Commissions are found to be a direct tax, they were *ultra vires* the Minister and could not be levied by way of the Contract in the absence of clear and unequivocal legislation from the Ontario Legislature.

58. The Commissions constituted a tax, not a fee, for the following reasons. The Commissions were enforceable by law under statutory authority granted to the Minister. Unless the Class Members agreed to the Collect Call rates unilaterally imposed by the Defendants, inclusive of the Commissions, the Prisoner Class members could not make a call and the Consumer Class members could not receive a call from a Prisoner in an Ontario Facility.

59. Bell imposed the telephone fees on the Plaintiffs and the Class on authority given to it by the Minister through the Contract. The Minister administered the OTMS, including the Contract, under the general authority given to it by the legislature through the *MCS Act* to operate Ontario Facilities.

60. Therefore, the Crown, as represented by the Minister, was a public body levying the Commissions in a public authority, and intended the Commissions to be collected for a public purpose. The revenue obtained from the Commissions was used for the public purpose of defraying the costs of prison or government administration in general, and not simply to offset

the costs of the OTMS.

61. There was no reasonable connection or nexus between the cost of the OTMS service provided and the Commissions charged. The Commissions varied for each call made by a Class Member depending on whether it was a local or long distance call and/or on how many minutes the call lasted, amongst other things.

62. The Commissions were an indirect tax. None of the Class Members ever paid the Crown any Commissions directly. Rather, the Crown demanded the Commissions from Bell in the expectation and intention that Bell should pass the Commissions on to the Class. Section 4.02 of the Contract required that Bell pay the Commissions to the Ministry through a cheque payable to the Minister of Finance (Ontario). Pursuant to section 4.01 of the Contract, Bell was required to pay the Commissions to the Crown regardless of whether Class Members had actually paid Bell for the calls.

63. As a result, the Commissions were an indirect tax outside the constitutional jurisdiction of the provincial Crown as listed in section 92 of the *Constitution Act, 1867*. Nor were the Commissions ancillary to a valid regulatory scheme. No regulatory scheme existed that included the Commissions. The Minister levied the Commissions through its commercial Contract with a private party, Bell.

64. In the alternative, if the Court finds that the Commissions were a direct tax, they were *ultra vires* the Minister. The Commissions did not originate in the Ontario Legislature. Neither the *MCS Act* nor any other act of the Ontario Legislature specifically or unequivocally authorized the imposition of this tax on the Class. The Commissions embody taxation without representation.

65. In the circumstances of this case, particularly given the vulnerability of the Class Members, the imposition of this unconstitutional and unlawful tax on the Class was unjust and oppressive. The Crown should not be allowed to retain the Commissions.

L. THE CROWN BREACHED ITS FIDUCIARY DUTY

66. The Crown has exclusive control over the Prisoner Class at the Facilities, and has been entrusted under the *MCS Act* to "provide programs and facilities designed to assist in the rehabilitation of inmates". Throughout the Class Period, the Crown knew or should have known that—as the Crown has acknowledged in its OTMS Manual—"communication between the inmates and members of the community is important for rehabilitation and successful reintegration into society. The telephone is the primary method by which inmates maintain contact with others."

67. The Crown has assumed and maintains an extensive degree of discretionary control over the Prisoner Class members' lives, and the care and welfare of the Prisoner Class members in particular. A Prisoner at a Facility completely depends on the Crown for all the necessaries of life. The Crown is required by law, and expressly and impliedly undertook, to protect Prisoners, who are peculiarly vulnerable to and at the mercy of the Crown for their basic life, survival, and rehabilitation needs.

68. The level of custodial discretion that the Crown exercises over the day-to-day life of Prisoners in the Facilities is akin to that of a parental relationship, and therefore cloaks the Crown with fiduciary obligations in respect of the Prisoners.

69. These undertakings and circumstances placed a duty on the Crown to act loyally and in

the best interests of the Prisoner Class.

70. The Crown breached that duty by: (a) failing to ascertain that Bell complied with the Contract and does not extract unconscionable telephone rates from the Class Members; (b) profiting from the unlawful Commissions; (c) the Crown's self-created conflict of interest in ensuring that the higher the telephone rates charged by Bell, the more the Crown benefitted from the Commissions, which led to the Crown putting its own interests ahead of those of the Prisoner Class; and (d) failing to provide the Prisoner Class members with a meaningful and affordable means of communication with the outside world, their families, support network, legal defence, etc.

71. The Crown's breach of its fiduciary duty to the Prisoner Class caused the Class loss and damage including, but not limited to, the unlawful Commissions and fees paid for the telephone calls through the OTMS.

M. DAMAGES AND UNJUST ENRICHMENT

72. The conduct of the Defendants caused the Plaintiffs and Class Members loss and damage contrary to the *Constitution Act, 1867*, provincial and federal legislation, and the common law particularized herein.

73. As a result of this conduct, the Defendants have been enriched by the payment or overpayment made by the Plaintiffs and the Class.

74. The Plaintiffs and Class Members suffered a financial deprivation corresponding to the Defendants' enrichment.

75. There is no juristic reason for the Defendants' enrichment and the Plaintiffs' and Class Members' corresponding deprivation. It would be contrary to the interests of justice to allow the Defendants to retain the fruits of their unlawful and unconscionable conduct. The Plaintiffs and Class Members are entitled to restitution and/or a disgorgement of all profits, fees and Commissions as a result of said unjust enrichment.

N. PUNITIVE, EXEMPLARY, AND AGGRAVATED DAMAGES

76. Telephone communication with individuals outside of Ontario correctional Facilities is crucial to Prisoners' rehabilitation, reintegration, and mental health. It is the principal way for incarcerated persons to maintain regular contact with their families and loved ones, coordinate and arrange re-entry plans, and access important services in the community such as legal counsel, healthcare, and mental health support.

77. The Defendants saw an opportunity to exploit Prisoners, their families, and loved ones under their exclusive control. The Defendants chose excessive profits even if that meant isolating Prisoners in Ontario Facilities by preventing, or imposing insurmountable financial burdens on, contact with loved ones. The Defendants deliberately chose to profit by increasing the hardships and injustices on Prisoners resulting from isolation and a lack of access to necessary communication with vital post-release services, and their loved ones who were deprived of meaningful contact.

78. Due to the egregious nature of the Defendants' conduct particularized herein, the Plaintiffs and Class Members are entitled to recover punitive, exemplary, and aggravated damages. The Defendants' conduct offends the moral standards of the community and warrants the condemnation of this Court.

O. SERVICE

79. On February 19, 2020, the plaintiffs served notice on the Crown of this claim pursuant to section 18 of the *Crown Liability and Proceedings Act, 2019*, SO 2019, c 7, Sched 17.

80. This originating process may be served without court order outside Ontario in that the claim is:

(a) in respect of real or personal property in Ontario (Rule 17.02(a) of the *Rules of Civil Procedure*);

(b) brought against a person ordinarily resident or carrying on business in Ontario (Rule 17.02 (p) of the *Rules of Civil Procedure*).

August 14, 2020

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VANESSA FAREAU et al
Plaintiffs

-and-

BELL CANADA et al
Defendants
Court File No. CV-20-00635778-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

Proceeding under the *Class Proceedings Act, 1992*

FRESH AS AMENDED STATEMENT OF CLAIM

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Tab 3

Court File No. CV-20-00635778-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

VANESSA FAREAU and RANSOME CAPAY

Plaintiffs

and

BELL CANADA and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

Proceeding under the *Class Proceedings Act, 1992*

DEMAND FOR PARTICULARS

The Defendant Bell Canada (**"Bell"**) demands particulars of the following allegations in the Fresh As Amended Statement of Claim issued July 24, 2020 (the **"Claim"**):

1. With respect to paragraphs 6 and 28 of the Claim, particulars regarding the "public statements" in which Bell allegedly stated that rates for prisoners are the same as for the general public, including:

(a) where such statements were made;

(b) the format (written or oral) such statements were made;

(c) when such statements were made; and

(d) what precisely was said.

2. With respect to paragraph 35 of the Claim, particulars regarding the representations that Bell allegedly made, including:

(a) where such representations were made;

(b) the format (written or oral) such representations were made;

(c) when such representations were made; and

(d) what precisely was said.

3. With respect to paragraph 41 of the Claim, particulars regarding the representations that Bell allegedly made, including:

(a) where such representations were made;

(b) the format (written or oral) such representations were made;

(c) when such representations were made;

(d) what precisely was said; and

(e) the “actual charges” that were “imposed by the OTMS”.

4. With respect to paragraph 52 of the Claim, particulars regarding the CRTC decisions referred to therein, including citations.

January 21, 2021

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ONTARIO
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Proceeding commenced at TORONTO

DEMAND FOR PARTICULARS

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Tab 4

Court File No. CV-20-00635778-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

VANESSA FAREAU and RANSOME CAPAY

Plaintiffs

and

BELL CANADA and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

Proceeding under the *Class Proceedings Act, 1992*

RESPONSE TO DEMAND FOR PARTICULARS

The plaintiffs provide the following particulars in response to your demand for particulars dated January 21, 2021 ("Demand") without prejudice to the plaintiffs' right to provide further particulars in the future:

1. Paragraph 1 of the Demand requests:

> *1. With respect to paragraphs 6 and 28 of the Claim, particulars regarding the "public statements" in which Bell allegedly stated that rates for prisoners are the same as for the general public, including:*
> *(a) where such statements were made;*
> *(b) the format (written or oral) such statements were made;*
> *(c) when such statements were made; and*
> *(d) what precisely was said.*

2. Plaintiffs' response: In addition to the Representations particularized in the Fresh as Amended Statement of Claim ("Claim"):[1]

[1] Capitalized terms here have the same meanings as those in the Claim.

- On or about January 31, 2019, a Bell Canada spokesperson was reported by Ottawa Citizen as representing in a statement: "rates for operator-assisted collect calls from Ontario correctional facilities are the same as Bell's public rates. 'We couldn't comment further about any of our business or government contracts.'"

- On or about January 14, 2020, Bell Canada spokesperson, Jacqueline Michelis, was reported by Global News in writing as representing: "Rates for operated assisted calls are the same as Bell's public rates."

- Further representations made by representatives and spokespersons for Bell as known to and in the possession of the defendant.

3. Paragraph 2 of the Demand requests:

2. With respect to paragraph 35 of the Claim, particulars regarding the representations that Bell allegedly made, including:
(a) where such representations were made;
(b) the format (written or oral) such representations were made;
(c) when such representations were made; and
(d) what precisely was said.

4. Plaintiffs' response: Paragraph 35, in conjunction with paragraph 1(w) of the Claim which defines "Proposal", pleads all the particulars requested in paragraph 2 of the Demand. The Proposal was in writing, including the quoted representation. For ease of reference:

- Paragraph 35: "As detailed herein, Bell represented that the rates for calls at the Facilities were the same as its residential rates for the general public.

In the Proposal, which was part of the Contract under which Bell exercised its monopoly, Bell represented that its telephone services for Ontario Prisoners would be at an 'identical call rate and connection fees including all time of day and mileage discounts as are experienced by Bell residential customer'". [emphasis added]

- Paragraph 1(w): "'Proposal' means a proposal dated November 20, 2012 that Bell submitted to the Minister for an OTMS, responding to a Request for Proposals numbered COS-0009 issued by the Minister to procure a contract for the purposes of the OTMS" [emphasis added]

5. Paragraph 3 of the Demand requests:

3. With respect to paragraph 41 of the Claim, particulars regarding the representations that Bell allegedly made, including:
(a) where such representations were made;
(b) the format (written or oral) such representations were made;
(c) when such representations were made;
(d) what precisely was said; and
(e) the "actual charges" that were "imposed by the OTMS".

6. Plaintiffs' response: For (a)-(d), see definition of "Representations" in paragraph 1(x) of the Claim and the paragraphs referenced therein, and the answer above to paragraph 1 of the Demand; (e) the Claim particularizes what is meant by the quoted words in the same paragraph: "The actual charges to be imposed by the OTMS were never disclosed to the Class Members, either orally or visually, prior to using the OTMS. The Class Members only discovered the price of phone calls when they received a bill, often weeks after a call. The Commissions paid to the Crown were never disclosed by Bell to Class Members. [emphasis added]"

7. Paragraph 4 of the Demand requests:

4. With respect to paragraph 52 of the Claim, particulars regarding the CRTC decisions referred to therein, including citations.

8. Plaintiffs' response:

- Telecom Order CRTC 95-316
- Telecom Decision CRTC 98-8
- Telecom Regulatory Policy CRTC 2015-546
- Telecom Regulatory Policy CRTC 2016-295

February 1, 2021

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-and-

BELL CANADA et al.
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Court File No. CV-20-00635778-00CP

ONTARIO
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PROCEEDING COMMENCED AT TORONTO

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Tab 5

ARCHIVED - Telecom Order CRTC 95-316

Telecom Order

Ottawa, 15 March 1995
Telecom Order CRTC 95-316
IN THE MATTER OF the proceeding initiated by Consumer Safeguards for Operator Services, Telecom Public Notice CRTC 94-35, 2 August 1994 (Public Notice 94-35).
WHEREAS, on 17 June 1994, Unitel Communications Inc. (Unitel) filed an application under Tariff Notice 919 requesting approval of tariff revisions providing for the introduction of operator-assisted calling for Unitel calling card holders and for consumer safeguards for Unitel-provided operator services;
WHEREAS, with regard to consumer safeguards, Unitel proposed that:
(1) Unitel operators identify themselves as representing Unitel to callers or to any party accepting charges for a collect or billed-to-third-party call, prior to charges being incurred;
(2) Unitel operators provide the customer with sufficient time to terminate the call at no charge prior to the call being connected;
(3) Unitel operators provide, upon customer request, (a) rates or charges for a call, (b) alternative call billing methods available to customers, and (c) complaint procedures available to dissatisfied customers;
(4) Unitel post information in close proximity to each publicly accessed telephone serviced, identifying itself and providing rate information; and

(5) in cases where Unitel provides operator services on behalf of another party, Unitel withhold payment of any compensation to that party if 10-XXX or 1-800 access is blocked to competitive carriers;

WHEREAS, in Public Notice 94-35, the Commission stated the preliminary view that uniform consumer safeguards governing the provision of operator services should apply to all carriers under its jurisdiction that offer competitive long distance services;

WHEREAS the Commission also stated the view that it may be appropriate to include consumer safeguards as conditions of service in the telephone companies' tariffs for services or facilities that might be used by competitors offering operator services;

WHEREAS, in Public Notice 94-35, the Commission requested comment on:

(1) the adequacy of the specific consumer safeguards proposed by Unitel and whether any alternate or additional safeguards would be appropriate;

(2) whether uniform safeguards should be required in all tariffs for operator services provided by facilities-based carriers of competitive long distance service; and

(3) whether the telephone companies' tariffs should provide for such safeguards through conditions of service for services or facilities that might be used by competitors offering operator services;

WHEREAS the Commission also requested comments on the specifics of Unitel's application, noting that Unitel proposed surcharges of $1.25 for operator-assisted Canada-Canada, Canada-U.S. and U.S.-Canada calling card calls, and a surcharge of $6.25 for Canada-Mexico calling card calls;

WHEREAS comments were received from the Competitive Telecommunications Association (CTA), Sprint Canada Inc. (Sprint), Stentor Resource Centre Inc. (Stentor) on behalf of AGT Limited, BC TEL, Bell Canada, The Island Telephone Company Limited, Manitoba Telephone System, Maritime Tel and Tel Limited and The New Brunswick Telephone Company, Limited (collectively, the telephone companies) and Unitel, and reply comments were received from Stentor and Unitel;

WHEREAS the parties agreed that uniform consumer safeguards should apply to all operator services providers;

WHEREAS CTA submitted that there were only two remaining issues to be resolved: (1) unreasonable rates charged by unregulated firms, and (2) protection of subscriber information;

WHEREAS CTA submitted that provisions similar to those approved in Telecom Order CRTC 94-629, 8 June 1994, with regard to access to billing and collection services and related databases by resellers with trunk-side access, were sufficient to deal with the above-noted concerns;

WHEREAS Sprint submitted that Unitel's proposed safeguards were adequate and should be adopted as a uniform set of standards;

WHEREAS Stentor stated that Unitel had not provided information as to how emergency calls would be processed;

WHEREAS Stentor submitted that Unitel should elaborate on any proposal it had for completing 9-1-1 calls;

WHEREAS Unitel stated that it did not anticipate any emergency calls reaching its operators, due to the long dialing sequence required;
WHEREAS Unitel stated that, upon introduction of its full complement of operator services, it would offer access to emergency service providers on a full-time basis, twenty-four hours a day, seven days a week, and would work in conjunction with Stentor to negotiate any technical requirements associated with completing emergency calls to 9-1-1 service providers;
WHEREAS Unitel agreed with Stentor that operator services providers should adhere to a code of ethics when dealing with the content, as well as the details, of a customer's telephone call;
WHEREAS Unitel considered that confidentiality was provided for by Article 11 of its Terms of Service;
WHEREAS Unitel stated that its employees were required to sign a "Code of Business Conduct", which addresses the release of confidential information and prohibits employees from revealing such information without proper authorization;
WHEREAS Unitel stated that its operators are required to sign an additional code of ethics, which relates specifically to operator services;
WHEREAS Stentor stated that the Commission should be informed of the method by which complaints were to be resolved, and of the manner in which callers would be informed of the process;
WHEREAS Unitel submitted that it had detailed procedures to handle all complaints, including operator services complaints, and that the "welcome package" it sends to all new customers includes information on these procedures;
WHEREAS Unitel submitted that problems with call splashing would not be encountered, as it did not currently plan to provide domestic operator-to-operator services;
WHEREAS Unitel stated that, in the case of international calls, it would have the correct originating and terminating telephone numbers and would therefore be in a position to correctly bill the call;
WHEREAS Unitel stated that, in cases where operator services providers transferred calls to Unitel operators without supplying the originating telephone number, Unitel would inform the customer that the call would be rated from the originating location of the operator to the requested terminating number;
WHEREAS Unitel stated that it would complete the call if the customer consented to this rating method;
WHEREAS Stentor stated that, in order to prevent customer confusion and unwarranted activity by telephone company operators, Unitel's tariff should provide sufficient information as to how Unitel's card users could access operator assistance;
WHEREAS Unitel submitted that instructions with respect to accessing operator assistance are provided on the back of each Unitel calling card, and would be provided by voice commands when a call was placed;
WHEREAS Unitel indicated that the proposed requirement that each publicly accessed telephone serviced by Unitel be clearly identified is designed to ensure that members of the public will understand that all "1+" long distance calls placed from that telephone will be carried on the Unitel network;

WHEREAS Stentor expressed concerns as to the inclusion in the telephone companies' terms of service of consumer safeguards with regard to the provision of operator services by competitors;

WHEREAS Stentor submitted that a requirement for the telephone companies to enforce consumer safeguards through their terms of service would be inappropriate and ineffective, except in the event of a Commission directive to discontinue service;

WHEREAS Stentor stated that the telephone companies would be willing to discontinue the provision of access and related services to alternate operator services providers as a result of abuse, on the advice of the Commission;

WHEREAS Unitel stated that regulated carriers should include safeguards in their tariffs, and that, for unregulated operator services providers, the safeguards should be included in the conditions of service of the regulated companies whose facilities would be used;

WHEREAS Unitel stated that Stentor members did not have safeguards in place to protect customers from potential abuse;

WHEREAS Stentor submitted that the telephone companies' Terms of Service and tariffs reflect numerous consumer safeguards;

WHEREAS no party other than Unitel commented on the rates proposed under Tariff Notice 919;

WHEREAS the Commission has considered the comments and reply comments filed in this proceeding;

WHEREAS the Commission considers that safeguards providing consumer protection are required in a competitive marketplace;

WHEREAS the Commission is of the view that Unitel's proposed safeguards, in conjunction with Article 11 of its Terms of Service, adequately protect consumers in respect of rates, access and

confidentiality;

WHEREAS the Commission considers that Unitel has not made adequate provision for handling emergency calls; and

WHEREAS the Commission is of the view that complaint and access procedures should be incorporated into operator services tariffs -

IT IS HEREBY ORDERED THAT:

1. Unitel is directed to file for final approval revised proposed tariff provisions incorporating those proposed in Tariff Notice 919, modified as set out below.

2. In its revised proposed operator services tariffs, Unitel is to implement standards to ensure that (a) emergency calls are connected to the appropriate emergency service in the reported location, if known, and, if not known, in the originating location of the calls, and (b) where there is no 9-1-1 service available, Unitel operators handle emergency calls in a manner similar to that expected of telephone company operators.

3. As an alternative to paragraph 2, above, Unitel may wish to make arrangements with the telephone companies for the handing-off of emergency calls, with the originating telephone number.

4. Unitel is directed to incorporate its complaints and access procedures into its operator services tariffs.

5. The telephone companies are directed to file, within 90 days, comprehensive operator services tariffs that (a) incorporate the consumer safeguards currently set out in various locations in their tariffs and white page directories, and (b) state that contracts are required pursuant to the telephone companies' operator services tariffs.

6. The telephone companies are directed to negotiate contracts with operator services providers for services or facilities used in the provision of operator services.

7. The contracts referred to in paragraph 6 are to (a) include provisions similar to Article 11, (b) specify that, when cases of abuse arise, the Commission may direct regulated carriers to discontinue the provision of access and related services to operator services providers, and (c) reference the fact that negotiated operator services contracts are required pursuant to the telephone companies' operator services tariffs.

Allan J. Darling
Secretary General

Date modified:

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Tab 6

ARCHIVED - Telecom Decision CRTC 98-8

Telecom Decision
CRTC 98-8

Ottawa, 30 June 1998

LOCAL PAY TELEPHONE COMPETITION

I BACKGROUND

In York University - Provision of Competitive Local Pay Telephone Service, Telecom Decision CRTC 95-20, 18 September 1995 the Commission expressed the preliminary view that the resolution of certification issues for competitive local exchange carriers (CLECs), in the context of the proceeding announced in Implementation of Regulatory Framework - Local Interconnection and Network Component Unbundling, Telecom Public Notice CRTC 95-36, 11 July 1995, would be sufficient to address concerns identified with respect to competition in the local pay telephone market. The Commission also indicated its intention to initiate a proceeding, following the establishment of the CLEC certification requirements, to consider whether or not additional consumer safeguards were required as a condition of competitive entry into this market.

On 1 May 1997, the Commission issued Local Competition, Telecom Decision CRTC 97-8 (Decision 97-8), which established the framework for local exchange competition. The Commission found that resellers of local exchange services would meet certain of the service requirements that the Commission imposed on local exchange carriers (LECs) such as 9-1-1 and Message Relay Service (MRS), by virtue of the underlying LEC obligations.

On 8 July 1997, the Commission issued Telecom Public Notice CRTC 97-26, Local Pay Telephone Competition, requesting comments on issues in relation to pay telephone competition, including the following:

(i) Is it appropriate at this time to permit competition in the local pay telephone market?

(ii) If so, what consumer safeguards should be met by service providers?

(iii) What is the appropriate mechanism to ensure the enforceability of the consumer safeguards identified in (ii) above?

Comments and reply comments were received from AT&T Canada Long Distance Services Company (AT&T Canada LDS), The British Columbia Public Interest Advocacy Centre on behalf of the British Columbia Old Age Pensioners' Organization, Council of Senior Citizens' Organizations of B.C., Federated Anti-Poverty Groups of B.C., Senior Citizens' Association of B.C., West End Seniors' Network, End Legislated Poverty, B.C. Coalition for Information Access and the Tenants' Rights Action Coalition (collectively, "BCOAPO et al."), Consumers' Association of Canada (CAC), Consumers' Association of Canada, Alberta Branch (CACAlta), Call-Net Enterprises Inc. on behalf of itself and Sprint Canada Inc. (Call-Net), Canadian Business Telecommunications Alliance (CBTA), Canadian Cable Television Association (CCTA), Canada Payphone Corporation (CPC), the Director of Investigation and Research (the Director), The Public Interest Advocacy Centre (PIAC), Queen's University (Queen's), RNL Financial & Investment Advisory Services (RNL), Stentor Resource Centre Inc. (Stentor) on behalf of BC TEL, Bell Canada (Bell), Island Telecom Inc. (formerly known as The Island Telephone Company Limited), Maritime Tel & Tel Limited, MTS Communications Inc. (formerly known as MTS Netcom Inc.), The New Brunswick Telephone Company, Limited, NewTel Communications Inc., TELUS Communications Inc. and TELUS Communications (Edmonton) Inc., The City of Calgary, and Vidéotron Télécom Itée.

II GENERAL CONCLUSIONS

A. General

As noted above, the Commission in Decision 97-8 established a framework for local competition that balances the interests and needs of consumers, local competitive entrants, toll competitors and incumbent telephone companies. Building on that framework, the Commission finds that it is appropriate to allow competition in the local pay telephone market.

Highlights of the Commission's determinations in this proceeding are listed below. Detailed discussion of the various issues and rationale are set out in Parts III, IV, and V of this Decision.

B. Competition

The local pay telephone market is opened to competition effective the date of this Decision. Before a new entrant may provide service, the following must be completed: (i) all new entrants must register; (ii) where an unregulated provider uses an incumbent local exchange carrier's (ILEC) services for access, Commission approved pay telephone access tariffs and a standard service agreement must be in place; and (iii) where an unregulated service provider uses CLEC's services for access, the CLEC must ensure that its service contract includes the consumer safeguard requirements of this Decision.

The Commission intends to hold a review within a three-year time frame to investigate the impact competition has had on the local pay telephone market. This review will include, among other things, problem areas that have been identified through complaints, including complaints with respect to consumer safeguards and barriers to entry.

C. Consumer Safeguards

The Commission mandates additional consumer safeguards to augment those established in Decision 97-8. These safeguards will serve to protect the Canadian consumer and address the concerns which have historically militated against the opening of the pay telephone service market to competition.

D. Enforcement Mechanism

The registration process established for CLECs in Decision 97-8 is modified for specific application to entry into the local pay telephone market. A new entrant must: (1) attest in writing that it understands and will conform to the obligations and consumer safeguards set out in this Decision; (2) provide the name of the carrier supplying the access lines; (3) provide to the Commission serving area maps for information purposes and make such serving area maps available upon request at its business offices; and, (4) provide details as to how it proposes to deal with consumer complaints.

CLECs are directed to include the consumer safeguards established in this Decision in all contracts negotiated with competitive pay telephone service providers (CPTSPs) for the provision of pay telephone service.

Stentor-member companies are directed to file proposed pay telephone access tariffs within 45 days of this Decision. The tariffs are to incorporate the mandated consumer safeguards established in this Decision.

Non-compliance by the CPTSP with the ILEC tariff or the CLEC contract as applicable will constitute reason for the termination of the access service.

E. Regulatory Framework For New Entrants

Pursuant to section 34 of the *Telecommunications Act* (the Act), the Commission refrains from exercising its powers and performing its duties pursuant to sections 25, 29 and 31 and subsections 27(1), (5) and (6) of the Act, in relation to local pay telephone services provided by CLECs. Sections 24, 25, 27, 29 and 31 do not apply to CLECs to the extent that they are inconsistent with the determinations in this Decision.

F. Other

ILECs are directed to file reports within 45 days of this Decision indicating where pay telephones were located as of 1 July 1998 in their respective serving territories. Thereafter, ILECs are directed to file annual reports indicating locations where pay telephones were removed and the reasons why.

ILECs are directed to file information within 45 days of this Decision with respect to any long-term or exclusive contracts entered into after 1 July 1997 which have a life expectancy of five years or longer.

The Commission considers it appropriate to establish a per-call compensation regime and that ILECs may file tariffs for its implementation. The Commission also considers it appropriate that new entrants negotiate rates with interexchange carriers.

III ISSUES

A. Should Competition be permitted in the Local Pay Telephone Market?

All parties that commented on this issue, with the exception of CAC, CACAlta, PIAC and Stentor, expressed the view that competition should be introduced in the local pay telephone market.

CAC, CACAlta, PIAC and Stentor supported competition in varying degrees provided adequate consumer safeguards were put in place. CAC expressed considerable reservation that such a state could be reached and urged the Commission to consider the United States' experience carefully. PIAC submitted evidence prepared by Dr. Mark Cooper indicating that since competition became a major thrust of public policy in telecommunications in the United States, few areas have been more troubling than the competitive provision of pay telephone service. Dr. Cooper also recommended the provision of public interest pay telephones. These are pay telephones which are deemed to be required in locations to further the public interest (e.g. promote public health and safety), but which are not likely to be profitable. To ensure that these telephones are deployed, subsidy mechanisms are necessary, typically drawn from a universal service fund.

Stentor submitted that Canadian consumers have been provided with and have come to expect high quality pay telephone service. According to Stentor, pay telephones located in Canada provide consumers with an array of services and consumer safeguards, including access to local and toll services provided by the Stentor-member companies and other service providers, alternate billing arrangements, access to emergency services, access to MRS, clearly posted instructions, a process for repairs, and leading edge technology.

Stentor noted that the details of the competitive pay telephone scene painted by Dr. Cooper would not be disputed by knowledgeable industry observers. Given the awareness of the situation, Stentor stated that the Commission must assess whether it is in the public interest to establish a competitive environment for the provision of pay telephones. If so, a framework should be put in place that embodies consumer safeguards, establishes appropriate enforcement mechanisms, allows consumers to obtain the benefits of competition, promotes a healthy and viable pay telephone industry, fosters investment and innovation in the pay telephone industry, and ensures equality in regulatory treatment for all pay telephone service providers.

In Decision 97-8, the Commission found that it was in the public interest to exercise its powers under section 24 of the Act, in order to impose a variety of terms and conditions (e.g. consumer safeguards) on CLECs. The Commission also indicated that resellers providing local exchange services would meet certain of the service requirements imposed on LECs, such as 9-1-1, MRS, and privacy protection, by virtue of the underlying LECs' obligations. The Commission notes that parties to this proceeding generally supported the notion of competition in the local pay telephone market, provided appropriate consumer safeguards were put in place.

The Commission notes that parties to this proceeding generally agreed that safeguards, in addition to those established in Decision 97-8, were required to deal with specific issues associated with pay telephone service.

The Commission also notes that CAC, CACAlta, PIAC and Stentor submitted that the introduction of pay telephone competition in the United States was accompanied by customer confusion and complaints caused by negative practices. Many of the problems encountered were related to alternate operator service providers (AOSPs) and included such concerns as a lack of rate information on the services provided and the inability of callers to select or use a service provider of their choice. Customer complaints reflected concerns such as being billed unreasonable rates, being billed for unanswered calls, restricted carrier access and variances in billed amounts due to "call splashing". Call splashing occurs when an AOSP transfers a call to a particular carrier at the caller's request. In such cases, for billing purposes, the call is transferred or deemed transferred to an interexchange carrier in the city where the AOSP's switching centre is located. If the location of the AOSP switching centre differs from that of the caller, the call may be billed from the location of the centre, rather than from the location where the call originated. As a result, the bill may confuse the customer and be higher than expected.

The Commission considers that the uniform consumer safeguards adopted by the Commission in Consumer Safeguards for Operator Services, Telecom Order CRTC 95-316, 15 March 1995, (Telecom Order 95-316) go a long way towards resolving many of the price gouging problems involving AOSPs encountered in the United States' market. (A detailed description of these safeguards is outlined in Part III B (vi) "Provisioning of Operator Services" of this Decision).

The Commission considers that the establishment of a regime that incorporates the safeguards established in Decision 97-8, those set out in Part III B of this Decision, and the enforcement mechanism in Part III C of this Decision is sufficient to protect the Canadian consumer and address the concerns which have historically militated against the opening of the pay telephone service market to competition.

In the Commission's view, introducing competition in the local pay telephone market will stimulate service innovation, foster a viable domestic industry and increase total market revenues. It is therefore consistent with the Commission's stated objective in Review of Regulatory Framework, Telecom Decision CRTC 94-19, 16 September 1994 that increased competition in the local telecommunications market is in the public interest and that restrictions on entry into the market should be removed where appropriate. Furthermore, the Commission considers that the rules for competition in the local pay telephone market established in this Decision conform to the Commission's objectives of placing greater reliance on market forces and ensuring that regulation, where required, is effective. Accordingly, the Commission directs that the local pay telephone market be opened to competition effective the date of this Decision. Before a new entrant may provide service, the following must be completed: (i) all new entrants must register; (ii) where an unregulated provider uses an ILEC's services for access, Commission approved pay telephone access tariffs and a standard service agreement must be in place; and (iii) where an unregulated service provider uses CLEC's services for access, the CLEC must ensure that its service contract includes the consumer safeguard requirements of this Decision.

B. Consumer Safeguards

Many of the safeguards established in Decision 97-8, such as access to 9-1-1 and provision of MRS were unanimously supported and are being mandated here. As noted above, parties, in general, supported the view that additional safeguards are required to ensure that consumers are protected from potential abuses and competition is permitted to roll out properly. The following areas were contentious and are examined in more detail: rate regulation; notification of long distance charges; location provider commissions; per-call compensation regime; provisioning of various types of calls (local, long distance, incoming and outgoing) and means of payment (use of coin and/or card); provisioning of operator services; provisioning of operating instructions; public interest pay telephones; information campaign; and long-term and exclusive contracts. Each of these concerns is addressed below.

i) Rate Regulation

PIAC, CAC and CACAlta argued that the Commission should impose full rate regulation on CPTSPs and that a rate ceiling should be established for local calls at current rates.

AT&T Canada LDS, CPC, the Director and Queen's submitted that, similar to the treatment afforded CLECs in Decision 97-8, retail rates for CPTSPs should not be regulated. Furthermore, the Director argued that the Commission should forbear from regulation of the rates charged by the ILECs, pursuant to the provisions of section 34 of the Act, if it is satisfied that there is, or is likely to be, sufficient competition to protect the interests of users.

The Director noted that traditional wireline services as well as wireless cellular and personal communications services (PCS) services were likely to provide an increasing constraint on the pricing of pay telephone services and that, given factors such as location and volume of calls, it is highly likely that there is a wide range of costs associated with the provision of pay telephone services. The Director considered that capping rates at $0.25 or some other pre-determined level could have the effect of eliminating price competition and inhibiting the installation of competitive pay telephones in higher cost areas. Moreover, to the extent that rate regulation has led to subsidies for the provision of pay telephone service, such subsidies will act as a barrier to entry for competitors.

According to Stentor, in a competitive pay telephone market, the terms and rates for pay telephone services should be determined by market forces, thus generating conditions which will support service availability, quality, innovation and competitive prices. Stentor submitted that the principle of establishing a level playing field should lead the Commission to conclude that the regulation of pay telephone rates will not be necessary once competition is established to some degree.

The Commission is of the view that ILECs will remain dominant in the local pay telephone market for the foreseeable future and accordingly, until such time as sustainable competition is in place, forbearance from the regulation of ILEC-provided pay telephone service is inappropriate. However, the Commission considers that, in a competitive pay telephone market, new entrants will not have sufficient market power to impose unreasonable rates on callers. Accordingly, market forces should be sufficient to discipline the pay telephone rates of these providers. Forbearance is discussed further in Part IV of this Decision.

ii) Notification of Long Distance Charges

PIAC and CAC submitted that a mechanism to inform the customer of the long distance rates for all calls should be provided on-line (e.g. the rate for the first three minutes or the per-minute rate for that particular carrier) after the number has been dialled, but prior to the call being completed, thus giving the caller the opportunity to terminate the call at no charge.

CPC indicated that should a caller choose an alternate interexchange carrier (IXC), it may not be possible for the CPTSP to identify the charges which would apply, as only the IXC selected by the caller would have this information.

According to Stentor, the rates for alternately billed calls are determined by the network service provider and are beyond the control of the pay telephone service provider (PTSP). Additionally, long distance rates for most service providers are unregulated and, therefore, there is no readily available process through which PTSPs could learn of rate changes, making it a challenge to ensure that accurate rate information is provided. Moreover, Stentor noted that the costs incurred to change the rate information at each pay telephone at the time of any service provider’s rate change would be onerous. Stentor submitted that should the CPTSP or location provider impose an end-user charge in addition to that of the network service provider, a mechanism should be provided so that consumers are aware of such charges prior to placing calls.

The Commission notes that currently ILECs are not in a position to provide customers who use alternate interexchange service providers via swipe cards, 1-800/888 or 10XXX dialling with the long distance charges incurred on those networks. Furthermore, the long distance rates charged by such service providers are unregulated. Given these circumstances, CPTSPs would not be in a position to provide the long distance rates for all alternate interexchange service providers. In addition, the Commission considers that callers who select alternate interexchange service providers, other than the default service provider, can be presumed to be aware of the rates charged by that provider, or if not, are likely to have been informed by the selected service provider how to obtain this information. In the Commission's view it would not be feasible or practical to direct CPTSPs to provide the long distance rates for all service providers, given the number of resellers. However, in order to ensure that consumers are aware of the default service provider selected for the pay telephone in question, the Commission directs CPTSPs to display prominently the name of the default long distance service provider at each pay telephone.

iii) Commissions Charged By Location Providers

CACAlta submitted that splitting of revenues with location providers such as the owner of the establishment, placement agent, property manager or any other party who might gain benefit from the establishment of a pay telephone location should not be permitted. CACAlta considered that these third parties already benefit due to increased traffic to the location, enhanced property values or other similar reasons. CACAlta also considered that revenue splitting would cause the CPTSP to increase rates.

Stentor noted that location providers supply essential floor space and appropriate lighting and, in some cases, assume additional responsibilities such as cleaning the telephone and enclosure, providing electricity, reporting service problems and assisting customers with change or dialling problems. According to Stentor, a discontinuation of the practice of revenue splitting with location providers would lead to a reduction in the availability and quality of pay telephone service in Canada and, therefore, CACAlta's arguments in this regard should be rejected.

In Canada, typically, location providers are compensated through negotiated settlements with the ILECs based on earned eligible revenues per public pay telephone. The Commission is of the view that it would not be possible or appropriate to eliminate revenue splitting between the PTSPs and third parties and that, in fact, to do so could result in a deterioration of pay telephone service.

The Commission notes that location surcharges to be paid by pay telephone users have not been part of the history of the Canadian pay telephone industry and are not a part of the historic norm in a monopoly environment. The Commission also notes PIAC's concern that, in the United States, CPTSPs are not adhering to a requirement to post warnings with respect to location surcharges. The Commission considers that the Canadian consumer's expectation about the cost of a call is based on experiences with long distance calls billed from home and that without warnings about location surcharges, consumers will, at least initially, not be aware of them.

Accordingly, the Commission directs that any surcharges not included in the cost of a call be prominently displayed at each pay telephone location.

iv) Per-Call Compensation Regime

Stentor submitted that PTSPs should be compensated for every call that accesses an IXC's network from a local pay telephone. However, Stentor considered that this charge should ideally be collected from the IXC rather than directly from the initiator of the call. This would permit toll-free and casual calling to continue and reflect the fact that the network service provider is the beneficiary of the provision of this access to their network. Stentor also concurred with CPC's view that, at the present time, such a charge should be at least equivalent to the value of a local call. According to Stentor, even if the Commission determined that competition is not appropriate at this time, the implementation of a per-call compensation regime for access from pay telephones is required. Stentor indicated that its members were studying alternative approaches for implementing a per-call compensation regime for the use of their pay telephones, with the intention of proposing tariffs in the fourth quarter of 1997.

CPC submitted that a suitable mechanism to compensate PTSPs would be to charge the caller the price of a local call in order to access an IXC, although a lesser charge (or no charge at all) could be levied for calls to IXCs who have made compensation arrangements with the PTSP. CPC noted that a similar approach had been adopted by the Federal Communications Commission (FCC) and could serve as an appropriate interim or final arrangement in Canada.

AT&T Canada LDS considered that rates charged for services or forms of access from CPTSPs (e.g., card swipe access or location provider compensation), should be limited to no more than the rates charged by ILECs where the ILECs' rates are subject to Commission approval. Moreover, AT&T Canada LDS and Call-Net indicated that until Stentor offered details as to the type of access charge and the business case underlying that fee, they were not in a position to comment meaningfully on the justification of such a charge.

Queen's submitted that CPTSPs should be compensated for calls and should negotiate the appropriate charge. In its view, if parties are unable to agree on the amount, they should have recourse to some form of alternative dispute resolution procedure.

In Stentor's view, services such as swipe card access, which are provided on a competitive basis or could be self-provided, do not meet the definition of an essential service. Furthermore, in a competitive environment, rates for such services, regardless of the specific service provider, should be subject only to market forces. Stentor noted that the economic structures associated with different location characteristics vary substantially and, therefore, inflexible price structures or terms and conditions associated with location access would unduly constrain service availability, and quality, and stifle innovation.

The Commission notes that the Canadian pay telephone industry has accommodated access to alternate toll service providers, delivered card swipe access service and provided access to toll-free services without additional direct charges to the pay telephone user. In Telecom Order CRTC 98-281, dated 18 March 1998, the Commission found it appropriate to establish an ongoing usage charge of $0.25 as a proxy for an access charge to provide for a contribution to the costs of the pay telephone operations. However, this rate will apply solely to calls using the three slots being offered by the ILECs to long distance competitors.

The Commission also notes that Stentor, CPC, the Director and Queen's supported the requirement for a per-call compensation regime. In principle, the Commission considers such a regime to be appropriate but is of the view that there is insufficient evidence at the present time to assess the appropriate level of this compensation. The Commission notes that Stentor, in reply comments, stated that its members were in the process of studying alternative approaches for implementing a per-call compensation regime, with the intention of filing proposed tariffs in the fourth quarter of 1997. As of this date, no tariffs have been filed. The Commission considers it appropriate to establish a per-call compensation regime and ILECs may file tariffs for its implementation. With respect to unregulated PTSPs, the Commission considers it appropriate that they negotiate rates with IXCs.

v) Provisioning of Various Types of Calls and Means of Payment

PIAC noted that several parties wished to provide a level of pay telephone service which is substantially less than currently provided. PIAC considered that consumer expectations would likely be frustrated by partial service and noted that while many participants indicated that competition would promote better service at lower prices, the first thing they wished to do was raise prices and cut back on services.

With the exception of Queen's, parties considered that CPTSPs should provide for both local and long distance calls. According to Queen's, all pay telephones should be technically configured to provide both services; however, CPTSPs should not be mandated to provide both as a condition of service.

Stentor submitted that any CPTSP's telephones that provide for long distance calls should be required to provide equal access to all networks of alternate providers of long distance services (APLDS).

With the exception of CBTA, Queen's and Stentor, parties to the proceeding were of the view that both coin and card payment options should be mandated.

CBTA submitted that coin access should be mandatory and card access optional, the assumption being that in order to compete, PTSPs will provide for card access. With respect to CBTA's proposal, Queen's argued that the service provider should have the ability to determine which means of payment best satisfies its customers' needs and its own business operations, whether that be through the use of coins, credit cards, debit cards, smart cards, or some combination of these or other alternatives. Queen's noted that the operation of coin pay telephones involves increased operating costs, e.g. collection of coins, and greatly increased risks of vandalism and theft, as compared to card only pay telephones.

Stentor indicated that its installed base of pay telephones includes both coin-operated sets and pay telephones which do not accept coins. According to Stentor, mandating the acceptance of cash payment at all pay telephones could actually stifle innovation in the technology and services available to consumers in Canada.

The Commission is of the view that opening the local pay telephone market to competition and then mandating CPTSPs to provide the identical services to those currently in place is at odds with the concept of the benefits to be derived from competition. The Commission finds that, subject to the requirements established in this Decision, new entrants should be allowed to determine the nature and scope of the services they wish to provide. However, if long distance calling is provided for, the CPTSP must allow access to all APLDS' networks accessed by the CPTSP's underlying LEC.

In addition, it will be left to the CPTSPs' discretion as to what types of payment they will accept. However, it is imperative that they ensure coinage is returned for incomplete calls, such as busy signals or no answer (if coins are accepted) or similarly, if a card is used, that alternately billed charges do not apply if the call is not connected to the called party.

vi) Provisioning of Operator Services

Parties varied in opinion as to whether or not provision of directories and operator services, other than 9-1-1 and MRS, should be mandated. AT&T Canada LDS argued that if operator services are provided, it should be in compliance with the industry guidelines noted in paragraph 284 of Decision 97-8. BCOAPO et al. argued that operator services similar to those provided by ILECs should be mandated, including 9-1-1, MRS, directory assistance, collect calling, line verification, and coin return for incomplete calls. CAC expressed the view that local and long distance directory assistance should be provided. CBTA argued that free access to the ILEC's operator assistance, or that of any CLEC's as such services are developed, should be provided.

According to CPC, operator services should be limited to 9-1-1, MRS, local and long distance directory assistance. Queen's submitted that all pay telephones should provide free access to directory assistance, operator assistance, 1-800 services, 9-1-1 and MRS. In RNL's view, 411 and 0+ calling should be provided.

Stentor considered that access to operator services and directory assistance could be mandated as an industry requirement or left to market forces. In addition, Stentor submitted that the provision of directories need not be mandated, as market forces could reasonably be expected to ensure that consumer needs in that regard were met by CPTSPs.

In Telecom Order 95-316, the Commission mandated that: (1) operators identify themselves as representing the company to callers or to any party accepting charges for a collect or billed-to-third party call, prior to charges being incurred; (2) operators provide the customer with sufficient time to terminate the call at no charge prior to the call being connected; (3) operators provide, upon customer request, (a) rates or charges for a call, (b) alternative call billing methods available to customers, and (c) complaint procedures available to dissatisfied customers; (4) the company post information in close proximity to each publicly accessed telephone serviced, identifying itself and providing rate information; and (5) in cases where the company provides operator services on behalf of another party, it withhold payment of any compensation to that party if 10-XXX or 1-800 access is blocked to competitive carriers.

In addition, the Commission directed Unitel Communications Inc. (now AT&T Canada LDS) in that Order to implement standards to ensure that (a) emergency calls are connected to the appropriate emergency service in the reported location, if known, and, if not known, in the originating location of the calls, and (b) where there is no 9-1-1 service available, operators handle emergency calls in a manner similar to that expected of the incumbent local telephone company operators; furthermore AT&T Canada LDS was directed to incorporate its complaints and access procedures into its operator services tariffs.

The Commission directed the ILECS, in Telecom Order 95-316, to file operator services tariffs that (a) incorporate the consumer safeguards currently set out in various locations in their tariffs and white page directories, and (b) state that contracts are required pursuant to the ILECs' operator services tariffs. Furthermore, the ILECs were directed to negotiate contracts with operator services providers for services or facilities used in the provision of operator services. These contracts were to (a) include provisions similar to Article 11 of the ILECs' Terms of Service, (b) specify that, when cases of abuse arise, the Commission may direct regulated carriers to discontinue the provision of access and related services to operator services providers, and (c) reference the fact that negotiated operator services contracts were required pursuant to the ILECs' operator services tariffs.

In Decision 97-8, the Commission declined to mandate the provision of, or terms and conditions for, operator services provided by CLECs, with the exception of access to emergency services through 9-1-1 or, failing that, through an operator and MRS. With regard to 9-1-1, all service providers were directed to ensure, to the extent technically feasible, that the appropriate end-user information is provided to the Automatic Location Identification database to the same extent as that provided by the ILECs. Furthermore, the Commission declined to mandate the provision of directory assistance and directories as it considered that, by virtue of CLEC non-dominance, market forces would be sufficient to discipline the provision of these services.

The Commission notes that CPC has indicated its intention to initiate service using paper directories. CPC plans, over time, to develop new electronic directory services that will not be subject to the same vandalism problems experienced with paper directories.

The Commission is of the view that the same rationale used in Decision 97-8 with respect to CLECs can be adopted in this proceeding. Accordingly, CPTSPs are not mandated to provide directories, access to directory assistance or operator services, with the exception of 9-1-1 or operator assisted emergency service access and MRS. However, should a CPTSP decide to offer its own operator services or use the operator services of a third party, such services must comply with the consumer safeguards established in Telecom Order 95-316.

In Decision 97-8, the Commission directed the CRTC Interconnection Steering Committee (CISC) to establish guidelines, processes and procedures for the provision of Operator Services within a multiple service provider environment. In its Consensus Report to the Commission (DOTF009 - Operator Processes, dated 26 August 1997), the Operator Services/Directory Listings Sub-Working Group of CISC indicated that further discussions would be deferred until such time as an AOSP existed. At that time the industry would decide whether to re-open discussions using the work completed to that date as a starting point.

The Commission directs that any operator services offered by CPTSPs be provided in compliance with procedures that evolve from CISC.

vii) Provisioning of Operating Instructions

Parties submitted that an approach for the provision of operating information similar to that established in Decision 97-8 should be adopted. In Decision 97-8, CLECs were directed to provide two distinct categories of information. The first category contains consumer information, which must be made available upon request, including rate information, and services available. The second category contains information that must be made available before the purchase decision is made, including the company name, address and a toll-free telephone number where information can be obtained and complaints addressed.

Stentor was of the view that the provision of instructions on accessing APLDS should not be mandated but should continue to be the responsibility of each APLDS. With respect to the level of detail for operating instructions to be posted on or near a pay telephone, Stentor considered that it would be in the CPTSPs' best interest to ensure that their pay telephones are easy for customers to use.

The Commission is concerned that in a competitive environment where rates for all parties are not regulated, it is essential that consumers have full, comprehensive and comprehensible information to make informed choices.

In order to achieve this goal, the Commission directs that the following information be prominently displayed at each pay telephone location provided by CPTSPs: (a) rates of local calls; (b) charges for operator services (if provisioned); (c) the name of the default long distance provider, if applicable; (d) any surcharge, mark-up or location charges not included in the price of the call; and, (e) the CPTSP's name, address and toll free number where information can be obtained and complaints addressed. In addition, CPTSPs are directed to place the Commission's address and toll-free number (1-877-249-CRTC) on all pay telephones, in order to ensure that, when complaints are not satisfactorily addressed, consumers have direct recourse to the Commission. CPTSPs are also directed, as part of the registration process, to disclose the method by which complaints concerning rates, charges or collection practices will be resolved.

With respect to providing information on the operation of special features such as Email, Internet browsing and on-line services, the Commission considers that these services could conceivably be delineating factors and an incentive for the public to opt to use the equipment. Accordingly, given that it would be in the CPTSP's best interest to ensure that clear operating instructions are provided, the Commission will not mandate that such instructions be provided.

However, should there be limitations on the functionality of the pay telephone equipment, such as an inability to make long distance calls, the Commission directs the CPTSPs to post this information either on, or in close proximity to, the pay telephone.

With respect to providing information on how to access APLDS, the Commission considers that, similar to when the long distance market was opened to competition, APLDS will ensure that their customers know how to access their networks from pay telephones. Accordingly, the Commission does not consider it necessary to mandate this requirement.

viii) Public Interest Pay Telephones

As already noted, PIAC submitted evidence prepared by Dr. Mark Cooper recommending the provision of public interest pay telephones. Public interest pay telephones are defined by the FCC as pay telephones which (a) fulfil a public policy objective in health, safety, or public welfare; (b) are not provided for a location provider with an existing contract for the provision of a pay telephone, and (c) would not otherwise exist as a result of the operation of the competitive marketplace.

BCOAPO et al. argued that a regulatory body should be created, whose costs would be borne by the CPTSP through a fee of $0.25 per month per telephone, to handle issues and concerns raised by consumers, location providers and competitors, in respect of these telephones.

AT&T Canada LDS submitted that subsidized public interest pay telephones have the potential to be as contentious as existing mechanisms to subsidize residential basic local service. Such a regime would require a clear definition to establish which pay telephones would be eligible, quantifying the appropriate subsidy, possibly at a very disaggregated level depending on the location, and establishing a mechanism to recover and distribute the subsidy.

CPC indicated that in Local Service Pricing Options, Telecom Decision CRTC 96-10, 15 November 1996 (Decision 96-10), the Commission noted the high penetration rate of telephone service in Canada and found that affordability was not presently an issue. CPC noted that PIAC had relied for its submissions solely on information relating to activities in the United States and that the FCC had acknowledged in CC Docket No. 96-128, Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, that the question of whether there was a need for public interest pay telephones varied from region to region and it was, therefore, more appropriate for the individual states to regulate this area based on local conditions.

CPC argued that it would be inappropriate to import a regulatory scheme from California or any other state which would almost certainly be unrelated to Canadian realities. In this regard, CPC submitted that Decision 96-10 reflected Canadian realities and a comparable approach should be adopted with respect to public interest pay telephones.

Queen’s objected to the imposition of an obligation to serve on CPTSPs and submitted that such an obligation does not currently exist. Queen’s considers that it would be ironic if the introduction of competition in the provision of pay telephone service was accompanied by an obligation to serve which is more typically associated with the provision of a service on a monopoly basis.

Stentor argued that requiring a certain number of pay telephones to be maintained and funded in the interest of serving health, safety and welfare goals had never been imposed in the past, and would, in effect, be an attempt to mandate certain forms of obligation to serve.

Stentor stated that pay telephones are installed today primarily to meet the needs of the travelling public and people away from their primary network access. Unlike the situation in the United States, these pay telephones are not typically installed in areas with low levels of residential telephone penetration in order to provide an extension to basic local service.

According to Stentor, communication options available to the travelling public have increased over the last several years and, as a result, the number of non-compensatory pay telephones has decreased. In Stentor's view, the approaches suggested by BCOAPO et al. and PIAC are entirely inappropriate in today's environment.

The Commission has in the past encouraged ILECs to provide pay telephone service in locations where costs exceed revenues. However, this is not mandated, as illustrated in Item 250 of Bell's General Tariff which states that the company furnishes public telephone service at its discretion, primarily to make outgoing service available to the general public and determines the location of the service.

In the Commission's view, there is no compelling evidence on the record to indicate that the introduction of competition in the pay telephone market warrants placing an obligation to serve, which currently does not exist, on CPTSPs or incumbent PTSPs at this time. Furthermore, establishing such a regime could prove to be contentious and a heavy administrative burden. The FCC acknowledged this concern when it indicated that any effort by it to implement a national program for public interest pay telephones would be beyond its current resource capabilities.

The Commission considers that the vast majority of people who use pay telephones do so as a matter of convenience or emergency, not as a substitute for basic telephone service. The Canadian telecommunications policy, as set out in the Act, requires the Commission to ensure that reliable and affordable telecommunications services of high quality be accessible to all Canadians in both urban and rural areas throughout Canada. This generally refers to the requirement that as many as possible are able to connect to the network via good quality basic access service. The Act also requires the Commission to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective.

The Commission agrees with the majority of parties in this proceeding that circumstances, at present, do not indicate a need for the establishment of public interest pay telephones. However, it is the Commission's intention to hold a review within a three-year time frame to investigate the impact competition has had on the pay telephone market. This review will include, among other things, problem areas that have been identified through complaints, including complaints with respect to consumer safeguards and barriers to entry. In addition, the Commission will, as part of the review, assess the requirement for public interest pay telephones. ILECs are directed to file reports within 45 days of this Decision indicating where pay telephones were located as of 1 July 1998 in their respective serving territories. Thereafter, ILECs are directed to file annual reports indicating locations from which pay telephones have been removed and the reasons why. Should the outcome of the review indicate that significant negative changes have occurred, the Commission would consider establishing a regime for public interest pay telephones.

ix) Information Campaign

PIAC argued that there should be a CRTC-directed information program, paid for by the CPTSPs, that would begin to educate Canadian telephone customers against potential abuses. This information program would be proactive and go beyond the mechanisms, i.e., billing inserts, adopted by the Commission with respect to long distance competition.

CPC opposed PIAC's suggested campaign noting the expense and the implicit and unjustified message that competitive pay telephones are unreliable and likely to cause consumers problems. According to CPC, this type of hidden message would undermine the evolution of competition from the outset.

In Stentor's view, mandating an information campaign focusing on potential consumer abuses, as proposed by PIAC, could well have the effect of prejudicing Canadian consumers against all new CPTSPs, which would retard the establishment of a competitive marketplace and the attendant benefits that Canadians may derive from it. Stentor noted that Canadians are well educated concerning the use of pay telephones and, indeed, many have first-hand experience with the complexities associated with the use of competitive pay telephones in the United States. In addition, Stentor considered that normal market forces could be relied upon to ensure that necessary and sufficient information is provided to consumers.

The Commission considers that the concept of competition generally in the telecommunications industry is not new to Canadians. Further, the Commission is of the view that, imposing the requirement on all CPTSPs to post rates, etc. at all pay telephone locations should provide sufficient information to consumers. The Commission is not persuaded that the expected benefits of conducting an information campaign would materialize and, in fact, believes that it could stifle the introduction of competition. The Commission, therefore, finds that an information campaign is not required.

x) Long-term and Exclusive Contracts

The Director submitted that the widespread existence of long-term and exclusive contracts entered into by ILECs prior to the beginning of competitive entry could pose a competition policy concern if it prevented entry in high volume locations such as airports, shopping malls, hospitals, universities and hotels.

CPC shared the Director's concern and submitted that it would be ironic if regulatory concerns about the anti-competitive aspects of these types of contracts actually served to delay the introduction of competition.

RNL submitted that Stentor should reveal the percentage of key, high volume locations that are presently under contract and the percentage of total revenue currently protected under these contracts, as well as any other contracts expiring beyond the end of 1997 in order to assist in determining whether barriers to entry exist.

Stentor submitted that, although some exclusive contracts have been entered into by certain ILECs with location providers, such contracts do not constitute a significant barrier to entry into the pay telephone business. Furthermore, the percentage of pay telephones covered under such arrangements is small and would not prevent an entrant from acquiring presence in key, high volume locations.

The Commission notes that one of the key success factors in operating a pay telephone service is the securing of appropriate sites. From a commercial perspective, these sites are ideally located in high pedestrian traffic areas. The use of long-term and/or exclusive contracts is one way to secure these sites for a pay telephone provider and thereby lower its ongoing costs. In anticipation of competition, the ILECs have had an extra incentive to secure attractive pay telephone sites on both privately and publicly owned lands. Such recent arrangements would be anti-competitive if they had the effect of erecting barriers to prevent new entrants from entering the market.

The Commission is of the view, however, that long-term contracts between PTSPs and owners/managers of airports or hotels, for example, are not counter to the public interest in the long term as such contracts lower the costs to both parties of providing the service or underlying services. If exclusive contracts give rise to inappropriately high prices, one can be confident that the users will put pressure on the airport or hotel management to get the price lowered either directly or through the use of alternatives such as portable wireless handsets.

Further, as far as competition itself is concerned, the Commission expects that the airport or hotel management will wish to engage in cost-efficient business practices that stimulate revenues by serving its customers and engendering goodwill. Such managers, therefore, can be expected to contract with the CPTSP or CPTSPs that can provide the best service at reasonable prices. Such CPTSPs will have to be at once innovative and efficient.

The Commission notes that, based on the above, exclusive contracts may be benign or disadvantageous. Those most likely to be disadvantageous to entry are the ones that have been concluded before entry is permitted. In order to identify whether a problem exists, the Commission directs the ILECs to file information with respect to any long-term or exclusive contracts entered into after 1 July 1997 which have a life expectancy of five years or longer, within 45 days of this Decision.

xi) Mandated Safeguards

The following safeguards are mandated as a condition of entering the local pay telephone market:

(a) Provision of coinless and cardless access to 9-1-1, or access to emergency call routing by an operator accessed by dialling 0 at a pay telephone. Where required by civic authorities, provision of a list of detailed pay telephone locations to the enhanced 9-1-1 administrator;

(b) Provision of MRS;

(c) Provision of 6-1-1 or other number for reporting telephone trouble;

(d) Provision of non-discriminatory access to the networks of all APLDS connected to the underlying LEC network, if long distance calling is permitted;

(e) Posting on or near the pay telephone the company name, address and toll free number where information can be obtained and complaints addressed;

(f) Posting the Commission’s address and toll-free number (1-877-249-CRTC) on all pay telephone equipment, in order to ensure that consumers have direct recourse to facilitate resolution of unresolved complaints;

(g) Operator services, if provided, (other than emergency services access and MRS) that are in compliance with Telecom Order 95-316 as well as with procedures that evolve from the CISC;

(h) Prominent display, at each pay telephone location, of the following information: rates of local calls, the name of the default long distance provider; and any surcharges not included in the price of the call;

(i) Provision for coin return for uncompleted calls, such as busy signals or no answer if coin access is applicable, and similarly if a card is used, alternately billed charges must not apply if the call is not connected to the called party;

(j) Standard arrangement of letters as well as numbers provided on the dial in order to permit callers to reach their provider of choice through the use of commonly used vanity access sequences;

(k) All pay telephones are to meet existing and future CSA and the Terminal Attachment Program Advisory Committee standards to prevent network harm;

(l) All pay telephones are to be accessible to the physically disabled, be hearing aid compatible and meet the standards established in Telecom Order CRTC 98-626 for provisioning of service to visually impaired consumers; and

(m) Adherence to all applicable Commission rules concerning protection of customer privacy.

C. Mechanism to Ensure Enforceability of Safeguards

With respect to the appropriate mechanism to ensure enforceability of safeguards, CAC, CCTA, PIAC, Queen's and Stentor supported the system established for CLECs in Decision 97-8. CPC submitted that the appropriate mechanism to ensure enforceability of the safeguards would be to embody them in the relevant LEC tariffs. In a similar vein, safeguards could be imposed on CPTSPs by incorporating them in the pay telephone access tariff offered by LECs to CPTSPs. Should a complaint be lodged, the Commission would investigate the matter and if the CPTSP had failed to comply with one or more of the safeguards, it could be directed to demonstrate that it had brought itself into compliance. Failing this, the Commission could direct the LEC supplying the access line to terminate the service. According to CPC, this tariff mechanism is familiar, fair and effective and has been used by the Commission to enforce regulatory restrictions against end-users, resellers and other unregulated service providers.

CPC indicated that when it conducted its technical trial in the Vancouver area, it utilized a regular business line with answer supervision and BC TEL's directory assistance - all of which were provided on a General Tariff basis. According to CPC, given the minimal technical requirements necessary to begin offering competitive pay telephone service, the Commission could direct the companies to adopt a tariff along the lines of the model tariff it provided which included provision for interconnection, resale, and terms and conditions of service.

In CPC's view the tariff could, in time, evolve to address any technical requirements or related matters that might arise. CPC urged the Commission to approve an initial pay telephone access tariff as part of its decision to allow the immediate commencement of competition and to direct the Stentor-member companies to file tariffs implementing the Commission's decision within 30 days of the date of the decision.

The Director supported the registration/tariff approach envisaged by CPC, but agreed with Stentor that a requirement for the LECs to essentially police their competitors would place an inappropriate regulatory burden on the LECs. According to the Director, any certification process should be subject to review within a fixed period of time, at which time, the process could be modified or terminated.

Queen's submitted that ILECs should be required to submit pay telephone tariffs incorporating appropriate safeguards. With respect to CLECs, Queen's noted that safeguards could be imposed, pursuant to section 24 of the Act, in all CLEC contracts with CPTSPs for the provision of services. In both scenarios, non-compliance by the CPTSP could constitute cause for termination of the service.

Stentor was of the view that the Commission should enforce safeguards directly. Complaints regarding non-compliance should be addressed to the Commission for review with the possibility of certification being withdrawn. Furthermore, the Commission would have the power to effect this termination through a disconnection order served on the provider of the underlying access lines.

Stentor noted that enforcement of these safeguards could be compromised in the instances where a CPTSP obtains access facilities from a reseller and, accordingly, the Commission might consider prohibiting the resale of underlying facilities for purposes of providing pay telephone service. In addition, the CPTSP should inform the Commission as to which carrier is providing the underlying facilities.

Stentor concurred with parties that recommended the use of both a certification and complaints process. Stentor noted that in order for a complaint process to be effective, it must be simple for consumers to invoke and it must produce timely results. Stentor also noted that, based on the volume of complaints to the FCC and state Public Utilities Commissions, a more robust complaint process (e.g., added resources, use of a 1-800 number, etc.) than is currently in place at the Commission might be required.

With respect to CPC's suggestion to embody safeguards in the relevant LEC access line tariffs, Stentor argued that it would be inappropriate for the companies to be tasked with policing their competitors and that the Commission, in Resale to Provide Primary Exchange Voice Services, Telecom Decision CRTC 87-1, 12 February 1987 (Decision 87-1), had recognized the potential drawbacks to this approach. According to Stentor, the imposition of such a role on the companies would inevitably lead to disputes between the parties along with accusations of anticompetitive behaviour in cases where the companies are obliged to take action to correct non-compliance.

In addition, such disputes would act to slow the process of resolving the non-compliance - to the detriment of the public - and would burden the companies with substantial additional costs as a result of this role, which their competitors would not experience. Therefore, Stentor submitted that the imposition of such a role on the companies would be an ineffective public policy, which would ultimately negatively effect the pay telephone industry.

With respect to CPC's proposal that existing tariffs for individual business lines were sufficient to meet the needs of a new pay telephone industry, Stentor noted that the companies would expect to file tariffs for the provision of pay telephone access lines which reflect the unique requirements of these customers (such as, among other things, inclusion of the pay telephone number in the Billed Number Screening (BNS) Database), until competition in access lines allows deregulation. Additionally, the costs associated with provisioning pay telephones in public locations (e.g., on street corners or along highways) would need to be reflected in the development of such tariffs.

Stentor noted that CPC plans to initially install pay telephones that have certain operating characteristics which enable them to operate with a standard business access line. However, other competitors may choose to install pay telephones that utilize a different technology and require different access line characteristics. For example, the answer supervision provided on business lines would not provide appropriate service to the majority of the pay telephones currently installed in North America. Issues of this nature would have to be addressed to adequately reflect the access line needs of all CPTSPs. Furthermore, the unique calling patterns generated from pay telephone lines may result in an additional or reduced load on operators when compared to other access services.

Stentor agreed with CBTA that with full competition the market would tend generally towards self-regulation, eliminating the need for any elaborate enforcement mechanism. However, Stentor submitted that it would be naïve to believe that the elimination of all regulated safeguards would be possible with the initial establishment of local pay telephone competition bearing in mind the United States experience.

Finally, Stentor noted CCTA's proposal that only CLECs be permitted to provide local pay telephone service, so that safeguards would be enforced through direct regulation. Stentor further noted that this would be a workable enforcement mechanism and was, in fact, very similar to the approach taken by the Commission in its findings regarding the provision of toll only pay telephone service.

The Commission has, over a period of several years, declined to permit competition in the pay telephone market due to concerns with respect to unregulated service providers. With its decision to allow competition, the Commission must now establish a competitive pay telephone framework that encompasses the ILECs and two new potential types of competitive service providers.

The first such entity is a CLEC, which by definition, is a Canadian carrier pursuant to the Act and is subject to direct enforcement of its consumer safeguards by the Commission. In Decision 97-8, the Commission found that, with respect to end-users, CLECs would be bound by the obligations set out in the Decision, but no tariffs would be required. However, the Commission retained its power under section 24 of the Act so that the offering and provision of any telecommunications service by Canadian carriers would still be subject to any conditions imposed by the Commission or included in a tariff approved by the Commission.

The second type of provider would be an unregulated service provider, a reseller, such as CPC or Queen's. Resellers are beyond the scope of the Act, are not subject to direct regulation, and are not required to file tariffs for the approval of rates or of other terms and conditions of service. Therefore, for these entities, the enforcement of consumer safeguards would involve indirect regulation through the LEC whose access services are being used to connect the pay telephone equipment.

In Decision 87-1, the Commission found that it would not be appropriate to place conditions in ILEC tariffs for enforcement of obligations on CPTSPs, as it would place the ILEC in a position whereby it would have to monitor and enforce compliance on its potential competitors.

However, the Commission notes that it has used the tariff mechanism to enforce regulatory restrictions on telecommunication resellers on several occasions, in a variety of areas. For example, in Attachment of Subscriber-Provided Terminal Equipment, Telecom Decision CRTC 82-14, 23 November 1982, terminals (i.e., telephones, PBX systems) which could be attached to the networks of carriers were restricted via tariff provisions. Likewise, pursuant to Telecom Order CRTC 94-629, 8 June 1994, Access to Billing and Collection Services and Related Databases by Resellers with Trunk-Side Access, the telephone companies were required to provide resellers with trunk-side access to the telephone companies' BNS databases, conditional on the recipient signing a non-disclosure agreement. This agreement required the reseller to undertake to protect the confidentiality of any billing or other information received, using it only for the purpose of billing and not reselling it or otherwise disclosing it to any third party. The Commission also notes that consumer safeguards governing the provision of operator services have been included in tariffs, with a condition stipulating that unregulated service providers that obtain facilities or services of the company which are used in the provision of operator services must have a signed contract with the company which spells out the terms and conditions and consumer safeguards with which they must comply. Furthermore, contractual arrangements such as agreements specifying the procedures of the Interexchange Carrier Group and Non-Disclosure Agreements are currently used by the telephone companies and competitors in place of specific tariff provisions in the provisioning of interconnection services.

In the Commission's view, the registration/tariff/contract approach is the most suitable to ensure adherence to its findings in this Decision. The registration process established for CLECs in Decision 97-8 is modified for specific application to entry into the pay telephone market.

The Stentor-member companies are directed to file proposed pay telephone access tariffs which include the unique requirements, i.e., inclusion of the pay telephone number in the BNS database, associated with provisioning of pay telephone service, together with a standard service agreement, within 45 days of this Decision. The tariffs are to make reference to service agreements which include as part of the terms and conditions of service, the mandated consumer safeguards established in this Decision.

The CLECs are directed to include the consumer safeguards established in this Decision in all contracts negotiated with CPTSPs for the provision of pay telephone service.

The Commission notes that non-compliance by a CPTSP with either the ILEC tariff or the CLEC contract will constitute reason for the termination of the access service. When cases of abuse arise and are substantiated, the Commission will direct LECs to discontinue the provision of access service.

IV REGULATORY FRAMEWORK FOR NEW ENTRANTS

In Decision 97-8, the Commission considered the issue of forbearance for certain services offered by CLECs, and concluded that sections 25, 29 and 31 and subsections 27(1), (5) and (6) of the Act would not apply in respect of retail telecommunications services offered by CLECs to end-users. The Commission notes that, while local pay telephone service offered by CLECs would be considered a retail service, issues with respect to the extent of regulation of this service were not considered in Decision 97-8.

In light of the findings set out in this Decision, the Commission considers that it is appropriate to refrain, pursuant to section 34 of the Act, from exercising certain of its powers and performing certain of its duties in respect of local pay telephone service offered by CLECs. The Commission is of the view that to do so would be consistent with the Canadian telecommunications policy objectives outlined in the Act. Subject to the following, the Commission also considers that the offering of local pay telephone service will be subject to sufficient competition to protect the interests of users.

As noted earlier in this Decision, the Commission considers that competition will be sufficient to discipline the rates for pay telephone services offered by CLECs. Accordingly, the Commission will forbear from exercising its powers and duties under section 25 and subsection 27(1) of the Act with respect to the rates charged for local pay telephone service provided by CLECs. CLECs will not be required to file tariffs for these services. The Commission is also of the view that it is appropriate to refrain from exercising its powers under section 29 of the Act with respect to the approval of agreements.

The Commission has also concluded in this Decision that it is appropriate to require CLECs to include the safeguards set out in this Decision in all contracts negotiated with CPTSPs. Accordingly, the Commission considers that it is in the public interest that it continue to exercise its powers under section 24 of the Act to impose on CLECs the conditions contained in this Decision, as well as any that may prove necessary in the future.

In order to ensure that CPTSPs do not unjustly discriminate against any other service providers or subscribers, or confer an undue or unreasonable preference toward any person, the Commission will retain its powers and duties under subsections 27(2), (3) and (4) of the Act.

The Commission has also concluded that it would be appropriate to forbear from exercising its powers and duties pursuant to section 31 of the Act which deals with limitation of a Canadian carrier’s liability. In Decision 97-8, the Commission concluded that it would not be in the public interest to provide CLECs with the regulatory protection that ILECs receive in respect of limitation of liability, as many CLEC services would not be subject to rate regulation while those of the ILECs would. The Commission is of the view that the same reasoning applies in respect of local pay telephone services.

In light of the above, the Commission will refrain from exercising its powers and performing its duties pursuant to sections 25, 29 and 31 and subsections 27(1), (5) and (6) of the Act, in relation to local pay telephone services provided by CLECs. Sections 24, 25, 27, 29 and 31 do not apply to CLECs to the extent that they are inconsistent with the determinations in this Decision.

Pursuant to subsection 34(3) of the Act, the Commission finds, as a matter of fact, that to refrain from exercising its powers as set out herein, would not likely impair unduly the establishment or continuance of a competitive market for local pay telephone service.

V ENTRY PROCEDURES

New entrants must conform to the following registration procedures:

(1) The CPTSP must attest in writing that it understands and will conform to the obligations and consumer safeguards set out in this Decision;

(2) The CPTSP must provide the name of the carrier supplying the access lines;

(3) The CPTSP must provide to the Commission serving area maps for information purposes and make such serving area maps available upon request at their business offices; and

(4) The CPTSP must provide details as to how it proposes to deal with consumer complaints.

Laura M. Talbot-Allan
Secretary General

This document is available in alternative format upon request.

Date modified:
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Tab 7

Telecom Regulatory Policy CRTC 2015-546

PDF version

Reference: Telecom Notice of Consultation 2015-67

Ottawa, 10 December 2015

File number: 8650-C12-201501825

Consumer safeguards for payphones – Notification of rates for non-cash payphone calls

The Commission finds that the current notification requirements for local non-cash payphone calls, whose rates are regulated, are sufficient. However, the Commission finds that the current notification requirements for long distance non-cash payphone calls are not sufficient. Non-cash calls are often made using credit cards, prepaid long distance cards, and other telephone cards. Consumers generally only become aware of the rates to be paid for their calls when they receive their billing statement, potentially leading to bill shock.

*To ensure consumers can obtain the necessary rate information to make an informed decision about their long distance non-cash payphone calls, the Commission **directs** specific payphone providers, namely the incumbent local exchange carriers (ILECs), to make detailed rate information available to consumers. The Commission further **directs** the ILECs to file, no later than **six months** from the date of this decision, information on the means they intend to use to meet this requirement.*

As a result of the enhanced safeguards introduced in this decision, Canadians will be empowered to make informed choices concerning their use of payphones to make long distance non-cash calls.

Background

Current notification requirements for non-cash calls

1. The current consumer safeguards with respect to notification of rates for non-cash payphone calls, which were established in Telecom Order 95-316 and Telecom Decision 98-8, are as follows:
    - At each payphone they operate, competitive payphone service providers (CPSPs) must prominently display rates for local calls and any surcharge, markup, or location charges not included in the price of the call.

- For operator-handled payphone calls, the incumbent local exchange carriers (ILECs) and CPSPs are to provide, when requested by the consumer, the rates and charges for a call and alternative billing methods available to consumers.

Telecom Decision 2013-327 and subsequent Commission releases

2. On 5 June 2013, the Commission determined, in Telecom Decision 2013-327,[1] that it would initiate a proceeding to review whether the existing consumer safeguards are sufficient to ensure that consumers are in a position to make informed decisions regarding the use of payphones for non-cash calls.[2]

3. On 26 February 2015, the Commission released a fact-finding report concerning the current role of payphones in the Canadian communications system.[3] The Commission also issued Telecom Notice of Consultation 2015-67, inviting parties to file comments, with supporting rationale, on the following questions:

   - Are the current notification requirements in relation to non-cash calls from payphones imposed on ILECs and CPSPs sufficient and appropriate?
   - If not, what should these requirements be?

4. The Commission received interventions regarding the Telecom Notice of Consultation 2015-67 proceeding from Bell Canada, on behalf of itself, Bell Aliant Regional Communications, Limited Partnership, Northwestel Inc., and Télébec, Limited Partnership (collectively, Bell Canada et al.); the Canadian Independent Telephone Company Joint Task Force (JTF); the Consumers' Association of Canada and the Public Interest Advocacy Centre (collectively, CAC/PIAC); TBayTel; TELUS Communications Company (TCC); l'Union des consommateurs (l'Union); and about 15 individuals.

5. The public record of this proceeding, which closed on 8 May 2015, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Issues

6. The Commission has identified the following issues to be addressed in this decision:

   - Do the current notification requirements for non-cash payphone calls remain sufficient and appropriate?
   - What changes should be made to the current notification requirements for non-cash payphone calls?
   - How should the notification requirements for non-cash payphone calls be applied to CPSPs?

Do the current notification requirements for non-cash payphone calls remain sufficient and appropriate?

7. Bell Canada et al., the JTF, TBayTel, and TCC generally were of the view that the current notification requirements for both local and long distance non-cash payphone calls were sufficient and appropriate. On the other hand, CAC/PIAC and l'Union argued that the current notification requirements for non-cash payphone calls are insufficient and do not protect consumers from bill shock.

8. L'Union noted that in some instances, such as long distance non-cash payphone calls, consumers can incur charges in addition to the rate incurred for the call itself, such as "connections fees," which CAC/PIAC noted could be more than $10 per call, and that consumers are not sufficiently notified of that fact. CAC/PIAC noted in this regard that consumer complaints concerning the notification of charges for non-cash payphone call requirements led, in part, to the issuance of Telecom Decision 2013-327.

9. Bell Canada et al. and TCC noted that a consumer can readily call the operator at no charge to obtain a quote and that the option is available through their Interactive Voice Response (IVR) system. CAC/PIAC and l'Union argued that the "obtain a quote" option is not effective as a means of consumer notification as it is often presented after the option to complete the call in the IVR system. L'Union argued that if consumers were fully aware of all costs prior to making a call, many would not proceed.

10. CAC/PIAC noted their concern that consumers may not have any recourse in relation to complaints they may have regarding their experience of bill shock for non-cash payphone calls.

Commission's analysis and determinations

11. The main concern of the consumer groups in this proceeding is that the current regime may not be robust enough to prevent bill shock for some users of long distance non-cash payphone calls who were not made aware of the various one-time fees and per-minute rates.

12. As rates for local non-cash calls on payphones operated by ILECs are regulated, the Commission finds that the current consumer safeguards for such calls are sufficient to prevent bill shock for payphone users and, as such, remain sufficient and appropriate.

13. Rates for long distance non-cash calls on payphones operated by ILECs, however, are not regulated. While this can lead to a more competitive market, it may also lead to situations in which the rates and charges incurred in order to complete a call are not made sufficiently clear to Canadians. This, in turn, may lead to bill shock when the sum of the fees is higher than expected. The Commission is not satisfied that the notification methods currently being used to meet the existing requirement are resulting in effective notification of the full scale of the rates and charges that consumers may incur in completing their long distance non-cash payphone calls. Based on the above, the Commission finds that the current safeguards for long distance non-cash payphone calls are not sufficient.

What changes should be made to the current notification requirements for non-cash payphone calls

14. Payphone providers generally argued that users are sufficiently aware that they have the option to reach the operator by dialing 0 at any time to obtain rate information. The JTF and TCC noted that further requirements could make the business proposition of some payphones even less appealing, with TCC noting that in some instances the imposition of further requirements could accelerate the removal of payphones.

15. CAC/PIAC and l'Union argued that payphone users are often under pressure to complete a call quickly, citing examples like completing a call in a busy airport or due to a personal emergency, and, as such, new requirements should be put in place so that information is quickly and easily available.

16. Interveners to this proceeding suggested alternative means to convey the information related to long distance non-cash payphone calls to consumers, including (a) making detailed rate information available by posting it on or around the payphone itself, (b) modifying the IVR system so that the option to obtain a quote comes first, and (c) maintaining the current practice of using the operator services by dialing 0. Payphone providers generally argued that implementing the various proposals, above and beyond their current practices, would be unworkable, not necessary, and onerous, but did not provide details regarding the specific costs that would be incurred as a result.

17. Bell Canada et al. submitted that posting the rates for non-cash calls on payphones would diminish their flexibility to respond to market forces, and that it would be expensive to continually update this information on every payphone. CAC/PIAC recognized that posting all possible rates may not be reasonable, but argued that the posting of rate bands should be feasible. TCC argued that, should this proposal be required by the Commission, it should only apply to payphone providers who charge rates in excess of a pre-determined threshold. L'Union submitted that all rate information should be posted on payphones.

18. L'Union suggested that the "obtain a quote" option should be presented before the option to complete the call in the IVR system, in addition to posting the rates on the payphones. CAC/PIAC supported the proposal, particularly in light of the high initial charge to complete a call at certain payphones. Bell Canada et al. argued that the revenues generated from payphones would not justify the costs to modify existing IVR options, while TCC submitted that it is unsure if it would even be possible to modify some of its older payphones. Further, TCC argued that the order in which options are presented to consumers seeking information will not have any bearing on whether a consumer chooses one option over another.

19. CAC/PIAC voiced concerns that consumers are not notified that a third-party service provider may be billing for payphone service, arguing that a consumer should be notified that this could be a possibility.

Commission's analysis and determinations

20. The intent of notification requirements for non-cash payphone calls is to empower consumers by giving them the tools to make informed decisions. By providing consumers with the opportunity to get information that could affect their decision making, the possibility of bill shock is lowered. In order to achieve this goal, rate information must be available to consumers as early and as clearly as possible in the process of making a long distance non-cash payphone call.

21. Posting rates or rate bands on or around payphones would achieve the goal of notifying consumers, but may be impractical and may hinder payphone providers' flexibility to react to market forces. As for the suggestion of only applying such a requirement when fees surpass a certain threshold, as submitted by TCC, considering that rates for long distance non-cash payphone calls are not regulated, a requirement that only applies on the basis of the fees charged would not be appropriate in the circumstances.

22. If a payphone provider's IVR system is modified to ensure that the "obtain a quote" option is presented to consumers earlier in the menu, this too could provide greater notice. The order in which options are presented to consumers is likely to have an impact on the choices consumers make, especially in instances where the consumer is under pressure to quickly complete their call. A consumer who is offered the option of completing a call before being offered the option of receiving rate information is less likely to receive that rate information. However, modifying IVRs may not be cost-effective or, in some cases, technologically possible.

23. While operator services, which can be reached by dialing 0, may be an efficient means for consumers to obtain detailed rate information, the current notification requirements only apply when a consumer requests the information in the course of an operator-handled call. Consumers may not be aware that the operator can provide this information, and may not even be aware that they may be subject to additional charges, such as connection fees, nor of their scale, and thus may not think to inquire about them.

24. On the matter raised by CAC/PIAC that consumers should be made aware that the entity billing their long distance non-cash payphone call may be a third party, the name on their statement should not affect whether consumers experience bill shock.

25. Based on the record of the proceeding, consumer safeguards for long distance non-cash payphone calls need to be strengthened; however, the record of this proceeding shows that a "one size fits all" solution to address the issue is not appropriate and, while an enhanced notification requirement is necessary, payphone providers need some flexibility in the means they use to effect notification of rates for long distance non-cash payphone calls. In so doing, payphone providers should keep in mind the ultimate goal of notification, which is to ensure consumers are empowered to obtain the necessary information and make an informed decision about their long distance non-cash payphone calls.

26. Accordingly, pursuant to its powers under section 24 of the *Telecommunications Act* (the Act), the Commission **directs** that as a condition of providing payphone services, all ILECs must make detailed information available to consumers regarding the rates and other fees charged by or on behalf of the ILEC with respect to long distance non-cash payphone calls. Detailed rate information includes connection fees, per-minute rates, and any other charges that would be charged to the consumer by or on behalf of the ILEC for a long distance non-cash payphone call.

27. The Commission **directs** all ILECs to file, within **six months** of the date of this decision, (a) the means they intend to use to ensure the above requirement is met, (b) how this approach will ensure that all potential users have an opportunity to obtain information about detailed rate information necessary to make an informed decision, and (c) the timeline for the implementation of the selected approach.

28. The Commission provides the following non-exhaustive list of examples of means that would be considered as meeting the above requirement:

    - posting, on or around the payphone, detailed rate information to common destinations, including destinations in Canada, the U.S., and abroad;
    - modifying the IVR system so that the first option presented to consumers making a long distance non-cash payphone call is the option to “obtain a quote;” or
    - posting, on or around the payphone, that detailed rate information, including all fees, can be obtained by dialing 0 to reach an operator. The operator would have to disclose detailed information if asked about rates, including rates and additional charges and any difference between IVR- and operator-completed calls.

How should the notification requirements for non-cash payphone calls be applied to CPSPs?

29. Conditions of service - such as the notification requirements for non-cash payphone calls - can be imposed on Canadian carriers, such as ILECs, by virtue of section 24 of the Act. However, CPSPs are considered resellers of telecommunications services rather than Canadian carriers. Accordingly, the current notification obligations were imposed on CPSPs indirectly. In Telecom Decision 98-8, the Commission directed Canadian carriers doing business with these resellers to include the obligations in their tariffs and contracts with CPSPs. In December 2014, Parliament amended the Act by adding section 24.1, which allows the Commission to impose conditions of service on resellers directly. However, no CPSPs participated in the present proceeding and there is no evidence on the record addressing the question of how the new obligations should be imposed in their case.

30. Accordingly, while the Commission is of the view that the new notification requirement, expressed above, should apply to CPSPs, a follow-up proceeding is necessary in order to determine how this requirement should be imposed on them as well as whether the underlying Canadian carriers who provide facilities to CPSPs should continue to be subject to the

conditions of service requiring them to apply the existing notification obligations on CPSPs. Thus, the Commission intends to issue a notice of consultation calling for comments on these issues.

Policy Direction

31. The Commission, in exercising its powers and performing its duties under the Act, is required to implement the policy objectives set out in section 7 of the Act, in accordance with the requirements of the Policy Direction.[4]

32. The Commission considers that its determinations in this decision will advance the policy objectives set out in paragraphs 7(*a*), (*b*), (*f*), and (*h*)[5] of the Act.

33. Consistent with subparagraph 1(*a*)(i) of the Policy Direction, in this case, market forces alone cannot be relied upon to ensure that payphone providers adequately notify consumers of the costs of completing long distance non-cash payphone calls, based on the record related to consumer bill shock that has not been prevented by the current requirements.

34. Consistent with subparagraph 1(*a*)(ii) of the Policy Direction, the regulatory requirement set out above, wherein payphone providers will select the means through which they will comply with the requirement, is efficient and proportionate to its purpose, and minimally interferes with market forces. The burden that will be imposed on payphone providers in complying with this requirement has been considered, as well as the potential impact on these payphone providers' existing business models. However, the requirement will ensure that consumers are provided information on which to base their decision, while not prohibiting current practices by the payphone providers, and giving payphone providers flexibility in determining how to meet the requirement.

35. Consistent with subparagraph 1(*b*)(iii) of the Policy Direction, the regulatory requirement set out above, once fully implemented, would achieve a symmetrical regulatory regime across all payphone providers, regardless of the technology they use, the geographic market in which they operate, and their size.

Other matter

Recourse mechanism for consumers experiencing bill shock with their long distance non-cash payphone calls

36. As noted above, the current notification requirements do not sufficiently protect consumers from the possibility of bill shock related to long distance non-cash payphone calls. There should be a clear recourse mechanism available to consumers who experience bill shock related to such calls.

37. In general, the Commissioner for Complaints for Telecommunications Services Inc. (CCTS) deals with consumer complaints about forborne telecommunications services, including long distance calls, whereas complaints about regulated services are typically dealt with by the Commission.[6]

38. A review of the structure and mandate of the CCTS was initiated by Broadcasting and Telecom Notice of Consultation 2015-239, which included a public hearing that took place from 3 to 6 November 2015. The role of the CCTS in dealing with bill shock related to long distance non-cash payphone calls was commented on by the CCTS during that proceeding. The Commission shall release its determinations in that proceeding in due course.

Secretary General

Related documents

- *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.*, Broadcasting and Telecom Notice of Consultation CRTC 2015-239, 4 June 2015, as amended by Broadcasting and Telecom Notices of Consultation CRTC 2015-239-1, 24 July 2015, and 2015-239-2, 25 September 2015
- *Consumer safeguards for payphones - Notification of rates for non-cash payphone calls*, Telecom Notice of Consultation CRTC 2015-67, 26 February 2015
- *Fact-finding process on the role of payphones in the Canadian communications system*, Telecom Notice of Consultation CRTC 2013-337, 16 July 2013, as amended by Telecom Notice of Consultation CRTC 2013-337-1, 11 September 2013
- *Public Interest Advocacy Centre and Canada Without Poverty - Billing of calls placed from Bell Canada payphones*, Telecom Decision CRTC 2013-327, 5 June 2013, as amended by Telecom Decision CRTC 2013-327-1, 10 July 2013
- *Review of the Commissioner for Complaints for Telecommunications Services*, Telecom Regulatory Policy CRTC 2011-46, 26 January 2011
- *Local pay telephone competition*, Telecom Decision CRTC 98-8, 30 June 1998
- Telecom Order CRTC 95-316, 15 March 1995

Footnote 1

Telecom Decision 2013-327 was issued as a result of the Commission’s consideration of an application filed in November 2012 by the Public Interest Advocacy Centre, on behalf of itself and Canada Without Poverty.

1

Footnote 2

Non-cash payphone calls include calls paid for using third-party billing, credit cards, and telephone cards (including calling cards, collect cards, prepaid long distance cards, and other telephone cards).

2

Footnote 3

The Commission's report, entitled *Results of the fact-finding process on the role of payphones in the Canadian communications system* (the Report), was placed on the Commission's website on 26 February 2015. The Report was prepared based on the results of the fact-finding process initiated by Telecom Notice of Consultation 2013-337. See https://crtc.gc.ca/eng/publications/reports/rp150226a.htm

3

Footnote 4

Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, P.C. 2006-1534, 14 December 2006

4

Footnote 5

The cited policy objectives of the Act are 7(*a*) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; 7(*b*) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; 7(*f*) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and 7(*h*) to respond to the economic and social requirements of users of telecommunications services.

5

Footnote 6

For more details about the mandate of the CCTS, see Telecom Regulatory Policy 2011-46.

6

Date modified:

2015-12-10

Tab 8

Telecom Regulatory Policy CRTC 2016-295

PDF version

Reference: Telecom Notice of Consultation 2016-103

Ottawa, 28 July 2016

File number:1011-NOC2016-0103

Application of certain consumer safeguards for payphones directly to competitive payphone service providers

*The Commission **directs** competitive payphone service providers (CPSPs), as a condition of providing service, to abide by all consumer safeguards with respect to the notification of rates for non-cash payphone calls.*

*The Commission **retains** the condition imposed on incumbent local exchange carriers (ILECs) that operate payphones requiring them to include the existing safeguards in their tariffs and contracts with CPSPs. Further, the Commission **directs** these ILECs to include the new safeguard in their tariffs and contracts with CPSPs as well.*

*Finally, the Commission **directs** CPSPs to report on their implementation of these safeguards within 12 months of the date of this decision.*

With this decision, the Commission ensures that Canadians will be able to make informed decisions when making non-cash payphone calls on all payphones regardless of the provider.

Background

Notification requirements for non-cash calls

1. The Commission established consumer safeguards with respect to the notification of rates for non-cash payphone calls in Telecom Order 95-316 and Telecom Decision 98-8, as follows (the existing safeguards):
    - At each payphone they operate, competitive payphone service providers (CPSPs) must prominently display rates for local calls and any surcharge, markup, or location charges not included in the price of the call.

- For operator-handled payphone calls, the incumbent local exchange carriers (ILECs) and CPSPs are to provide, when requested by the customer, the rates and charges for a call and alternative billing methods available to customers.

2. In Telecom Regulatory Policy 2015-546, the Commission found that the existing safeguards for local non-cash payphone calls were sufficient. However, the Commission also found that the existing safeguards for long distance non-cash payphone calls were not sufficient. Accordingly, the Commission directed all ILECs to make detailed information available to consumers regarding the rates and other fees charged by or on behalf of the payphone provider with respect to long distance non-cash payphone calls.[1] The ultimate goal of this requirement is to safeguard consumers by enabling them to obtain the information necessary to make an informed decision about their long distance non-cash payphone calls, and to lower the possibility of bill shock. The Commission provided a non-exhaustive list of ways that a provider might satisfy this obligation (the new safeguard).
3. The Commission also directed ILECs to file, within six months from the date of that decision, information on the means they intend to use to implement the new safeguard, how the chosen means would satisfy the requirement, and the timeline for implementation of the chosen means.
4. The above-mentioned safeguards are imposed on ILECs by virtue of section 24 of the *Telecommunications Act* (the Act), which allows the Commission to impose conditions on the offering and provision of telecommunications services by Canadian carriers.[2]
5. Until recently, the Commission did not have the authority to directly impose these conditions on non-carriers, that is, providers other than Canadian carriers that include CPSPs.[3] Instead, where it was considered necessary, the Commission directed the underlying carriers that provide services to non-carriers to ensure through their tariffs or contractual arrangements that the non-carriers were subject to these conditions.[4]
6. As a result of the *Economic Action Plan 2014 Act, No. 2*,[5] the Act was amended to include new section 24.1,[6] which gives the Commission the power to impose directly on non-carriers conditions related to the offering and provision of telecommunications services.

Telecom Notice of Consultation 2016-103

7. In Telecom Regulatory Policy 2015-546, the Commission concluded that the new safeguard should be applied to CPSPs, but stated that it would be more appropriate to determine how it should be applied in the context of a follow-up proceeding.
8. In Telecom Notice of Consultation 2016-103, the Commission put forward the preliminary view that direct application of both the existing and new safeguards to CPSPs may be appropriate, as it would allow the Commission to directly impose compliance measures on CPSPs in response to non-compliance with these safeguards. Accordingly, the Commission directed CPSPs to show cause why the existing and new safeguards should not directly apply to them.
9. In that notice, the Commission also invited comments on the following questions:
    - Should the Commission remove the condition imposed on Canadian carriers requiring them to include the existing safeguards in their tariffs and contracts with CPSPs?

- Should the Commission impose a condition on Canadian carriers requiring them to include the new safeguard in their tariffs and contracts with CPSPs?
- Should the Commission require that CPSPs report on (i) the means they intend to use to ensure the new safeguard is implemented, (ii) how this approach will ensure that all potential payphone users have an opportunity to obtain information about detailed rate information necessary to make an informed decision, and (iii) the timeline for the implementation of the selected approach, as ILECs were required to do in Telecom Regulatory Policy 2015-546 and, if so, what deadline for such a report would be appropriate?

10. The Commission received interventions from Bell Canada, TELUS Communications Company, and l'Union des consommateurs (l'Union).
11. The public record of this proceeding, which closed on 28 April 2016, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Issues

12. The Commission has identified the following issues to be addressed in this decision:
    - Should the Commission impose the existing and new safeguards directly on CPSPs?
    - Are conditions on ILECs requiring them to include the safeguards in their tariffs and contracts with CPSPs necessary?
    - What reporting requirements are appropriate for CPSPs?

Should the Commission impose the existing and new safeguards directly on CPSPs?

13. All of the interveners supported direct application of the safeguards to CPSPs. In so doing, they highlighted the importance of symmetric regulation, arguing that safeguards should be available to all consumers regardless of their geographic location or type of service provider.

Commission's analysis and determinations

14. Applying the existing and new safeguards directly to CPSPs would be consistent with, and symmetrical to, the Commission's regulation of the ILECs, which are already subject to such obligations. Further, it will provide the Commission with greater flexibility with regard to the investigation and enforcement of these safeguards.
15. In light of the above, and pursuant to section 24.1 of the Act, the Commission **directs** all persons other than Canadian carriers, who offer or provide payphone services, as a condition of offering and providing such services, to abide by the existing and new safeguards.

Are conditions on ILECs requiring them to include the safeguards in their tariffs and contracts with CPSPs necessary?

16. Bell Canada argued that conditions on the underlying ILECs were not necessary. It submitted that the Commission is better suited than the ILECs to monitor and enforce compliance by

CPSPs with the safeguards and that removing the underlying ILEC conditions would make the regulatory process more efficient.

17. L'Union argued that if the ILECs were subject to such conditions, this would provide additional incentive for the CPSPs to comply with the safeguards.

Commission's analysis and determinations

18. There was no evidence on the record of this proceeding that the underlying ILECs would incur more than minimal incremental resource implications if the condition to include the existing safeguards in their tariffs and contractual arrangements with CPSPs was retained and expanded to include the new safeguard.
19. In addition, such conditions constitute a valuable mechanism by which CPSPs can be better informed of their obligations and further motivated to comply. As a result, such conditions will ultimately benefit consumers and support their ability to make informed choices with respect to non-cash long distance payphone calls, no matter what type of service provider they choose.
20. In light of the above, the Commission **retains** the condition imposed on ILECs that operate payphones requiring them to include the existing safeguards in their tariffs and contracts with CPSPs. The Commission also **directs**, pursuant to section 24 of the Act, that as a condition of offering and providing telecommunications services to persons who provide any payphone services, all ILECs include the new safeguard in their tariffs and contracts with CPSPs.

What reporting requirements are appropriate for CPSPs?

21. Both Bell Canada and l'Union supported a reporting requirement for CPSPs. Bell Canada argued that CPSPs should be subject to the same reporting requirement as ILECs, as this would ensure a symmetrical application of the safeguards and provide better protection for consumers. L'Union submitted that CPSPs should be required to report on the methods used to comply with the safeguards within the shortest possible time frame, in order to avoid a situation in which consumers are deprived of information necessary to make informed decisions.

Commission's analysis and determinations

22. Applying reporting requirements to CPSPs will provide the Commission with the information it needs to ensure that CPSPs understand their obligations and that the safeguards are implemented by all providers of payphone service across Canada. However, the Commission recognizes that many CPSPs may have limited resources and that greater flexibility in the reporting timelines may be required. As such, the Commission has increased the time allotted to twelve from six months with regard to the reporting obligations listed below.
23. Pursuant to section 24.1 of the Act, the Commission **directs** all persons other than Canadian carriers, who offer or provide payphone services, as a condition of offering and providing such services, to file, within twelve months of the date of this decision, (a) the means they will use to implement the new safeguard, (b) how this approach will ensure that all potential users have

an opportunity to obtain information about detailed rate information necessary to make an informed decision, and (c) the timeline for implementation.

Policy Direction

24. The Commission is required, in exercising its powers and performing its duties under the Act, to implement the policy objectives set out in section 7 of the Act in accordance with the Policy Direction.[7]
25. Bell Canada submitted that it would be consistent with the Policy Direction to apply the safeguards directly on CPSPs, to require CPSPs to report in the same manner as ILECs, and to remove conditions on ILECs requiring them to insert the safeguards in their tariffs and contracts with CPSPs.
26. In Telecom Regulatory Policy 2015-546, the Commission noted that its determinations regarding the new safeguard would advance the policy objectives set out in paragraphs 7(a), (b), (f), and (h) of the Act.
27. With the present decision, the Commission has furthered the symmetrical application of the safeguards across Canada by imposing the safeguards directly on all providers of payphone services, and by requiring all such providers to report on their implementation progress, regardless of the technology they use, the geographic market in which they operate, and their size, consistent with subparagraph 1(b)(iii) of the Policy Direction.
28. With respect to the conditions requiring ILECs to insert the safeguards in their tariffs and contracts with CPSPs, this measure is consistent with the Policy Direction by, for example, interfering with competitive market forces to the minimum extent necessary to meet the policy objectives and by being efficient and proportionate with respect to the measure's purpose of enabling consumers to obtain the information necessary to make an informed decision about their long distance non-cash payphone calls.

Secretary General

Related documents

- *Application of certain consumer safeguards for payphones directly to competitive payphone service providers*, Telecom Notice of Consultation CRTC 2016-103, 17 March 2016
- *Consumer safeguards for payphones - Notification of rates for non-cash payphone calls*, Telecom Regulatory Policy CRTC 2015-546, 10 December 2015
- *Local pay telephone competition*, Telecom Decision CRTC 98-8, 30 June 1998
- Telecom Order CRTC 95-316, 15 March 1995

Footnote 1

Detailed rate information includes connection fees, per-minute rates, and any other charges that would be charged to the consumer by or on behalf of the ILEC for a long distance non-cash payphone call.

1

Footnote 2

The Commission has the authority to impose conditions on any Canadian carrier that offers telecommunications services to potential customers, or that provides telecommunications services to customers.

2

Footnote 3

A non-carrier that provides telecommunications services is commonly referred to as a “reseller” of telecommunications services. A reseller sells or leases a telecommunications service provided by a Canadian carrier to the reseller on a wholesale basis.

3

Footnote 4

For example, the existing safeguards are applied to CPSPs indirectly, through a section 24 condition on the underlying carriers.

4

Footnote 5

This was originally Bill C-43, which received royal assent on 16 December 2014.

5

Footnote 6

Section 24.1 of the Act states that the offering and provision of any telecommunications service by any person other than a Canadian carrier are subject to any conditions imposed by the Commission, including those relating to (a) service terms and conditions in contracts with users of telecommunications services; (b) protection of the privacy of those users; (c) access to emergency services; and (d) access to telecommunications services by persons with disabilities.

6

Footnote 7

Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, P.C. 2006-1534, 14 December 2006

7

Date modified:

2016-07-28

FAREAU et al	**BELL CANADA et al**	Court File No: CV-20-00635778-00CP
and		
Plaintiffs/Respondents	Defendants/Moving Party	

ONTARIO
SUPERIOR COURT OF JUSTICE

CROSS-MOTION RECORD OF THE DEFENDANT/MOVING PARTY HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

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