Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2020-104

PDF version

Ottawa, 24 March 2020

Public record: 1011-NOC2019-0057

TELUS Communications Inc. and the Canadian Network Operators Consortium Inc. – Requests for disclosure of information filed in confidence as part of the Telecom Notice of Consultation 2019-57 proceeding, and related procedural requests

*The Commission **approves in part** a request by the Canadian Network Operators Consortium Inc. to disclose certain information contained in Bell Mobility Inc.'s further comments and in the Commissioner of Competition's further comments and appended report.*

*The Commission **denies** TELUS Communications Inc.'s request that certain information be disclosed selectively to certain outside counsel and/or independent experts, as well as requests for further process and related procedural changes.*

*In order to give parties adequate time to respond to the new information publicly disclosed as a result of this decision, and in light of the COVID-19 pandemic, the deadline for filing final replies in the Telecom Notice of Consultation 2019-57 proceeding **remains suspended** until further notice. Such final comments are now not to exceed 50 pages.*

Background

1. In Telecom Notice of Consultation 2019-57, the Commission initiated a proceeding (the proceeding) to review a broad range of matters in relation to mobile wireless services. In that notice, the Commission indicated that its review would focus on three key areas: competition in the retail market; the current wholesale regulatory framework, with a focus on wholesale mobile virtual network operator (MVNO) access; and the future of mobile wireless services in Canada, with a focus on reducing barriers to infrastructure deployment.

2. The Commissioner of Competition (the Commissioner) is an intervener in the proceeding, pursuant to his mandate under the *Competition Act* to make representations to federal boards and tribunals in respect of competition.

3. The Commissioner has filed both further comments and an accompanying economic report prepared by Dr. Tasneem Chipty of Matrix Economics (Dr. Chipty's report) on the record of the proceeding. The submissions include analyses based on information disclosed to the Commissioner pursuant to section 39(4)(b) of the

Telecommunications Act (the Act) by the wireless carriers who are parties to the proceeding.[1] In response to requests from parties, the Commission added a reply phase to the proceeding in order to provide a further opportunity to reply to the Commissioner's further comments and Dr. Chipty's report.[2]

4. The Canadian Network Operators Consortium Inc. (CNOC) and TELUS Communications Inc. (TCI) have subsequently filed requests for disclosure of information that was filed confidentially in the Commissioner's further comments and Dr. Chipty's report. CNOC requested public disclosure, whereas TCI requested selective disclosure to outside legal counsel and select independent experts retained by certain parties.[3] CNOC also requested public disclosure of certain information filed by Bell Mobility Inc. (Bell Mobility) in its further comments.

5. Bell Mobility; Bragg Communications Incorporated, operating as Eastlink (Eastlink); the Commissioner; Ice Wireless Inc.; Quebecor Media Inc. (QMI); Rogers Communications Canada Inc. (RCCI); Shaw Cablesystems G.P. (Shaw); SSi Micro Ltd. (SSi Micro); Teksavvy Solutions Inc. (Teksavvy); and Xplornet Communications Inc. (Xplornet) filed comments with respect to the disclosure requests.

6. Requests for disclosure of information designated as confidential are addressed in light of sections 38 and 39 of the Act and sections 30 onward of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure). In evaluating a request, an assessment is made as to whether the information falls into a category of information that can be designated confidential pursuant to section 39 of the Act. A further assessment is then made as to whether there is any specific direct harm likely to result from the disclosure of the information in question and whether any such harm outweighs the public interest in disclosure.

7. In making this evaluation, a number of factors are taken into consideration. For instance, harm may be more likely to outweigh the public interest in disclosure where the information is more disaggregated or where the degree of competition is greater. Conversely, the public interest may be more likely to outweigh any harm where disclosure of the information is more important to the ability of the Commission to obtain a full and complete record on which to base its decision. The general procedures and the factors generally considered are discussed in more detail in Broadcasting and Telecom Information Bulletin 2010-961, as amended by Broadcasting and Telecom Information Bulletin 2010-961-1.

---

[1] See, for example, Telecom Decision 2019-277.

[2] See Telecom Notice of Consultation 2019-57-1.

[3] Bell Mobility and RCCI also made requests for disclosure related to the Commissioner's further comments and Dr. Chipty's report. Those requests were dealt with separately and approved, in part, in a Secretary General letter dated 10 January 2020.

CNOC's public disclosure requests

Disclosure of Bell Mobility's further comments

Positions of parties

8. CNOC requested that Bell Mobility be directed to disclose publicly the information found in paragraph E9 and footnote 74 of Bell Mobility's further comments, related to the estimated number of persons who have subscribed to unlimited data plans offered by the national carriers, taken collectively, since the introduction of those plans.

9. Bell Mobility argued that the information should not be disclosed, since its disclosure, when used in conjunction with information publicly disclosed by other carriers, would allow competitors to calculate Bell Mobility's demand for these plans and gain insight into its competitive strategy.

Commission's analysis and determinations

10. The Commission considers that little direct harm would be caused to Bell Mobility by the disclosure of this information. In this regard, the Commission notes that it is already a matter of public record that these plans are popular with consumers, and that the information under consideration is only a historical estimate. Furthermore, during its appearance at the public hearing, Bell Mobility publicly disclosed a similar estimate. Therefore, disclosure of this information would not provide competitors with any meaningful insight into Bell Mobility's competitive strategy that would not otherwise be available to them. The Commission considers that the public interest outweighs any specific direct harm, as the information goes directly to the competitiveness of the retail market. Accordingly, this information should be disclosed.

Disclosure of the Commissioner's further comments and Dr. Chipty's report

Positions of parties

11. CNOC requested public disclosure of the following categories of information found in the Commissioner's further comments and Dr. Chipty's report: (i) information that is already publicly available, or could readily be or have been derived from public information; (ii) information that is aggregated; and (iii) any information for which the public interest in disclosure outweighs the specific direct harm that its disclosure may cause to parties. CNOC also requested disclosure of certain specific information, including

    - the price per gigabit (GB) charged by mobile wireless carriers, along with average revenue per user (ARPU) numbers that are already publicly available;

    - Herfindahl-Hirschman Index (HHI) calculations;

- the estimated competitor impact on price for mobile wireless services and end-user data usage; and

- spectrum ownership and the associated serviceable population.

12. CNOC argued that price-per-GB information had already been publicly disclosed on the record of this proceeding and that ARPU information would already be public for carriers that publicly report financial results. It noted that the Commissioner had disclosed HHI figures for Quebec and the Northwest Territories, indicating that this information, as it relates to other parts of the country, cannot be considered confidential and would not cause direct harm to any party. CNOC argued that estimated competitor impact on price and data usage was highly aggregated and would not reveal competitively sensitive information of any one carrier. CNOC further argued that there was a strong public interest in the disclosure of this information, since it went to an essential issue of the proceeding. With respect to information related to spectrum, CNOC argued that this information had already been made public by the Government of Canada with respect to all spectrum auctions going back to 1999.

13. Bell Mobility objected to any disclosure of information related to ARPU, arguing that disclosure of this information would give its competitors insight into competitive strategies and customer preferences, which could cause Bell Mobility direct financial harm. Bell Mobility also objected to the disclosure of information regarding actual unit prices paid for data, since such information is highly confidential. Bell Mobility further submitted that much of the Commissioner's analysis of competitor impact relies exclusively on data from Bell Mobility and RCCI. Accordingly, disclosure of that analysis could enable these companies to gain detailed insight into each other's competitively sensitive information.

14. With respect to CNOC's general disclosure request, Bell Mobility and RCCI both submitted that disclosure of any information that describes, reflects, or is derived from their confidential filings would cause them specific direct harm. Shaw, SSi Micro, and Xplornet also generally objected to public disclosure of information they had filed in confidence or aggregations of that information.

15. CNOC and all parties who commented on CNOC's request noted the difficulty of making effective submissions on disclosure, given the breadth of the redactions made by the Commissioner in his abridged submissions. Carriers whose confidential information was incorporated into Dr. Chipty's report argued that it was very difficult to intelligibly articulate whether specific direct harm would result from disclosure, since they did not know exactly what information was at issue, how it had been aggregated, or in what format it was presented. TCI argued that the only way that the Commission could fulfill its legal duty to hear from interested persons before requiring disclosure would be to permit selective disclosure to outside counsel and/or independent experts of the affected carriers, who could then make submissions with respect to each specific piece of information.

16. In response to these concerns, Commission staff conducted a review of the public and confidential versions of the Commissioner's further comments and Dr. Chipty's report and, by letter dated 6 February 2020 (the 6 February 2020 letter), provided parties with a further opportunity to comment on whether the Commission should disclose information that fell within a number of specific categories. Specifically, a preliminary view was expressed that information falling within the following specific categories should be publicly disclosed:

    (a) Information that is on the public record of the proceeding or that can be derived from such information;

    (b) Information that is otherwise publicly available (such as the financial reports of public companies) or that can be derived from such information;

    (c) Descriptors of information that the Commission directed parties to file on the record, without disclosing the data itself if the data was filed in confidence;

    (d) Descriptions of how parties filed data in response to Commission requests for information (RFIs), such as the level at which the data was provided (for example, whether a given carrier included enterprise subscriptions in its total subscriber numbers, but not the actual subscriber numbers);

    (e) Qualitative statements made by Dr. Chipty as to the quality and completeness of the data filed in response to RFIs;

    (f) Descriptors of numerical values, such as "approximately", "percent", "up to", etc., without disclosing the numerical values themselves;

    (g) Descriptions of the methodology used by Dr. Chipty to process data;

    (h) Communications between the Commissioner and other parties referenced in the report, but not the data contained within those communications;

    (i) Highly aggregated data, such as the national subscriber share of the three largest wireless service providers combined, the national subscriber share of the six largest regional facilities-based wireless service providers combined, or the difference in differences between prices before and after changes in outcomes (prices, plan limits, and plan limit-adjusted prices);

    (j) Descriptors of the scale and magnitude of the penetration rates of various carriers in categories from "high" to "mid" or "low", without disclosing the penetration rates themselves;

    (k) Representations in graph form of conclusions already placed on the record by the Commissioner regarding the alleged effects of various levels of penetration from competitive carriers;

    (l) Averages of plan limits (in GB) offered by RCCI and Bell Mobility in census metropolitan areas (CMAs), with and without the presence of Freedom Mobile Inc. (Freedom Mobile) in those CMAs;

(m) Information relating to the conclusions drawn in paragraphs 63 and 69 of Dr. Chipty's report, without disclosing the calculations used or specific numbers that could reveal confidential information;

(n) Descriptors of market segments, without disclosing the data within them.

17. RCCI, Shaw, TCI, Bell Mobility, and CNOC provided arguments with respect to the categories listed in the 6 February 2020 letter. While CNOC reiterated its original request, TCI continued to argue that the specific information contemplated for disclosure,[4] or a detailed description of each such piece of information, would need to be provided in order for it to meaningfully comment.

18. With respect to the disclosure of descriptions of how parties filed data or highly aggregated data, TCI submitted that the specific examples provided in the 6 February 2020 letter could be publicly disclosed but that it was unable to comment on whether other information in those categories should be disclosed.

19. With regard to descriptors of numerical values or the scale of various carriers' penetration rates, TCI submitted that such information should not be publicly disclosed on the basis that such disclosure would either be tantamount to disclosing the numerical values themselves or express a subjective view on behalf of the Commission.

20. Bell Mobility and RCCI did not object to the disclosure of most of the categories of information identified in the 6 February 2020 letter. However, Bell Mobility objected to the disclosure of communications between the Commissioner and parties referenced in the report, arguing that section 29 of the *Competition Act* would preclude the Commissioner from complying with any order to disclose this information.

21. Both Bell Mobility and RCCI objected to the disclosure of any information that had been aggregated from only the confidential information of those two companies on the basis that this could allow each of them to deduce the other's commercially sensitive information. In particular, this included objections to the disclosure of (i) information described in the 6 February 2020 letter as being highly aggregated data and (ii) the average of plan limits offered by these companies in CMAs, with and without the presence of Freedom Mobile. RCCI also objected to the disclosure of the information in figures 5 and 13 of the Commissioner's further comments, as well as in exhibit 6 of Dr. Chipty's report, on this basis.

22. Shaw objected to the release of any information from any of the categories that would disclose or allow parties to derive any of the company's information that had previously been filed in confidence.

---

[4] TCI proposed using the same selective disclosure approach it had proposed in its initial disclosure request in order to allow outside counsel or select independent experts for certain parties to have access to, and make submissions on, the information proposed to be disclosed publicly.

Commission's analysis and determinations

23. The Commission acknowledges the unusual situation presented by the fact that the party that knows exactly which information was designated confidential (in this case, the Commissioner) is not the party that could suffer specific direct harm should confidential information be disclosed. However, the carriers that filed information on the record of the proceeding are aware of the nature of the underlying data they filed in confidence and have had numerous opportunities to comment on the direct harm that would result from its disclosure. They have also been given some further description of the types of information proposed to be disclosed and, as evidenced by the submissions received, have made meaningful comments on the matter at hand. Accordingly, with respect to TCI's request for its outside counsel and/or independent experts to be granted access to the confidential information in order to make complete comment on the disclosure request itself, the Commission considers that additional process, which would be novel, complex, and fraught with its own confidentiality concerns, is neither efficient nor necessary.

Information that does not fall within a category of information that can be designated confidential

Positions of parties

24. CNOC argued, and no party contested, that spectrum ownership and associated serviceable population information is publicly available. Some parties objected to the disclosure of information that could be derived from public information.

Commission's analysis and determinations

25. Information that is on the public record or is otherwise publicly available (such as financial reports of public companies) does not fall into a category of information that can be designated confidential pursuant to section 39(1) of the Act. To the extent that disclosing information filed in confidence by the Commissioner would not also disclose information that was designated as confidential by the carriers and that falls into a category set out in section 39(1), the Commission considers that objections to the disclosure of public information and information that could be derived from public information must fail.

26. The Commission also considers that text in the Commissioner's further comments or Dr. Chipty's report that generally describes the types of information filed, how the parties filed the information, the report's methodology, or market segments – or that constitutes qualitative statements made by Dr. Chipty as to the quality and completeness of the data filed in response to RFIs – does not fall within the categories of information that can be designated confidential.

27. Accordingly, the Commission considers that information in the categories set out in subparagraphs 16(a) through (g) and in subparagraph 16(n) of this decision must be disclosed on the public record.[5]

Information properly designated confidential – is public disclosure in the public interest?

28. The Commission considers that the disclosure of communications between the Commissioner and parties referenced in the Commissioner's further comments and report, where specific data contained in those communications is not disclosed, would not be likely to cause specific and direct harm to a party. The Commission further considers that there is public interest in disclosing those referenced communications, since such disclosure would enable the parties to better understand how the data was filed on the record and utilized by the Commissioner.

29. Further, the Commission is not persuaded that section 29 of the *Competition Act* precludes the disclosure of the relevant communications between the Commissioner and parties. That provision prohibits the Commissioner from disclosing information voluntarily provided to him "pursuant to [the Competition] Act". However, the communications at issue relate to confidential RFI responses filed with the Commission pursuant to the Act. The Commissioner, who had received these responses pursuant to a Commission decision, communicated clarification questions to certain carriers regarding the data contained in the responses. In some cases, the carriers provided responses. The Commissioner then took those clarifications into account in preparing his submissions.

30. While the Commissioner has a general authority to participate in proceedings before tribunals like the Commission by virtue of section 125 of the *Competition Act*, the sole purpose of the Commissioner's intervention in this proceeding is to assist the Commission in its administration of the Act. Accordingly, section 29 of the *Competition Act* is not applicable. As a result, information in the category set out in subparagraph 16(h) of this decision is to be disclosed.

31. With regard to information in the categories contemplated in subparagraphs 16(i), (k), (l), and (m) of this decision, which includes aggregated information based on data that was designated as confidential by various parties, the Commission considers that the concerns raised by Bell Mobility and RCCI and outlined in paragraph 21 of this decision are valid.

32. The Commission considers that the disclosure of information aggregating data from only two parties, such as RCCI and Bell Mobility, would enable the parties to obtain insight into competitively sensitive information relating to a competitor and that the likely resulting harm would far outweigh any improvement in parties' ability to assess

---

[5] This would include figure 18 of the Commissioner's further comments, which depicts information relating to spectrum ownership and use that has already been disclosed on the record of the proceeding or is otherwise public.

or respond to the Commissioner's submissions or to the conclusions reached in Dr. Chipty's report. As such, the risk of harm is likely to outweigh any public interest associated with such disclosure. Accordingly, in the categories set out in subparagraphs 16(i), (k), (l), and (m) of this decision, information aggregating data from only two parties should not be disclosed.[6]

33. With regard to information in the category contemplated in subparagraph 16(j), the Commission considers that disclosing the descriptors used in Dr. Chipty's report of the scale and the magnitude of the penetration rates of various carriers in categories from "high" to "mid" or "low", without disclosing the penetration rates themselves, would place valuable contextual information on the record without being likely to cause specific and direct harm. Accordingly, such information shall also be disclosed.

TCI's disclosure requests and related procedural requests

Positions of parties

34. TCI requested that the Commission require the qualified, selective disclosure of the unabridged version of Dr. Chipty's report, along with all supporting materials[7] as well as the wireless carriers' confidential responses to RFIs that were disclosed to the Commissioner.

35. TCI argued that Dr. Chipty's report makes a number of findings that directly contradict TCI's own submissions and that, without access to the full report, RFI responses, and other supporting documentation, it is left with no effective mechanism to test the report's conclusions.

36. TCI argued that access to that information and an opportunity to file rebuttal submissions are necessary in order to replicate the results of the regression models used in Dr. Chipty's report and properly assess the merits of those results.

37. In TCI's view, providing access to this information is essential if the Commission is to comply with its procedural fairness obligations. However, TCI acknowledged the competitively sensitive nature of the information. Accordingly, it proposed a selective disclosure model, which it termed an "outside counsel and expert eyes only" model. Under this proposal, the information would be disclosed only to the outside legal counsel and/or independent experts retained by certain parties to the proceeding, subject to those persons entering into a confidentiality undertaking. TCI provided lists

---

[6] As a result of the application of this reasoning, the supplementary disclosure will include figure 5 of the Commissioner's further comments, which aggregates information on a national basis among more than two carriers. By the same token, it will include neither figures 12 and 13 of the Commissioner's further comments, nor exhibits 6, 7, 13a, or 13b of Dr. Chipty's report.

[7] TCI defined the term "supporting materials" to mean all materials used by the Commissioner and/or Dr. Chipty to arrive at their conclusions, including without limitation the Commissioner's and Dr. Chipty's databases, computer code, regression logs, spreadsheets, Excel workbooks, and any other analyses and supporting materials in their native formats.

of which parties' outside counsel and independent experts would be eligible to receive such disclosure and, in a subsequent filing, provided amended lists that expanded eligibility to some additional parties.

38. TCI submitted that in addition to this disclosure, procedural fairness required that it be allowed 90 days to assess the information and file a response. TCI proposed that the hearing date be postponed until after the deadline established for filing its response.[8]

39. CNOC and Teksavvy conditionally supported TCI's proposal as an appropriate way to address procedural fairness concerns. Both parties argued that their own outside counsel and independent experts should also receive such disclosure, though they argued that 30 days following such disclosure would be sufficient time to enable them to file a response. CNOC clarified that it supported TCI's proposal as additional relief to the disclosure CNOC had already requested, rather than as alternative relief.

40. Several parties opposed TCI's proposal, and did so on numerous bases. QMI and Eastlink argued that the proposal would be overly disruptive to the proceeding. Together with SSi Micro and Shaw, those parties argued that the proposal is unnecessary to address procedural fairness. Bell Mobility, QMI, RCCI, and SSi Micro also argued that it would create an undue risk of parties' confidential information being mishandled. Eastlink further argued that TCI's proposal could result in disclosure to individuals who regularly represent parties in Commission proceedings, and that it would override an important procedural protection that encourages industry participation. Eastlink and Ice Wireless also argued that the proposal would favour larger companies with greater resources at their disposal.

41. Although Bell Mobility opposed TCI's request, it raised procedural fairness concerns of its own regarding the parties' current ability to comment on the Commissioner's conclusions. In Bell Mobility's view, the proper manner to address such concerns would be to allow parties to propose additional RFIs intended to be addressed to the Commissioner and to make corresponding procedural changes to the proceeding to accommodate this.

42. In its response, TCI argued that its proposed relief was still needed to ensure compliance with the Commission's procedural fairness obligations. In the company's view, parties could effectively test the Commissioner's conclusion only by accessing Dr. Chipty's full report, related materials, and parties' responses to RFIs. TCI also expanded the list of named parties that could avail themselves of the proposed disclosure regime, subject to meeting the proposed eligibility criteria. The company added that no party had provided evidence of a situation in which a similar disclosure model used in regulatory proceedings had led to the unauthorized disclosure of confidential information.

---

[8] The Commission denied this postponement in a letter dated 10 January 2020.

Commission's analysis and determinations

43. The Commission considers that the procedures established as part of the proceeding and the information on the public record are sufficient to provide procedural fairness to the parties.

44. Although the interests of the carriers may be directly affected by the Commission's determinations in this proceeding, including with respect to whether to mandate an MVNO service, the Commission is engaged in polycentric decision-making under the Act. The proceeding is not adjudicative in nature or a dispute. The case for parties to meet in the proceeding is set out not in the submissions of one party, such as the Commissioner, but rather in the Commission's notice of consultation, which established the issues to be examined in the proceeding.

45. Neither the Act nor the Rules of Procedure include provisions that contemplate the process requested by TCI. Further, in Telecom Public Notice 2007-20, the Commission announced that it would not adopt a general practice direction on the provision of confidential access to confidential information that would have borne significant similarities to the disclosure regime requested by TCI. Accordingly, the parties can have no legitimate expectation of selective disclosure.[9]

46. The Commission notes that the proceeding afforded parties numerous opportunities to introduce evidence going to the issues under consideration.[10] The record of the proceeding contains voluminous evidence, including expert evidence, provided by various parties, with a diverse range of positions on the matters set out in the notice of consultation that initiated the proceeding.[11]

47. Parties have also had the opportunity to file a third round of interventions focused specifically on the Commissioner's filings. The record demonstrates that parties have been able not only to comment on the main thrust of the Commissioner's submissions and expert evidence but also to engage meaningfully with salient aspects of this evidence and its use by the Commissioner.

48. In this regard, the Commission notes that detailed arguments were provided, in some cases supported by rebuttal expert evidence, touching on such matters as the reliability and validity of the data used by the Commissioner and his expert; the appropriateness of market definitions, of certain variables used in the regression

---

[9] In coming to these conclusions, the Commission applied the factors identified by the Supreme Court of Canada in *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

[10] In this regard, the Commission notes that to date parties have had two opportunities to file general interventions, responded to various requests for information and, as discussed in this decision, been provided with an opportunity to respond directly to the Commissioner's further comments and Dr. Chipty's report. Presentations were made as part of the public hearing associated with the proceeding, and an opportunity to file final comments is also provided.

[11] The evidence submitted touches on such matters as prices and the state of competition in the Canadian wireless marketplace, as well as experiences with various regulatory measures in foreign jurisdictions.

analyses, and of the limitations associated with these; and data point inferences and their appropriateness. Arguments were also made with respect to variables and marketplace dynamics that the Commissioner and his expert may have failed to consider and the significance of those omissions with regard to the validity of the conclusions reached.

49. Finally, arguments were also addressed specifically to the Commissioner's proposed regulatory intervention (a mandatory MVNO regime with specific eligibility requirements). Those arguments actively engaged with the cost-benefit assessment associated with the Commissioner's proposed regime.

50. The Commission notes TCI's submission that selective disclosure similar to that proposed by TCI is used by other decision-making bodies.[12] Further, the Commission acknowledges that, if it were to adopt this proposal, the risk of outright unauthorized disclosure of the relevant confidential information, whether intentional or inadvertent, may be limited. However, any such disclosure or other inappropriate use of confidential information would be difficult for the party whose information has been disclosed to detect or prove and would likely lead to significant harm, given that the confidential information in this case is substantial in volume and highly commercially sensitive.

51. The public interest in disclosure is also limited in this case. The disclosure of information only to certain outside counsel and/or independent experts would serve only to increase the imbalance in terms of access to the evidence on the record, making it harder for smaller parties to participate effectively. The proposed regime would also lead to further delays, both those anticipated by TCI (such as the extension of time for the filing of final replies), and others not addressed by TCI (such as adjudicating whether specific individuals seeking access to the confidential information meet the established eligibility criteria). All of this would unduly delay the issuance of a final decision from the Commission in an environment where regulatory certainty is a valuable public policy objective.

52. In view of the above, the Commission considers that common law procedural fairness considerations do not weigh in favour of granting TCI's requests. In the circumstances, parties have been able to put their views on the record concerning the issues under consideration in the proceeding in a meaningful way. Further, the Commission considers that while limited, the risk of harm that would result from the inappropriate disclosure or use of the confidential information at issue, along with broader concerns relating to the public interest, weighs in favour of denying TCI's request.

53. In summary, the proceeding does not present the types of extraordinary circumstances that would justify the adoption of a model that is so divergent from the Commission's standard practice with respect to the treatment of confidential

---

[12] For example, a similar process is set out in the *Canadian International Trade Tribunal Act*, and TCI has indicated that analogous procedures have been used by the U.S. Federal Communications Commission.

information. The Commission's standard practice has generally been well suited to its proceedings and served the public interest, including in other proceedings with vast quantities of confidential commercial data, such as rate-setting proceedings. The Commission considers that its standard practice is also well suited to the present proceeding.[13] Accordingly, the Commission **denies** TCI's request.

Other requests for additional process

54. In response to TCI's "outside counsel and expert eyes only" disclosure request, Bell Mobility proposed that the Commission implement additional process to address what it perceived to be a breach in procedural fairness. As assessed above, the Commission is of the view that the existing procedures and level of disclosure are consistent with any requirements that the common law doctrine of procedural fairness would recognize in the circumstances.

55. Further, the implementation of Bell Mobility's proposed additional process would likely introduce significant delays into the proceeding and impose a significant additional administrative burden on parties and the Commission. For instance, under the proposed process, parties would propose RFIs, which would be reviewed by the Commission and then posed to the Commissioner. The Commissioner would provide responses and parties would comment. Given the sensitivity of the subject matter, it is likely that some of the information would be designated as confidential, leading to still more process. Further requests for clarification of responses are also possible.

56. In light of the above, the advanced stage of the proceeding, and the need not to delay unduly the closing of the record of the proceeding so that the Commission may ultimately deliberate on the substantive matters at issue, the Commission considers that it would not be in the public interest to adopt Bell Mobility's proposal.

57. However, in light of (i) the fact that the record of the proceeding is voluminous and both the oral hearing and the present decision have resulted in additional information being placed on the public record of the proceeding, and (ii) the uncertainty caused by the COVID-19 pandemic, the Commission considers it appropriate that the deadline to file final written submissions remain suspended until further notice.[14] Furthermore, the page limit for final submissions is increased from 25 to 50 pages.

---

[13] In Compliance and Enforcement and Telecom Decision 2020-7, the Commission adopted a selective disclosure regime in the context of a proceeding to determine whether Bell Canada should be permitted to conduct a trial to block fraudulent voice calls. However, the Commission considers that case to be distinguishable from the present proceeding. In Compliance and Enforcement and Telecom Decision 2020-7, the question at issue was whether the call blocking approach proposed by the applicant, Bell Canada, was appropriate. As such, access to information about the proposed approach was central to the case to be met. Furthermore, the Commission recognized that harm from disclosure would occur only if the information at issue was made available to persons seeking to make illegitimate phone calls.

[14] The deadline for filing final submissions was suspended on 28 February 2020 and announced at the public hearing associated with the Telecom Notice of Consultation 2019-57 proceeding.

Conclusion

58. Accordingly, the Commission **directs** Bell Mobility to file the information requested by CNOC and described at paragraph 8 for the public record by no later than **30 March 2020**.

59. The Commission also **directs** the Commissioner to file a revised, abridged version of his further comments and of Dr. Chipty's report, disclosing additional information for the public record, consistent with the determinations set out above. The Commissioner is to file his revised documents on the public record on **14 April 2020**. For greater clarity, the Commissioner shall not file his revised documents before that date. In order to facilitate this process, Commission staff will provide the Commissioner with further specific instructions regarding implementation of these determinations under separate cover.

60. The Commission modifies the procedure for the proceeding as follows:

    - The deadline of 23 March 2020 for final submissions in this proceeding, which was set out in Telecom Notice of Consultation 2019-57-1, will **remain suspended** until further notice. Submissions must not exceed 50 pages, including an executive summary and appendices.

61. The Commission **denies** all other requests.

Secretary General

Related documents

- *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*, Compliance and Enforcement and Telecom Decision CRTC 2020-7, 17 January 2020
- *Mobile wireless review - Disclosure of information designated as confidential to the Commissioner of Competition*, Telecom Decision CRTC 2019-277, 2 August 2019
- *Review of mobile wireless services*, Telecom Notice of Consultation CRTC 2019-57, 28 February 2019, as amended by Telecom Notice of Consultation CRTC 2019-57-1, 28 October 2019
- *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
- *Proposed Practice Direction on the Provision of Confidential Access to Confidential Information*, Telecom Public Notice CRTC 2007-20, 15 November 2007