



Telecom Decision CRTC 2013-327

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Ottawa, 5 June 2013

Public Interest Advocacy Centre and Canada Without Poverty – Billing of calls placed from Bell Canada payphones

File number: 8650-P8-201215913

In this decision, the Commission finds that Bell Canada has not withdrawn operator services at its payphones, and that it did not breach consumer safeguards as alleged by PIAC/CWP. The Commission directs Bell Canada to incorporate in its contract with WiMacTel an explicit reference to the consumer safeguards set out in its Operator Services tariff and to file with the Commission information regarding a revised script that it undertook to provide to WiMacTel operators. The Commission will initiate a proceeding to examine whether the consumer safeguards with respect to notification of rates are sufficient and appropriate for non-cash calls from payphones.

Background

1. In Telecom Order 95-316, the Commission established consumer safeguards for operator services provided by Unitel Communications Inc. (Unitel), an alternate provider of long distance services.¹ These consumer safeguards included the requirement for operators to identify themselves, to provide rate information when requested, and to inform dissatisfied customers on how to escalate complaints. In addition, Unitel was required to post information, identifying itself and providing rate information, in close proximity to each publicly accessed telephone serviced.
2. In Telecom Order 95-316, the Commission directed the telephone companies, including Bell Canada, to file comprehensive operator services tariffs incorporating the consumer safeguards in their tariffs and white page directories. Bell Canada's Operator Services tariff was subsequently approved by the Commission.
3. In Telecom Decision 98-8, the Commission established consumer safeguards for competitive pay telephone service providers (CPTSPs). These consumer safeguards included the requirements to (i) prominently display the rates for local calls; the name of the default long distance provider; and any surcharge, mark-up, or location charges not included in the price of the call; (ii) post the CPTSP's name, address, and toll free number where information can be obtained and complaints addressed, and the Commission's address and toll-free number; and (iii) comply with Telecom Order 95-316 if operator services (other than emergency services access and message relay service) are provided.

¹ Alternate providers of long distance services provide long distance services in competition with incumbent carriers.

The application

4. The Commission received an application from the Public Interest Advocacy Centre on behalf of itself and Canada Without Poverty (collectively, PIAC/CWP), dated 14 November 2012, regarding the provision of service at Bell Canada payphones.
5. PIAC/CWP stated that it had received a complaint from a Bell Canada payphone user regarding excessive charges for the handling of operator-assisted long distance calls placed from Bell Canada payphones.
6. PIAC/CWP submitted that a firm known as WiMacTel Inc. (WiMacTel) handled operator-assisted calls at Bell Canada payphones. PIAC/CWP also submitted that at a number of Bell Canada payphones it had visited, the only disclosure of the fact that WiMacTel processed these calls was provided by a scrolling notice on the screen of the payphones.
7. PIAC/CWP further submitted that Bell Canada's transfer of operator-assisted long distance calls to WiMacTel without providing adequate notice to customers that their operator-assisted long distance calls will be handled by this third party at excessive charges is not consistent with the Canadian telecommunications policy objectives set out in subsections 7(b), 7(f), and 7(h) of the *Telecommunications Act* (the Act).²
8. PIAC/CWP requested that the Commission direct Bell Canada
 - to provide an audited report setting out all of the charges billed to customer accounts or to customers' credit cards in relation to calls handled by WiMacTel, and to refund to the company's customers who have been billed for operator-assisted calls handled by WiMacTel any charges in excess of the rates in effect for Bell Canada handled calls of similar description;
 - to abide by the consumer safeguards set out in Telecom Order 95-316 and Telecom Decision 98-8 regarding operator-assisted long distance calls and require an officer of the company to periodically certify that the company is in compliance (as is its delegate WiMacTel); and
 - to develop adequate procedures to ensure compliance with the Commission directives with respect to withdrawing a tariffed service and to periodically confirm its compliance status.

² The cited policy objectives of the Act are

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.

9. PIAC/CWP also requested that the Commission initiate a proceeding to examine the state of the payphone marketplace in Canada and, in particular, the adequacy of current consumer safeguards.
10. The Commission received comments on the application from Bell Canada. The public record of this proceeding, which closed on 18 April 2013, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.
11. The Commission has identified the following issues to be addressed:
 - I. Did Bell Canada violate Commission directives regarding the withdrawal of tariffed services?
 - II. Did Bell Canada breach the consumer safeguards in Telecom Order 95-316 and Telecom Decision 98-8?
 - III. Did Bell Canada violate section 27 of the Act?
 - IV. Should the Commission initiate a proceeding to examine the adequacy of consumer safeguards for payphone services?

I. Did Bell Canada violate Commission directives regarding the withdrawal of tariffed services?

12. PIAC/CWP submitted that to the extent that operator-assisted calling at Bell Canada payphones is now provided by WiMacTel at WiMacTel rates, Bell Canada has discontinued providing operator services at its payphones without having complied with the requirements for the withdrawal of tariffed services established by the Commission in Telecom Circular 2005-7 and Telecom Decision 2008-22.
13. Bell Canada stated that WiMacTel is an independent contractor that provides operator services on Bell Canada's behalf at its payphones, and that all amounts invoiced to customers by WiMacTel are collected and remitted to the company by WiMacTel as agent for the company. Bell Canada submitted that the outsourcing of operator services to WiMacTel cannot be viewed as the withdrawal of a service.

Commission analysis and determinations

14. The Commission notes that Bell Canada has a contract with WiMacTel to provide operator services at Bell Canada payphones. WiMacTel processes operator-assisted or card-swipe calls, except for calls placed using a Bell Canada calling card. Further, all amounts invoiced to customers by WiMacTel are collected and remitted to Bell Canada by WiMacTel as agent for Bell Canada, and WiMacTel is compensated by Bell Canada in accordance with the agreement for the service provided. The rates and charges invoiced by WiMacTel for local non-cash calls are set out in Bell Canada's Public Telephone Service tariff, and rates and charges for long distance calls are approved by Bell Canada.

15. In view of the above, the Commission concludes that Bell Canada has not withdrawn its operator services and therefore has not breached the directives set out in Telecom Circular 2005-7 and Telecom Decision 2008-22 with respect to withdrawing a tariffed service.

II. Did Bell Canada breach the consumer safeguards in Telecom Order 95-316 and Telecom Decision 98-8?

Telecom Order 95-316

16. PIAC/CWP submitted that Bell Canada appears to be in breach of the requirements set out in Telecom Order 95-316 regarding written notification of rates for long distance calls on payphones.
17. PIAC/CWP also questioned the adequacy of the scrolling notice on the screen of Bell Canada payphones.
18. Bell Canada stated that there is no requirement for an incumbent payphone service provider or a CPTSP to provide notice of the rates associated with long distance services because the Commission has forborne from the regulation of rates for long distance services.

Telecom Decision 98-8

19. PIAC/CWP submitted that by transferring to WiMacTel the handling of operator-assisted calls, Bell Canada has transferred a portion of its payphone business to WiMacTel, and that the CPTSP obligations apply.
20. PIAC/CWP submitted that Bell Canada did not display the name of the default long distance provider or any surcharges, markup, or location charges imposed by WiMacTel; and did not post the CPTSP's name, address, and toll-free number where information can be obtained and complaints addressed.
21. Bell Canada argued that it has no regulatory requirement to post notice with respect to the default long distance provider used at its payphones.
22. Bell Canada stated that, for its customers' benefit, it has voluntarily posted notice that WiMacTel processes operator-assisted calls, despite having no regulatory obligation to do so.
23. With respect to the allegation regarding the displaying of surcharges, markup, or location charges, Bell Canada stated that it wished to clarify that (i) the rates charged are not those of WiMacTel but the company's rates that are invoiced by WiMacTel, and (ii) all rate information is properly provided to consumers.
24. Bell Canada submitted that there is no requirement for an incumbent payphone service provider or a CPTSP to provide notice of the rates associated with long distance services. Bell Canada noted however that because non-cash calls are

processed with operator assistance, it is required to, and does, provide rate information for operator-assisted calls in accordance with item 85(1)(c)³ of its Operator Services tariff. Bell Canada submitted that as all operator-assisted calls processed by WiMacTel are routed either through the WiMacTel integrated voice response (IVR) system or a live operator, a caller using these calling platforms may select the appropriate option from the automated IVR to obtain applicable rates or may simply ask a live operator for rate information.

25. With respect to the allegation that the company does not provide the address/toll-free number for WiMacTel where information can be obtained and complaints addressed concerning WiMacTel services, Bell Canada noted that WiMacTel provides services on behalf of the company and complies with item 85(1)(d)⁴ of its Operator Services tariff, which sets out the process for escalation of customer complaints within the company and to the Commission.
26. In order to clarify that WiMacTel is providing operator services on its behalf, Bell Canada indicated that it would alter the greeting used by WiMacTel's live operators and the script used by the WiMacTel IVR system.
27. In response to the concern that a caller was unable to escalate a complaint, Bell Canada stated that it would undertake to ensure that WiMacTel operators and customer service representatives receive additional training to ensure that proper information is given and proper escalation paths are followed.

Commission analysis and determinations

28. The Commission considers that in contracting operator services to WiMacTel, Bell Canada and WiMacTel become neither alternate providers of long distance services or CPTSPs. Therefore, the consumer safeguards set out in Telecom Order 95-316 and Telecom Decision 98-8 do not apply to Bell Canada or WiMacTel, as argued by PIAC/CWP.
29. The Commission notes, however, that the consumer safeguards applicable to the provision of operator services set out in Bell Canada's Operator Services tariff apply to Bell Canada and, in turn, to any person acting on behalf of Bell Canada. According to the tariff, Bell Canada's operators are required, among other things, (i) to identify themselves as representing the company to the calling party, the called party, or party accepting charges for operator-handled calls; and (ii) to provide rates for a call and various billing arrangements when requested by the caller. In addition, a company operator who encounters a customer who is not satisfied with the service

³ Item 85(1)(c) - The Company's operators will provide, when requested by the customer at the beginning of an operator-handled call, the rates and charges and various alternate billing arrangements available to the customer.

⁴ Item 85(1)(d) - If a Company operator encounters a customer that is not satisfied with the service provided by Bell Canada, the operator will inform the customer of their option to present their case to the Company through the Company's Customer Service Centres, a Company manager or executive. If, in following this process, the customer remains dissatisfied, the customer may direct their concern(s) to the Canadian Radio-television and Telecommunications Commission.

provided by Bell Canada must inform the customer of the option to present his or her complaint to the company through the company's Customer Service Centres, a company manager, or company executive. Further, if in following this process the customer remains dissatisfied, the customer may direct their concerns to the Commission.

30. The Commission notes that Bell Canada's contract with WiMacTel does not specifically refer to the consumer safeguards set out in Bell Canada's Operator Services tariff. The Commission considers that the contract must explicitly require that WiMacTel comply with the consumer safeguards applicable to Bell Canada in the provision of operator services. Accordingly, the Commission directs Bell Canada to ensure that WiMacTel is explicitly required pursuant to their agreements to comply with the obligations of Bell Canada set out in its Operator Services tariff, and in particular, the consumer safeguards set out in that tariff, and to file within 60 days evidence of compliance with this requirement.
31. The Commission notes that item 85(1)(a)⁵ of Bell Canada's Operator Services tariff requires that operators identify themselves as representing the company. In order to ensure that it is clear to consumers that WiMacTel is providing operator services on behalf of Bell Canada, Bell Canada is directed to provide, within 10 days of this decision, for the Commission's information, the revised script that it has provided to WiMacTel regarding identification of operators. Bell Canada is also directed to file with the Commission, within 60 days of this decision, confirmation that the training of WiMacTel staff has been completed and that WiMacTel has implemented the script changes.
32. With regard to the requirement to advise dissatisfied customers of avenues for complaints, the Commission notes that Bell Canada has undertaken to ensure that WiMacTel operators and customer service representatives receive additional training to properly escalate complaints. In view of this, Bell Canada is directed to provide, within 10 days of this decision, for the Commission's information, the revised script that it has provided to WiMacTel regarding escalation of complaints. Bell Canada is also directed to confirm, within 60 days of this decision, for the Commission's information, that the training of WiMacTel staff has been completed and that WiMacTel has implemented the script changes.

III. Did Bell Canada violate section 27 of the Act?

33. PIAC/CWP submitted that Bell Canada has conferred upon itself an undue preference to the detriment of its payphone users by failing to adequately warn its payphone users of its decision to use WiMacTel to handle certain long distance calls placed from payphones and by not providing notice of WiMacTel's charges for such calls. PIAC/CWP also submitted that Bell Canada has also conferred an undue

⁵ Item 85(1)(a) – The Company's operators will identify themselves as representing the Company to the calling party, the called party or party accepting charges for operator-handled calls.

preference upon WiMacTel to the detriment of the company's payphone users by failing to provide payphone users adequate notice of WiMacTel's rates.

34. PIAC/CWP further submitted that Bell Canada's and WiMacTel's failure to disclose rates also unjustly discriminates against alternate providers of long distance services who compete with Bell Canada. PIAC/CWP argued that if consumers were made aware of WiMacTel's excessive rates prior to making a call, consumers could decide to seek other long distance service providers to carry these calls.
35. Bell Canada submitted that it did not breach section 27 of the Act as alleged by PIAC/CWP.
36. Bell Canada stated that notice of rates for operator-assisted calls invoiced by WiMacTel on the company's behalf is provided according to item 85(1) of its Operator Services tariff, and that all rates invoiced by WiMacTel on the company's behalf are compliant with the company's tariffs, where such rates are tarified.⁶
37. Bell Canada stated that the Commission has set no requirement for either incumbent payphone service providers or CPTSPs to provide notice of rates for long distance calls at payphones but that where long distance services are provided using the assistance of an operator, rate information must be provided according to the consumer safeguards that apply to operator services, as set out in its Operator Services tariff.
38. Bell Canada submitted that the engagement of WiMacTel to provide operator services for the company's payphones has no effect on the ability of alternate providers of long distance services to compete in the long distance payphone market.

Commission analysis and determinations

39. With regard to PIAC/CWP's allegation that Bell Canada conferred upon itself an undue preference to the detriment of end-users by failing to adequately warn its payphone users of its decision to use WiMacTel, the Commission notes that Bell Canada's operators are required to identify themselves, as set out above. The Commission notes that Bell Canada has no regulatory requirement to provide notice of its decision to contract with WiMacTel to provide operator services on Bell Canada's behalf. Bell Canada has however provided a notice by way of a scrolling notice that states that effective 25 May 2011, operator-assisted and credit card calls would be processed by WiMacTel.
40. With regard to PIAC/CWP's allegation that Bell Canada has conferred an undue preference upon itself and WiMacTel to the detriment of end-users and unjustly discriminates against alternative long distance service providers, in failing to provide adequate notice of rates and thereby facilitating the charging of excessively high rates by WiMacTel, the Commission notes the following. Bell Canada's operators

⁶ See Bell Canada General Tariff items 250.6(b) and (d).

are required pursuant to Bell Canada's Operator Services tariff, to provide, when requested by the customer at the beginning of a call, the rates and charges. When the user interacts with an IVR, the Commission notes that rates can be obtained following a prompt to this end on Bell Canada's IVR platform. Further, the rates invoiced by WiMacTel for local non-cash calls are as approved by the Commission in Bell Canada's Public Telephone Service tariff and the rates for non-cash long distance calls which are forborne are as approved by Bell Canada.

41. Based on the record of this proceeding, the Commission finds that users of Bell Canada's payphones are notified that WiMacTel is providing operator services on behalf of Bell Canada and can obtain the rates and charges in accordance with existing tariff requirements. The Commission also finds that there is no evidence on the record that payphone users are being charged excessive rates, recognizing that the rates are either as approved in a tariff or are unregulated. Further, there is no evidence that such users do not have access to alternate providers of long distance services, which they can clearly access by using for example, pre-paid calling cards or by using toll-free or local access numbers.
42. In light of the foregoing, the Commission is unable to conclude that Bell Canada has conferred an undue preference upon itself, or WiMacTel, or subjected its payphone users to an undue disadvantage or unjust discrimination, as alleged by PIAC/CWP. Further, the Commission is unable to conclude that Bell Canada has unjustly discriminated against alternate providers of long distance services, as alleged by PIAC/CWP.

IV. Should the Commission initiate a proceeding to examine the adequacy of consumer safeguards for payphone services?

43. PIAC/CWP requested that the Commission initiate a proceeding to examine the state of the payphone marketplace in Canada and, in particular, the adequacy of current consumer safeguards. PIAC/CWP stated that the current consumer safeguards were established based on expectations that a vigorously competitive payphone marketplace was developing.
44. PIAC/CWP stated that the manner in which Bell Canada appears to have conveyed a portion of its payphone business to WiMacTel should also raise the Commission's concern regarding the adequacy of the current regulatory regime regarding payphones.

Commission analysis and determinations

45. With respect to PIAC/CWP's request for a broad proceeding, the Commission notes that the *CRTC Three-Year Plan 2013-2016* indicates that the Commission will undertake research to assess the need for a revised regulatory framework for payphones in the year 2013-2014. The Commission notes that any decision regarding a broad proceeding will be made subsequent to the above-noted research.

46. The Commission considers, however, that it would be appropriate to review whether the existing safeguards are sufficient to ensure consumers are in a position to make informed decisions regarding use of payphones for non-cash calls.
47. Accordingly, the Commission will initiate a proceeding to examine whether the consumer safeguards with respect to notification of rates are sufficient and appropriate for non-cash calls from payphones.

Policy Direction

48. The Policy Direction⁷ states that the Commission, in exercising its powers and performing its duties under the Act, shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(a), (b), and (c) of the Policy Direction.
49. The Commission considers that its findings in this decision are consistent with the Policy Direction and advance the policy objectives set out in paragraphs 7(a), (c), (f) and (h) of the Act.⁸
50. Further, by not regulating the long distance rates and surcharges charged by Bell Canada and other payphone service providers while maintaining necessary consumer safeguards, the Commission has relied on market forces to the maximum extent possible, and imposed regulatory measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent, consistent with subparagraphs 1(a)(i) and (ii) of the Policy Direction.

Conclusion

51. Except as otherwise determined above, the Commission **denies** PIAC/CWP's application.

Secretary General

Related documents

- *Mandatory customer contract renewal notification and requirements for service destandardization / withdrawal*, Telecom Decision CRTC 2008-22, 6 March 2008

⁷ *Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

⁸ Paragraphs 7(f) and (h) of the Act are set out in footnote 2. Paragraphs 7(a) and (c) 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; and 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications.

- *New procedures for disposition of applications dealing with the destandardization and / or withdrawal of tariffed services*, Telecom Circular CRTC 2005-7, 30 May 2005
- *Local pay telephone competition*, Telecom Decision CRTC 98-8, 30 June 1998
- Telecom Order CRTC 95-316, 15 March 1995