



July 30, 2001

Ms. Shirley Soehn
Executive Director, Telecommunications
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON K1A 0N2

Dear Ms. Soehn:

Re: Public Notice CRTC 2001-60-1

1. Pursuant to the directions on procedure in Public Notice CRTC 2001-60-1, the Canadian Wireless Telecommunications Association (CWTA) provides the following comments regarding the confidentiality provisions contained in the terms of service of Canadian carriers.
2. CWTA represents the wireless telecommunications industry in Canada. It has a membership base of more than 300 domestic and international companies. CWTA's members come from a variety of sectors, including mobile telephone service providers, paging companies, mobile radio, mobile satellite carriers, and fixed wireless service providers. In addition, CWTA represents a broad cross-section of manufacturers and equipment suppliers to the industry.
3. CWTA has reviewed the Part VII application dated November 15, 2000 filed by Bell Canada on behalf of itself, Bell Mobility, Bell Nexxia, Island Telecom Inc., Maritime Tel & Tel Limited, MT&T Mobility Inc., MTS Communications Inc., NBTel Inc., NewTel Communications Inc. and NewTel Mobility Limited (Bell et al) requesting changes to the applicable sections of the Terms of Service dealing with confidentiality of customer records. CWTA has also reviewed comments filed by TELUS Communications Inc. and TELUS Communications (BC) Inc. (TELUS), and joint comments filed by AXXENT Corp. and AT&T Canada. CWTA supports the conclusions of Bell et al and TELUS, to the effect that the

Commission's current rules respecting the confidentiality of customer information do not reflect the current telecommunications landscape in Canada or the state of consumer privacy protection.

4. At the time of Telecom Decision CRTC 86-7 (Decision 86-7) when the current confidentiality provisions were established, legislative protection of Canadians' privacy rights was limited. The *Privacy Act* imposed obligations on various federal government organizations, but the private sector was not governed by these obligations. Under these circumstances, it was reasonable to expect that the role of the Commission would include the protection of the privacy rights of the customers of regulated carriers.
5. As noted by both Bell et al and TELUS, the *Personal Information Protection and Electronic Documents Act (PIPED Act)* came into force January 1, 2001 and places obligations on all federally regulated organizations regarding the collection, use and disclosure of the personal information of customers and employees. The Privacy Commissioner of Canada is now responsible for the oversight of the *PIPED Act* as well as the *Privacy Act*, and is to be equipped with the resources required to effectively carry out its general powers under the *PIPED Act*, including the power to receive and investigate complaints. In light of the role of the Privacy Commissioner under the *PIPED Act*, it may now be appropriate for the Commission to defer to the office of the Privacy Commissioner of Canada respecting broader issues, such as the treatment of customer data, that do not require the kind of telecommunications-specific expertise the Commission has developed over the years. CWTA notes that the Commission has in the past moved away from regulating issues that are dealt with elsewhere in Canadian law¹.
6. Allowing the Privacy Commissioner of Canada to manage such privacy issues would help reduce or eliminate the duplication of regulatory oversight currently borne by telecommunications service providers (TSPs), and provide consumers with a clearer understanding of how to resolve any privacy concerns they may have with entities subject to the *PIPED Act*. However, should the Commission maintain its confidentiality rules, it should endeavor to align its regulations as closely as possible with the *PIPED Act*. In that context, CWTA provides the following remarks.
7. With respect to the requirement for written consent, CWTA is of the view that this obligation is out of step with consumer expectations and current

¹ In Decision 86-7, the Commission specifically exempted from the proceeding "telecommunications-related matters covered by federal statutes...not administered by the Commission"

business practices, especially in light of convergence in the communications industry and the rise of the Internet and other electronic media. Section 5 of the *PIPED Act* outlines the core principles for privacy protection in Canada and clearly establishes “knowledge and consent” as a fundamental element of good information management practices. Unlike the Commission’s written consent rule, the new legislation explicitly recognizes that the form of consent obtained for collection, use and disclosure of personal information may vary depending on the circumstances and type of information involved. The *PIPED Act* appropriately, in our view, allows for more flexible forms of consent to account for the varying degrees of sensitivity of personal information that can be exchanged when conducting business in the private sector. This approach gives the service provider operational flexibility and protects consumers by requiring organizations to obtain their informed consent to the collection, use and disclosure of personal information. The framework established in the *PIPED Act* includes rules that are generally applicable, competitively equitable and which make the form of consent required subject to the nature of the information disclosed, regardless of whether that disclosure takes place between affiliated or non-affiliated entities.

8. When specifically considering the disclosure of information to affiliated companies, the reasonable expectations of consumers are certainly relevant. CWTA agrees with the views of Bell et al:

Consumers tend to view corporate communications groups, which typically share branding, advertising and retail points of presence, as single entities. Consumers expect information to be shared within these corporate groups, and indeed are surprised — and in some cases, annoyed — where this is not the case.²

9. Consumers increasingly expect a high degree of personalization in the service they receive from companies with which they have ongoing relationships, including TSPs. The requirement to repeat basic personal information to each company within a corporate group acts as a barrier to the development of strong relationships between companies and their customers.
10. With respect to specific conditions regarding the storage of customer information, CWTA notes that, under the *PIPED Act*, TSPs are obligated to ensure that adequate safeguards are implemented for the protection of confidential information. Introducing additional CRTC mandated conditions or restrictions would unnecessarily increase the regulatory

² Bell et al, *Application to Revise Article 11 of the Terms of Service*, paragraph 13

burden for Canadian carriers. These conditions would also increase the competitive distortions between classes of TSPs. CWTA believes that, as discussed above, the Commission should rely on duly enacted legislation for the protection of the privacy rights of consumers.

11. In summary, the CWTA recommends the following actions in regard to the confidentiality provisions set out in the terms of service of Canadian carriers. At a minimum, the Commission should provide the relief requested by Bell et al, and remove the requirement for written consent for disclosure to affiliated companies. The Commission should also endeavor to align its determinations with the *PIPED Act* and the positions taken by the Privacy Commissioner of Canada.

12. The Commission should also consider deferring to the Privacy Commissioner of Canada respecting the regulation of broader consumer privacy issues such as the confidentiality of customer information.

13. 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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