



Compliance and Enforcement and Telecom Decision CRTC 2020-7

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Application to allow Bell Canada and its affiliates to block certain fraudulent voice calls on a trial basis – Requests for disclosure of information filed in confidence and motion for a non-disclosure agreement

*In regard to an application to allow Bell Canada and its affiliates to block certain fraudulent voice calls on a trial basis, the Commission **approves** requests for the disclosure of information in respect of which confidentiality was claimed, referenced in Appendix 1 to this decision; **directs** Bell Canada to disclose the information referenced in Appendix 2 to each intervener who signs the company's non-disclosure agreement, as modified by the Commission; addresses to Bell Canada the request for information set out in Appendix 3; **denies** all other requests; and **approves** modifications to the process for filing submissions in this proceeding.*

Background

1. The Commission received an application from Bell Canada, dated 24 July 2019 and revised on 27 August 2019, in which the company sought the Commission's approval to conduct a 90-day trial to block certain voice calls, received or transmitted from, to, or over its networks, that have been verified to be fraudulent.
2. Bell Canada indicated that, in accordance with Compliance and Enforcement and Telecom Regulatory Policy 2018-484, it was finalizing the implementation of universal network-level call blocking, targeting calls that purport, through caller identification (caller ID), to originate from telephone numbers that do not conform to established numbering plans.¹ Bell Canada indicated, however, that fraudsters are currently using conforming caller ID numbers and that, based on its samples, it has identified an additional 110 million verified fraud calls that use conforming caller ID and would therefore not be blocked pursuant to Compliance and Enforcement and Telecom Regulatory Policy 2018-484.

¹ In that decision, the Commission directed all telecommunications service providers to block calls terminating on their networks where the caller identification number (i) exceeds 15 digits, or (ii) is malformed and does not conform to a dialable number (e.g. 000-000-0000) for calls initiated under the North American Numbering Plan.

3. Bell Canada explained that its proposed call blocking tool will operate dynamically, and that an artificial intelligence (AI) system, together with human analysis, will compile, analyze, and block certain fraudulent or scam calls that transit or terminate on its network. The AI system will learn and improve on an ongoing basis through machine learning.
4. Bell Canada designated a significant amount of the information in its application as confidential under section 39 of the *Telecommunications Act* (the Act). Bell Canada stated that disclosure of the information for which it claimed confidentiality could reasonably be expected to result in material gain to parties engaged in fraudulent calling (which it referred to as “bad actors”) and cause significant financial harm to those targeted.
5. On 16 August 2019, Commission staff sent a request for information (RFI) [letter](#) to Bell Canada (referred to hereafter as Bell et al.(CRTC)16Aug19), in which it requested additional details concerning the company’s proposal, as well as summaries of its proposals for the public record. Bell Canada filed the bulk of its responses in confidence.
6. The Commission received interventions regarding Bell Canada’s application and confidential information from Dr. Fenwick McKelvey; Mr. Marc Nanni; M^e Mark Phillips; Dr. Reza Rajabiun; Allstream Business Inc. (Allstream); the Canadian Network Operators Consortium Inc. (CNOOC); the Internet Society Canada Chapter (ISCC); Iristel Inc., on its own behalf and on behalf of Ice Wireless Inc. (Iristel); Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); and TELUS Communications Inc. (TCI).

Requests for disclosure of information filed in confidence

7. On 4 October 2019, Mr. Nanni filed requests for disclosure of certain information filed in confidence by Bell Canada.
8. Mr. Nanni requested that the Commission require that all interveners be provided the opportunity to review the confidential information, failing which the application should be denied.

Bell Canada’s motion for a non-disclosure agreement

9. On 25 October 2019, Bell Canada filed a motion requesting that the Commission permit it to share more information with interveners on a confidential basis, on the condition that they sign a non-disclosure agreement (NDA). Bell Canada submitted that it understood the interveners’ concern about the lack of information on the public record and wanted to provide them with greater detail about the proposed trial.
10. Bell Canada added that the basis of its confidentiality claims, except for those that concern commercially sensitive and proprietary material, was the need to prevent bad actors from obtaining information that could assist them in evading its blocking tools.

11. Bell Canada submitted that due to the lack of information on the public record, certain interveners had raised objections that were based upon inaccuracies and speculation. Bell Canada stated that it wished to propose a more efficient and effective way to strike a balance between its concerns and the need for interveners to have a sufficient understanding of the proposed trial.

12. Specifically, Bell Canada requested the following Commission orders and directions:

- an order to allow Bell Canada to amend its confidentiality claims with respect to (i) the original and revised confidential versions of its application, and (ii) the original and the revised confidential versions of its responses to Bell et al.(CRTC)16Aug19an order to permit Bell Canada to refile with the Commission almost completely unredacted, but still confidential, versions of its application and its responses to Bell et al.(CRTC)16Aug19 (the NDA versions);
- an order to permit Bell Canada to share a copy of the new NDA versions of its application and its responses to Bell et al.(CRTC)16Aug19 with any party that (i) intervened in the proceeding on or before 14 October 2019; (ii) signs and executes a copy of its proposed NDA or any amended version that may be approved by the Commission; and (iii) returns an executed version of the NDA on or before a deadline to be prescribed by the Commission;
- directions to amend the process prescribed in the Commission staff [letter](#) dated 21 August 2019 (the process) in order to provide interveners who sign the NDA an opportunity to file supplementary interventions, and to provide Bell Canada an opportunity to file a final reply in response to any such interventions; and
- any such further orders or directions as the Commission considers just and necessary in the circumstances.

Issues

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

- Should the Commission approve the requests for disclosure of confidential information?
- Should the Commission approve Bell Canada's motion for disclosure subject to an NDA?

Should the Commission approve the requests for disclosure of confidential information?

Positions of parties

14. Mr. Nanni requested that Bell Canada disclose confidential information in its responses to Bell et al.(CRTC)16Aug19-1 and -3 to -9; in paragraph 19 of the company's application; and in any accompanying documents that were filed without an abridged version. Mr. Nanni submitted that Bell Canada had failed to put on the public record sufficient information about the trial, such as the content that would be blocked, consent and privacy, access to information, and the impact of the trial on other telecommunications service providers.
15. Mr. Nanni further submitted that Bell Canada did not provide reasons in support of its confidentiality claims for the public record.
16. Dr. Rajabiun and Dr. MacKelvey supported Mr. Nanni's requests for disclosure of confidential information.
17. In reply, Bell Canada agreed to disclose its responses to Bell et al.(CRTC)16Aug19-4, -8, and -9, and portions of its responses to Bell et al.(CRTC)16Aug19-3 and -7, but requested that the Commission deny the remaining disclosure requests. Bell Canada reiterated that publicly disclosing certain elements of the proposed trial could reveal important information to bad actors and enable them to adjust their actions to defeat the intent of the trial.
18. In addition, Bell Canada argued that it has no obligation to make public the reasons for a claim of confidentiality if doing so would undermine the confidentiality itself.

Should the Commission approve Bell Canada's motion for disclosure subject to an NDA?

Positions of parties

19. Dr. McKelvey, Mr. Nanni, Dr. Rajabiun, and the ISCC objected to Bell Canada's motion for disclosure to interveners who sign an NDA.
20. Mr. Nanni requested that the Commission deny Bell Canada's motion and determine that the company has forfeited its opportunity to make a final reply. He submitted that Bell Canada had been given ample time to respond.
21. In the event that the Bell Canada's motion would be granted, Mr. Nanni requested interim legal costs that would be incurred to qualify as an eligible intervener, as required by the proposed NDA.
22. Mr. Nanni submitted that, should the Commission accept Bell Canada's motion, amendments to Bell Canada's NDA would be required.

23. In addition, Mr. Nanni requested disclosure of domestic bad actors, which he stated would serve as a tool for Canadians and serve the public interest. Should that be denied, Mr. Nanni requested that the Commission draw up a list of “verified exempt domestic bad actors” that could be used as a tool for Canadians and serve the public interest.
24. Mr. Nanni attached an additional RFI for Bell Canada.
25. Dr. Rajabiun and Dr. McKelvey questioned how such private disclosures would assist the Commission in developing an adequate public record upon which parties could comment and by which risks could be assessed. They added that the proposed NDA could limit their ability to comment on the public record should they wish to identify risks based on privileged information.
26. The ISCC indicated that compliance with the proposed NDA would place a burden on interveners due to the significant effort required to ensure that information is not accidentally disclosed.

Commission’s analysis and determinations

27. Requests for disclosure of information designated as confidential are addressed in light of sections 38 and 39 of the Act and sections 30 to 34 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*. In evaluating such a request, the Commission assesses whether the information falls into a category of information that can be designated confidential pursuant to section 39 of the Act, whether any specific direct harm is likely to result from the disclosure of the information in question, and whether such harm outweighs the public interest in disclosure.
28. The Commission considers that the information subject to a claim of confidentiality that is referenced in Appendix 1 to this decision is of a general nature and could not be used to undermine Bell Canada’s proposal or otherwise used in a manner that is likely to harm Bell Canada. The Commission finds that Bell Canada failed to demonstrate that it is likely to incur any harm that would outweigh the public interest. Therefore, the Commission concludes that disclosure on the public record of the information referenced in Appendix 1 is in the public interest, in accordance with subsection 39(4) of the Act.
29. With respect to the information subject to a claim of confidentiality submitted by Bell Canada in certain parts of its response to Bell et al.(CRTC)16Aug19-2, the Commission finds that this information is of a technically and commercially sensitive nature as it provides detailed descriptions of the proposed technical solution and of the specific characteristics and methodologies of Bell Canada’s proposed AI system. The Commission concludes that the harm likely to result from disclosure of this information, either on the public record or to interveners who sign the proposed NDA, outweighs the public interest in such disclosure.

30. The Commission notes that the information subject to a claim of confidentiality that is referenced in Appendix 2 to this decision describes the types of calls that would or would not be blocked and the general methodology to be employed for investigating suspicious calls. The Commission considers that this information could be used to undermine Bell Canada's call blocking proposal to the benefit of persons seeking to make illegitimate calls. The Commission concludes that the harm likely to result from the disclosure of such information on the public record outweighs the public interest in disclosure.
31. The Commission considers, however, that the interveners in this proceeding are not persons seeking to make illegitimate calls. The Commission considers that given the nature of the information filed in confidence and referenced in Appendix 2, requiring interveners to sign an NDA would prevent the harm that would likely result from disclosure on the public record. Further, the Commission notes that Bell Canada filed an unusually significant amount of information in confidence, in both its application and its RFI responses, because of the nature of Bell Canada's proposal. As recognized by Bell Canada, this has affected interveners' participation in this proceeding. The Commission considers that selective disclosure to the interveners of certain information not available on the public record of this proceeding will afford them a meaningful opportunity to participate in the proceeding. Given the unique circumstances of this proceeding, the Commission concludes that disclosure to the interveners in this proceeding who sign the NDA of the information referenced in Appendix 2 is in the public interest.
32. As noted above, the objective of allowing for disclosure to interveners in this manner is to enable them to have a better understanding of the record so that they have a meaningful opportunity to participate in the proceeding, while preventing the harm that would be caused by disclosure of the information in question on the public record. To that end, the core obligations of interveners under the NDA are (i) to retain the information in confidence and not to disclose it to anyone other than another intervener that has signed the NDA, Bell Canada, or the Commission; and (ii) not to use such information for any purpose other than participation in the process. Best practices would call for interveners to return or destroy the information once the proceeding has been concluded and it is no longer required for that purpose. For clarity, the NDA does not apply to any information for which the Commission has denied a claim for confidentiality, and applies only to information that is referenced in Appendix 2 to this decision. Additional guidance to understanding the NDA is set out in Appendix 4 to this decision.
33. Any interventions that include comments that would reveal the information received under the NDA must be filed in accordance with the Commission's procedures for filing confidential information, as set out in Broadcasting and Telecom Information Bulletin 2010-961. For example, an abridged version of any such intervention must be filed for the public record, omitting only that information which is confidential. Documents should not be reformatted; rather, the space left by the omitted confidential information should be left blank. Intervenors requiring assistance may consult Commission staff for assistance in filing abridged submissions.

34. With respect to Mr. Nanni's request for interim costs to seek legal assistance related to the proposed NDA, the Commission notes that the NDA does not require signatories to obtain legal advice, but rather to acknowledge that they have had sufficient time to obtain independent legal advice. The Commission considers that this acknowledgement should be removed from the NDA in order to avoid misunderstanding and remove any potential barrier for interveners to sign the NDA. The Commission also notes that requests for interim costs must address all Commission requirements for interim costs applications.
35. In addition, the Commission considers that certain questions in Mr. Nanni's proposed RFI are reasonable, since they seek information that will enhance the public record and assist interveners in understanding Bell Canada's proposal. The Commission therefore approves the RFI, as amended by the Commission, set out in Appendix 3 to this decision.
36. Finally, the Commission considers that the process should be amended to allow interveners to address the information disclosed as a result of the Commission's determinations in this decision. The deadline for Bell Canada to file its reply should likewise be extended.
37. In light of the above, the Commission
- **approves** the request for disclosure on the public record of the information referenced in Appendix 1;
 - **directs** Bell Canada to disclose the information referenced in Appendix 2 to each intervener (named in paragraph 6 above) who signs the NDA proposed by Bell Canada and modified to exclude the acknowledgement relating to legal advice;
 - addresses to Bell Canada the RFI proposed by Mr. Nanni and modified by the Commission, as set out in Appendix 3;
 - **denies** all other requests; and
 - **approves** the following modifications to the process:
 - Bell Canada must file revisions to its abridged application, and to the RFI responses that it filed on 27 September and 15 October 2019, that reflect the determinations set out in this decision and disclose on the public record the information referenced in Appendix 1, by **24 January 2020**.
 - Bell Canada must provide a copy of the revised NDA to interveners by **24 January 2020**.

- Bell Canada must file its answers to the RFI set out in Appendix 3 and provide an abridged copy to interveners by **27 January 2020**. In its answers, Bell Canada must disclose on the public record any information that is similar or of a comparable nature to the information referenced in Appendix 1, and disclose to interveners who sign the proposed NDA any information that is similar or of a comparable nature to the information referenced in Appendix 2.
- Intervenors who wish to obtain disclosure of the confidential information referenced in Appendix 2 and Bell Canada's responses to the RFI set out in Appendix 3 must sign the NDA by **3 February 2020**. Bell Canada must provide each intervener who signs the NDA with the information referenced in Appendix 2, as well as information in its response to the RFI set out in Appendix 3 that is of a similar or comparable nature to the information referenced in Appendix 2, within **two business days** of receiving the signed NDA.
- Intervenors may file revised interventions, serving a copy on Bell Canada, to address information disclosed on the public record or in confidence to the intervenors by **21 February 2020**.
- Bell Canada may file a reply, serving a copy on all parties, by **2 March 2020**.

Secretary General

Related documents

- *Implementation of universal network-level blocking of calls with blatantly illegitimate caller identification*, Compliance and Enforcement and Telecom Regulatory Policy CRTC 2018-484, 19 December 2018
- *Procedures for filing confidential information and requesting its disclosure in Commission proceedings*, Broadcasting and Telecom Information Bulletin CRTC 2010-961, 23 December 2010; as amended by Broadcasting and Telecom Information Bulletin CRTC 2010-961-1, 26 October 2012
- *Regulatory measures associated with confidentiality provisions and privacy services*, Telecom Regulatory Policy CRTC 2009-723, 25 November 2009

Appendix 1 to Compliance and Enforcement and Telecom Decision CRTC 2020-7

Bell Canada is to disclose on the public record the information filed in confidence in the parts of its application and responses to the RFIs identified below, to the extent set out below:

- Paragraph 19 of Bell Canada's application
- Bell et al.(CRTC)16Aug19-3 (as indicated in the second paragraph, page 2, of the revised response dated 15 October 2019):

We estimate between #...# fraudulent or scam calls may be blocked over the course of the trial. As an aspirational target, we would hope to see between #...# fraudulent or scam calls being blocked during each week of the trial.

- Bell et al.(CRTC)16Aug19-7 (as indicated in the last paragraph, page 1, of the revised response dated 15 October 2019):

As described in Bell et al.(CRTC)16Aug19-2, the AI System operates by #...# it is not technologically possible for individual users to opt out of having their call information included...

Appendix 2 to Compliance and Enforcement and Telecom Decision CRTC 2020-7

Bell Canada is to disclose to interveners who sign Bell Canada's proposed NDA, as amended by the Commission, the confidential information filed in response to the RFIs listed below, to the extent set out below:

- All the information filed in confidence in response to Bell et al.(CRTC)16Aug19-1
- The following information filed in confidence in response to Bell et al.(CRTC)16Aug19-2:
 - the last paragraph on page 4 (including the three bullets), and
 - the second, third, fourth, and fifth paragraphs on page 5.
- All the information filed in confidence in response to Bell et al.(CRTC)16Aug19-3, except for the information that the Commission has required to be disclosed on the public record (see Appendix 1 above)
- All the information filed in confidence in response to Bell et al.(CRTC)16Aug19-5
- All the information filed in confidence in response to Bell et al.(CRTC)16Aug19-6
- The information filed in confidence in response to Bell et al.(CRTC)16Aug19-7, on page 2 of the revised response dated 15 October 2019
- All the information filed in confidence in response to Bell et al.(CRTC)16Aug19-10
- All the information filed in confidence in response to Bell et al.(CRTC)16Aug19-11

Appendix 3 to Compliance and Enforcement and Telecom Decision CRTC 2020-7

Additional request for information to Bell Canada

Bell Canada is to file its responses to the following request for information by **[27 January 2020]**:

Q.1 (provide a Yes or No answer): With respect to the information collected by Bell Canada as part of its proposed call blocking mechanism,

- a) is there a caller ID associated with each voice call?
- b) can this caller ID be used to track back to the two phone numbers involved?
- c) is Bell Canada able to identify and record the terminating telecommunications service provider (TSP) and/or downstream TSP?
- d) is Bell Canada able to identify and record the originating TSP and/or upstream TSP?
- e) is Bell Canada able to determine the times and dates of the calls?
- f) is caller ID identified (e.g. 800-555-1234)? Is it identified for both parties?
- g) is caller name identified (e.g. Bell Nordia)? Is it identified for both parties?
- h) does Bell Canada record if the source of the call is not identifiable?
- i) if the source of the call is identified, does Bell Canada record subscriber information (e.g. name, address, or originating telephone number)?
- j) if the terminating end of the call is identified, does Bell Canada record subscriber information (e.g. name, address, or terminating telephone number)?
- k) is the gateway, trunk group, or a Session Border Controller (SBC) Internet Protocol (IP) address identified?
- l) are terminating locations identified based on telephone or subscriber information?
- m) are source locations identified based on telephone or subscriber information?

Q.2: Is there any other subscriber information used that is not listed above? If so, describe in detail.

Q.3: Is any other identifying information used (e.g. international mobile subscriber identity [IMSI], IP address, mobile identification number [MIN], mobile subscription identification number [MSIN], Mobile Station International Subscriber Directory Number [MSISDN], or International Mobile Equipment Identity [IMEI]). If so, list all that apply.

Q.4: For each of the items in Q.1, Q.2, and Q.3 above, please indicate which data is retained.

Q.5: Indicate how each of the data points from above is “anonymized” (e.g. are they given or replaced with unique IDs similar to the unique IDs from the set-top box working group?).

Q.6. What is Bell Canada’s final verification step to block a call? Explain in more detail how a potential nuisance call is finally verified as a fraudulent call or not using the two methods given in your reply.

Q.7: Explain how Bell Canada’s call blocking proposal would be compliant with the regulatory measures set out in Telecom Regulatory Policy 2009-723.

Definitions of terms:

- The terminating TSP is the TSP of the subscriber who received the call.
- An upstream TSP is a TSP that routed the call towards the terminating TSP.
- For calls that originate in Canada, the originating TSP is the TSP that provides service to the subscriber who originated the call.
- A downstream TSP is a TSP that routed the call from the originating TSP.

Appendix 4 to Compliance and Enforcement and Telecom Decision CRTC 2020-7

The following guidelines are intended to highlight the scope of interveners' obligations under the NDA, should the interveners decide to sign it.

- Intervenors can only use the confidential information obtained from Bell Canada in this proceeding pursuant to the NDA for the purpose of participating in this proceeding (Article 2.1 and 2.2).
- Intervenors must maintain the confidentiality of the information and cannot disclose it to any person other than another intervener in this process that has signed the NDA, Bell Canada, or the Commission (Articles 2.2.1 and 2.3.1).
- Intervenors are not liable for the disclosure or use of confidential information where such disclosure or use is required by law; where Bell Canada has given express written approval; or where the intervener lawfully, under this agreement and otherwise, obtained such information from a third party (Article 2.2.2). The Commission notes that the NDA applies only to information identified in Appendix 2 to this decision and does not limit or affect the intervenors' use of any information that is on the public record of this proceeding or that is otherwise publicly available.
- Intervenors who refer to any of the confidential information in their submissions in this proceeding must file any such submission in confidence with the Commission and file an abridged version for the public record (Article 2.2.1).
- If an intervener is required by a court, or otherwise by law, to disclose the confidential information, then the intervener must give written notice to Bell Canada unless the intervener is legally prohibited from providing such notice (Article 2.3.2).
- If an intervener discloses or uses the information other than as permitted under the NDA, Bell Canada will be entitled to sue that intervener if Bell Canada suffers harm. The intervener agrees that it will indemnify Bell Canada for all damages and costs related to any claims by Bell Canada's customers or other persons that may be harmed by unauthorized use or disclosure of the information (Article 2.2.3).
- Intervenors must report to Bell Canada any unauthorized disclosure that could compromise the continued confidential treatment of the information (Article 3.1).
- Upon request by Bell Canada, intervenors must take all reasonable steps to return or destroy the information (Article 3.2). The Commission notes that once the proceeding has concluded, the best practice would be to delete/discard/remove all the information or return it to Bell Canada.
- The intervenors' obligation to maintain the confidentiality of the confidential information runs in perpetuity (Article 5.1).