

December 3, 2001

Ms. Ursula Menke
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Ms. Menke:

Re: Part VII Application re: alleged violations of CRTC Decision 2000-745

1. The Canadian Wireless Telecommunications Association (CWTA) is in receipt of the above noted application dated November 2, 2001 (the Application), filed by the Public Interest Advocacy Centre ("PIAC"). PIAC alleges that, in violation of the CRTC's ruling in Decision 200-745, "... wireless providers began charging their subscribers a specific surcharge designed to recover the new "revenue tax" in full." In this regard, PIAC requests that the Commission immediately issue an order requiring telecommunications service providers to:
 - a. immediately cease and desist from levying this or any similar surcharge on end-users; and
 - b. refund to individual subscribers any amounts already collected through such illegal surcharges.
2. At the outset, the CWTA notes that the requested relief cannot be granted by the Commission because the Application does not refer to a unique surcharge but instead refers to a variety of approaches taken by numerous service providers to recover the new contribution charge. Regardless, our response to PIAC's allegations is provided below.
3. The CWTA's members deny that they have committed any violations as alleged by PIAC and hence no further action by the Commission is required. PIAC has entirely misrepresented the fees imposed by wireless carriers. The recent changes to the wireless System Access Fee (SAF), alluded to in the Application, can in no way be construed as a violation of paragraph 110 (b) of the Decision.

4. As noted above, at paragraph 3 of the Application, PIAC contends that “... *wireless providers began charging their subscribers a specific charge designed to recover the new “revenue tax” in full.*” The wireless SAF is not a new charge, nor is it designed exclusively to recover the contribution charge. The SAF has been a component of wireless pricing in Canada since the 1980’s. The SAF is designed to recover a number of variable costs associated with providing wireless services, including network costs, and radio-frequency spectrum licence fees. Following the significant change in the contribution regime as it applies to wireless carriers, each carrier made adjustments to the level of SAF charged to its customers to reflect and offset the impact of the new contribution charge.
5. The CWTA submits that the Commission expected, and specifically allowed for an increase in rates as a result of the introduction of the new contribution regime. Paragraphs 135 – 137 of the Decision provide the mechanisms for price-regulated companies to raise rates “*to recover the new revenue-percentage charge.*”¹ The Commission did not prescribe any methods to recover the charge for forborne services (such as wireless or long distance) because the rates and pricing strategies for such services are not regulated. It is unreasonable to expect that, in the absence of such a prescription, price increases are not permitted.
6. The CWTA notes that throughout the proceeding leading up to the Decision, PIAC² maintained its position that service providers should be permitted to decide how to recover the contribution charge. In fact, one of the benefits of a revenue charge cited by PIAC in its preliminary submission to Public Notice CRTC 99-6 was that “*It provides service providers with flexibility in respect of how they recover this extra cost of doing business (as opposed to a set end-user surcharge).*”³
7. PIAC’s reply comments provide more insight into its position:

“ARC et al have not sought to hide contribution and do not oppose allowing service providers to itemize contribution. ARC et al are only opposed to mandating a separate line item.”⁴

“While ARC et al is not going so far as to suggest that the Commission interfere with the billing decisions of individual service providers by requiring them to show

¹ Order CRTC 2001-278 approved Bell Canada’s rate increases associated with the exogenous factor described in the Decision.

² During the proceeding of Public Notice CRTC 99-6, PIAC filed documents on behalf of Action Réseau Consommateur and the National Anti-Poverty Organization (“ARC et al”)

³ ARC/CAC/NAPO submission, Public Notice CRTC 99-6 - Review Of Contribution Collection Mechanism, November 30, 1999, Paragraph 4

⁴ Reply Comments of ARC et al, Public Notice CRTC 99-6, Review Of Contribution Collection Mechanism, July 21, 2000, Paragraph 22

the all-in price, ARC et al is proposing that service providers be permitted to decide whether or not to itemize contribution on the customer bill.”⁵

“Because there is no need for the Commission to impose a requirement that contribution appear as a separate line item, it seems reasonable to allow suppliers to respond to consumer preferences in specific market segments.”⁶

8. Despite the above statements, PIAC is now requesting that the Commission dictate the manner in which forborne services are priced and restrict the methods used by service providers to recover the contribution charge.
9. The CWTA notes that none of its members identifies the contribution charge as a separate, visible line item on customer invoices. Further, the CWTA notes that the ruling in paragraph 110 (b) of the Decision does not prevent service providers from explaining to their customers that certain pricing changes have been implemented to reflect the requirement to pay significantly higher contribution charges, or the purposes or policy objectives of those contribution payments. Indeed, the CWTA submits that such a prohibition would violate service providers' right to commercial speech, guaranteed under the *Charter of Rights and Freedoms*.
10. Moreover, the CWTA believes the Commission lacks the jurisdiction to establish such a restriction. In this regard, it is important to review section 46.5 of the *Telecommunications Act*. It is in this section of the *Act* that the Commission is granted the power to collect contribution. Specifically, it states that the " ... Commission may require any telecommunications service provider to contribute, subject to any conditions that the Commission may set, to a fund to support continuing access by Canadians to basic telecommunications services." In the CWTA's view, this does not provide the Commission with the power to prescribe the manner in which telecommunications service providers recover the associated costs from their customers. Therefore, PIAC's requested relief would result in a violation of the Commission's powers as granted by the *Telecommunications Act*.
11. In summary, CWTA submits that PIAC has failed to prove any violation of the Decision, and the Commission should reject the requests made in the Application for the following reasons:
 - a. The Commission expected, and approved rate increases for rate-regulated carriers as a result of the Decision.
 - b. Wireless services are forborne from rate regulation, and wireless carriers may recover the contribution charge in a manner that the market supports.

⁵ Ibid., Paragraph 27

⁶ Ibid., Paragraph 31

- c. The SAF does not exclusively recover the contribution charge and the contribution component of the SAF is not a separate, visible item.
- d. In Canada, service providers are guaranteed the right to communicate with their customers under the Charter.

12. The CWTA appreciates the opportunity to provide these comments.

Sincerely,

Electronic filing

J. David Farnes
Vice President
Industry and Regulatory Affairs

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