

**PURSUANT TO PART 1 OF THE CRTC RULES OF PRACTICE
AND PROCEDURE AND SECTIONS 24, 25, 27, 47, 48 and 56 of
the TELECOMMUNICATIONS ACT DIRECTED TO BELL CANADA
REGARDING CERTAIN PRACTICES OF THE RESPONDENTS,**

Bell Canada and WiMacTel Inc.,

**REGARDING BILLING OF CALLS PLACED FROM BELL CANADA
PAYPHONES WHICH CONTRAVENE THE
TELECOMMUNICATIONS ACT AND ARE INCONSISTENT WITH
DIRECTIVES ISSUED BY THE COMMISSION**

**Public Interest Advocacy Centre and Canada
Without Poverty**

December 14, 2012

John Lawford
Counsel
Public Interest Advocacy Centre
One Nicholas Street, Suite 1204
Ottawa, Ontario K1N 7B7

(613) 562-4002 x.25
lawford@piac.ca

December 14, 2012

Table of Contents

Introduction.....	3
Bell Canada's Third Party Operator-Assisted Call Provider WiMacTel	3
The Commission's consumer safeguards.....	7
Bell Canada in breach of rules established when the Commission authorized payphone competition	8
Breach of Commission directives in relation to the withdrawal of tariffed services....	11
Breaches of the <u>Telecommunications Act</u>	11
Implications for other proceedings regarding payphone services.....	14
Need for broader review of payphone marketplace	15
Relief sought	16

Introduction

1. Pursuant to Part 1 of the CRTC Rules of Practice and Procedure (“the Rules of Procedure”) and sections 24, 27, 47, 48 and 56 of the Telecommunications Act (“the Act”), the Public Interest Advocacy Centre (“PIAC”) on its own behalf and on behalf of the Canada Without Poverty (collectively, “PIAC/CWP”) hereby request that the Commission issue certain directives to the Respondents as further described below.
2. PIAC/CWP are filing this application in order to draw the Commission’s attention to and to seek relief regarding a troubling development encountered by users of Bell Canada’s payphones. As a result of a complaint from a Bell Canada payphone user, PIAC/CWP have become aware of what appear to be breaches of Commission directives regarding the provision by Bell Canada of payphone service and, in particular, the handling of operator-assisted long distance calls placed from Respondent Bell Canada’s payphones.

Bell Canada's Third Party Operator-Assisted Call Provider WiMacTel

3. We visited several Bell Canada payphones in Ottawa and the Gatineau area.¹ Although the payphones we visited bear Bell Canada signage, operator-assisted calls placed from Bell Canada payphones are not being handled by Bell Canada but, instead, by a firm known as WiMacTel Inc. (WiMacTel), a company headquartered in California but with offices in Alberta.²
4. WiMacTel claims to be “one of North America’s fastest growing independent telecommunications company.”³
5. The firm describes its payphone-related services as follows:

WiMacTel provides a variety of operator services for Payphone Operators, Hotels, Hospitals, University/Colleges and Local Exchange Companies. We specialize in routing and billing of collect, 3rd party, person to person, calling card and credit card telephone calls. There are no start up costs and we provide

¹ The locations of the payphones visited are Rideau Centre, Ottawa; Billings Bridge Plaza, Ottawa; Bank and Glebe Avenue, Ottawa; Les Promenades de l’Outaouais, Gatineau; Gatineau Plaza, Gatineau; Dépanneur Poisson-Blanc, Denholm, Québec.

² See <http://www.quortech.com/>, accessed 25 October 2012, see “contact us” tab.

³ Cited from the company’s website at <http://www.quortech.com/>, accessed 25 October 2012, see “news” tab.

December 14, 2012

comprehensive reports and customized branding, end user rates
and automated operator scripts to suit unique requirements.⁴

6. A quick search on the Internet⁵ of “WiMacTel” revealed numerous instances of complaints regarding high rates for calls for payphone originated calls handled by WiMacTel, including some in Canada.⁶ It appears that calls giving rise to complaints are operator-assisted long distance collect calls or calls billed to a credit card or a third party.
7. The Bell Canada payphones we visited contained no signage to alert consumers that operator assisted calls would be handled by a third party and not by Bell Canada itself. It appears that the only disclosure of the fact that WiMacTel handles operator assisted calls placed from Bell Canada payphones is provided by a scrolling notice on the screen of these payphones which states as follows (in English): "Effective May 25, 2011, operator assisted and credit card calls will be processed by WimacTel oprator services."⁷ [sic]
8. Additionally the payphones in question provided no information regarding the rates charged for operator assisted calls. It is our understanding that such calls are billed by WiMacTel at rates set by this company. No information regarding WiMacTel's rates (or any other terms and conditions established by WiMacTel) was posted in Bell Canada payphone locations we visited. It is our understanding that when payphone users who have been the subject of gouging complain to Bell Canada, they are directed to WiMacTel.
9. WiMacTel's website directs “specific Rate and Tariff questions” to a third party's website which sets out WiMacTel rate schedules for several U.S. states⁸. However, there does not appear to be any information (on

⁴ At: <http://www.quortech.com/>, accessed 25 October 2012, see “operator services” tab.

⁵ We used the Google search engine and typed in “WiMacTel”.

⁶ See for example, *WiMacTel Payphone Call Calgary AB* at [http://www.scambook.com/report/view/120266/WiMacTel-Payphone-Call-Calgary-AB-Complaint-120266-for-\\$72.14](http://www.scambook.com/report/view/120266/WiMacTel-Payphone-Call-Calgary-AB-Complaint-120266-for-$72.14), accessed 25 October 2012; *WiMacTel Canada Inc* at Better Business Bureau's website <http://www.bbb.org/calgary/business-reviews/telecommunication-companies/wimac-tel-canada-in-calgary-ab-72306> accessed 25 October 2012; *Pay phone users at DIA shocked by credit card rates* at <http://www.9news.com/news/article/208670/339/Pay-phone-users-at-DIA-shocked-by-credit-card-rates> accessed 23 October 2012 regarding excessive payphone rates at Denver International Airport. WiMacTel is referenced in this story. See also next footnote.

⁷ A video recording of the scrolling message in English (recorded by PIAC staff) can be seen at the following link: <http://youtu.be/wGi1iJ7ps4Q>. A video recording the scrolling message in French (also recorded by PIAC staff) can be seen at the following link: <http://youtu.be/nclI7EEjxho>.

⁸ In WiMacTel's site, in the “contact us”, the company sets out its “WiMacTel Credit Card Refund Policy” which invites customers with complaints to contact the company. At the bottom of the page, the company states “For specific Rate and Tariff questions please visit “ and it provides a link to another site, http://tariffs.net/select_client_docs.asp?comp=296. On this site (we accessed 25 October 2012) we found rate schedules for the following states: Alabama, Alaska, Iowa, Montana,, Nevada, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Virginia, Washington, Wisconsin, Wyoming, but no

December 14, 2012

WiMacTel's website or the third party's site) regarding WiMacTel rates in Canada.

10. In response to an investigation conducted by the Toronto Star earlier in 2012, both WiMacTel and Bell Canada appear to have taken the position that charges for operator assisted long distance calls are "unregulated" and that presumably, therefore, WiMacTel can charge consumers whatever rates it pleases.⁹
11. As described in media reports, the rates charged by Bell Canada's delegate WiMacTel appear to be considerably higher than a consumer could reasonably have expected in the past to pay for long distance calls carried by Bell Canada, even on an operator assisted collect, bill-to-third or bill-to-a-credit-card basis.
12. Moreover, in light of the manner in which Bell Canada's delegate appears to set its rates, it appears to be extremely difficult for U.S. consumers – and impossible for Canadian consumers – to determine what the actual cost of a WiMacTel handled call a consumer would be or how the rate for a call placed from a Bell Canada payphone and handled by WiMacTel is computed. As noted earlier, WiMacTel's rates for calls placed by Canadian consumers are not posted on the company's website. These rates also are not posted in Bell Canada payphones.
13. In an attempt to gain some idea of how WiMacTel's rates are computed, we examined the rates WiMacTel has published on the above referenced website for its U.S. locations. Based on our survey of the states referenced from WiMacTel's website, the company's U.S. rates appear to be broadly comparable to rates experienced by Canadian payphone users (though we cannot confirm this) – and equally extremely high.¹⁰
14. Even if WiMacTel made its rates available to Canadians in the manner it makes them accessible to U.S. consumers, it appears that deciphering the

information for Canadian jurisdictions. Users of Canadian payphones in which Bell Canada (or another payphone operator, as the case may be) has delegated calling services to WiMacTel would have no way to determine what WiMacTel's rates are.

⁹ Toronto Star, *Pearson airport traveller's pricey Bell payphone lesson* (20 July 2012). Online at <http://www.thestar.com/business/article/1229774--pearson-airport-traveller-s-pricey-bell-payphone-lesson>, accessed 25 October 2012

¹⁰ We examined the company's payphone rates set out in what the company refers to as its "price guide". We decided, for the purposes of this application, to focus on one state, picked at random, Pennsylvania. We could have selected any one of a number of U.S. states in which WiMacTel operates which are identified on the third party website to which WiMacTel sends consumers. In the Pennsylvania "Price Guide", rating policies are set out in section 3 and rate elements for operator assisted (and other calls) are described in section 3.6 and following. The company's "price guide" can be found at: http://www.tariffs.net/tariffs/100183/tempPA%20PG%20IXC_09%2027%2012_WiMacTel%20CURPG.pdf.

December 14, 2012

rate charged for a call poses a considerable and confusing challenge to any consumer. In the case of an intrastate call originated in Pennsylvania for example, the consumer faces, first, the arduous task of deciphering a 54 page document (which WiMacTel refers to as a “Price Guide”). This document includes extensive and complex terms and conditions, including limitations of liability in favour of WiMacTel. A consumer must navigate through some 32 pages before finding a discussion of rates and then several further pages before finding any actual rates and rate elements.¹¹ The “Price Guide” does not appear to have been designed to be understood by consumers as we consider that extensive knowledge of tariffs and rate setting would be needed in order to decipher the charges and rating elements which would be applicable to a given WiMacTel-handled call.

15. Charges for credit card calls appear to be debited from the user’s credit card account when a call is made. A consumer may find it difficult to determine exactly who is debiting his/her credit card, however.¹²
16. In the case of WiMacTel handled calls placed from Bell Canada payphones, while Bell Canada provides some notice (but only in the message screen located on the payphone) and in cryptic style, users would have no advance notice of the possibility that they may face excessive charges or what these charges would be. Bell Canada and WiMacTel may be tempted to respond that WiMacTel’s operators identify themselves as such once the customer dials the call but we question the effectiveness of such notice when it is likely to be delivered in the midst of placing a call in a potentially busy, noisy location such an airport, railway station or other public place and, importantly, when the user has been provided no other warning prior to initiating the call that the call will be subject to WiMacTel’s excessive rates.
17. Additionally, since charges for these calls would typically not be known by the person paying for the call until they appear on the user’s credit card statement or on the phone bill of the person who accepted a bill-to-third or collect call,

¹¹ Section 3.6.

Any taxes applicable to the services provided by WiMacTel appear to be extra: see section 2.7 of the Pennsylvania “Price Guide”, unless “otherwise provided” by the company in the price guide”. See also 2.8.2 (E) which appears to expose consumers to additional potential flow-throughs.

¹² Section 2.8.1. of the “Price Guide” for Pennsylvania states that:

The charges for service are due when billed and are billed and collected by the Company or its authorized agent, or the connecting company from whose service point the messages were sent paid or at whose service point the messages were received collect.

We interpret this to mean that the customer’s account is debited at the time a call is made or attempted to be made (in the case of a call which cannot be completed). As it appears to be practically impossible for consumers to inform themselves about WiMacTel’s rates until a call is actually dialed. This constitutes a recipe for consumer confusion.

December 14, 2012

notice of the excessively high charges would not be provided to consumers until days or possibly weeks after the call was made.¹³

18. Bell Canada will perhaps be tempted to respond that by dialing to reach the operator, the user can obtain the rates charged by WiMacTel for a given call. It is indeed our understanding that WiMacTel (or Bell Canada) will divulge the rates WiMacTel charges but only if the user specifically requests this by dialing an appropriate digit to summon a representative who can provide rating information. We question the effectiveness of this process when users have been provided no advance notice of the fact that when WiMacTel handles calls originated in Bell Canada payphones, WiMacTel's rates and not Bell Canada's apply.
19. Bell Canada provides inadequate notice to enable consumers using its payphones to make informed decisions. Bell Canada's and WiMacTel's business model appears to us to be an example of practices the Commission sought to avoid when it established the rules for competition in the payphone business nearly 15 years ago.

The Commission's consumer safeguards

20. The Commission first considered consumer safeguards for operator services in Telecom Public Notice CRTC 94-35 *Consumer Safeguards for Operator Services* ("PN 94-35") soon after its decision to authorize competition in the long distance telephony marketplace. PN 94-35 was issued further to the filing by Unitel Communications Inc. ("Unitel"), an alternative provider of long distance services, of proposed tariffs for the introduction of operator-assisted calling for its customers. In its proposed tariffs, Unitel included consumer safeguards for Unitel-provided operator services. In PN 94-35, the Commission sought comments regarding Unitel's proposed tariffs. In doing so, the Commission expressed the view that "uniform consumer safeguards governing the provision of operator services should apply to all carriers under its jurisdiction that offer competitive long distance services."
21. In Telecom Order CRTC 95-316 ("Order 95-316"), the Commission issued its determinations in the PN 94-35 proceeding. The Commission determined that

¹³ We also question the quality of the notice consumers would be provided (in other words: the ease with which consumers would know that a WiMacTel charge corresponded to a credit card or operator assisted call). WiMacTel is not a known entity. Bell Canada has provided no notice to its payphone users of the company's decision to transfer to WiMacTel a portion of its payphone services. We question the extent to which consumers would know when they receive their credit card statement or their phone bill who or what WiMacTel is. This is an important consideration: forcing customers to do research when they receive their credit card statement or phone bill to identify the source of a charge constitutes a significant hurdle for consumers which facilitates the continuation by Bell Canada and WiMacTel of their gouging of payphone users.

December 14, 2012

safeguards providing consumer protection are required in a competitive operator services marketplace. Among the safeguards it approved in Order 95-316 was a requirement that “Unitel post information in close proximity to each publicly accessed telephone serviced, identifying itself and providing rate information”. Unitel operators were also required to identify themselves “as representing Unitel to callers or to any party accepting charges for a collect or billed-to-third-party call, prior to charges being incurred”. Unitel operators were required as well to “provide the customer with sufficient time to terminate the call at no charge prior to the call being connected”. Unitel operators were required to “provide, upon customer request, (a) rates or charges for a call, (b) alternative call billing methods available to customers, and (c) complaint procedures available to dissatisfied customers”.

22. When it authorized competition in the payphone marketplace, in Telecom Decision CRTC 98-8, the Commission stated that when competitive payphone service providers make operator services available in their payphones such services “must comply with the consumer safeguards established in Telecom Order 95-316.”

23. At a minimum, Bell Canada appears to be in breach of the Commission’s requirements regarding written notification of rates in/on payphones.

24. Additionally, to the extent WiMacTel provides operator services in Bell Canada payphones, we question the adequacy of the scrolling notice on the screen of these payphones. Consumers expect Bell Canada service in Bell Canada payphones, not a cryptic reference to “processing” by a third party which is identified nowhere else in the payphone.

Bell Canada in breach of rules established when the Commission authorized payphone competition

25. When the Commission authorized competition in the payphone marketplace in Decision 98-8, it underscored the importance of ensuring that consumers have adequate information from service providers in order to make informed decisions regarding payphone use. The Commission expressed this concern in the following manner:

The Commission is concerned that in a competitive environment where rates for all parties are not regulated, it is essential that consumers have full, comprehensive and comprehensible information to make informed choices.

26. The Commission, “[i]n order to achieve this goal”, issued specific directions to payphone service providers:

December 14, 2012

...the Commission directs that the following information be prominently displayed at each pay telephone location provided by CPTSPs: (a) rates of local calls; (b) charges for operator services (if provisioned); (c) the name of the default long distance provider, if applicable; (d) any surcharge, mark-up or location charges not included in the price of the call; and, (e) the CPTSP's name, address and toll free number where information can be obtained and complaints addressed. In addition, CPTSPs are directed to place the Commission's address and toll-free number (1-877-249-CRTC) on all pay telephones, in order to ensure that, when complaints are not satisfactorily addressed, consumers have direct recourse to the Commission. CPTSPs are also directed, as part of the registration process, to disclose the method by which complaints concerning rates, charges or collection practices will be resolved.

27. Bell Canada appears to have ignored several of these directions.
28. As mentioned earlier, Bell Canada payphones served by WiMacTel do not appear to provide information regarding WiMacTel's charges for the services it provides.
29. To the extent that WiMacTel carries (and controls rates for) long distance calls processed by its operators, Bell Canada does not disclose the name of the default long distance provider used to carry such calls. We recognize that Bell Canada discloses in the message screen of payphones that operator assisted calls are processed by WiMacTel but we question whether this constitutes effective or comprehensible notice that WiMacTel is also the long distance service provider used to carry these calls and that WiMacTel's rates apply to such calls.
30. If this is so, we submit that Bell Canada is also in breach of a direction issued by the Commission in Decision 98-8:

in order to ensure that consumers are aware of the default service provider selected for the pay telephone in question, the Commission directs CPTSPs to display prominently the name of the default long distance service provider at each pay telephone.

31. In Decision 98-8, the Commission recognized that a distinction can exist between the provider of operator services and the default long distance service provider. Bell Canada's notice on the message screen of its payphone is inconsistent with this direction because it does not disclose the fact that WiMacTel is the default long distance provider in relation to certain calls.

December 14, 2012

32. Additionally, no notice of any surcharge, mark-up or location charges imposed by WiMacTel are disclosed at the payphone location. As discussed earlier, WiMacTel's "Price Guides" appear to contemplate a range of different charges. We acknowledge that the only "Price Guides" we have seen are those applicable to U.S. jurisdictions. WiMacTel's rating structure for Canada may be different. We have no way of knowing what WiMacTel's rate structure in Bell Canada's serving territory actually is as its tariffs are not published.
33. Bell Canada also appears to be in violation of the requirement that the service provider post at the payphone location the address and toll free number where information can be obtained and complaints addressed regarding the payphone service provided. Since Bell Canada appears to have assigned a portion of its payphone service to WiMacTel, Bell Canada or WiMacTel should posting WiMacTel-relevant information. This does not appear to be the case.
34. We acknowledge that the Commission direction cited above was issued to Competitive Pay Telephone Service Providers (CPTSPs) and not to ILECs. We note, however, that by transferring to WiMacTel the handling of (at least some types of) operator assisted calls Bell Canada has transferred a portion of its payphone business to WiMacTel and we submit, therefore, that to the extent WiMacTel is billing customers for such calls, it operates as a CPTSP.
35. We further note that in Decision 98-8, the Commission issued directions regarding "location surcharges". Because of the opaque character of WiMacTel rates to its Canadian users, we cannot determine whether WiMacTel imposes such charges on its payphone users. In Decision 98-8, the Commission stated that it:
- ... considers that the Canadian consumer's expectation about the cost of a call is based on experiences with long distance calls billed from home and that without warnings about location surcharges, consumers will, at least initially, not be aware of them.
- Accordingly, the Commission directs that any surcharges not included in the cost of a call be prominently displayed at each pay telephone location.
36. Since no rate information for WiMacTel handled calls is posted in Bell Canada's payphones, consumers have no way of determining whether such surcharges apply¹⁴. WiMacTel's rates for its U.S. customers appear to contain several potential surcharges. In the event WiMacTel imposes any

¹⁴ In the Pennsylvania example we picked at random, the "price guide" appears to contemplate a plethora of supplementary charges (in section 3 and also in section 4).

December 14, 2012

such surcharges, Bell Canada and WiMacTel would be in breach of the above referenced directive.

Breach of Commission directives in relation to the withdrawal of tariffed services

37. The Commission should also take exception to the manner in which Bell Canada appears to have withdrawn operator services in its payphones. To the extent that operator assisted calling in Bell Canada payphones is now provided by WiMacTel at WiMacTel rates, we submit that Bell Canada has discontinued providing operator services in its payphones (in part or completely, depending upon the scope of the business arrangement with WiMacTel). Operator services provided by Bell Canada are a tariffed service¹⁵. In withdrawing its operator service from (some or all) of the company's payphones and conveying this business to WiMacTel, Bell Canada appears to have ignored the requirements established by the Commission in Telecom Circular CRTC 2005-7¹⁶ and Telecom Decision CRTC 2008-22.¹⁷

Breaches of the Telecommunications Act

38. As a result of the above, we submit that Bell Canada is in breach of several provisions of the *Telecommunications Act* (the *Act*).

39. Section 24 of the *Act* provides that:

The offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission.

40. Bell Canada has ignored several Commission conditions regarding the supply of payphone service set out in Order 95-316 and in Decision 98-8, as discussed earlier.

41. Also as discussed earlier, the Commission established requirements regarding the withdrawal of tariffed services. Bell Canada has not complied with these requirements either.

¹⁵ Bell Canada, General Tariff, Item 85, available at <http://www.bce.ca/aboutbce/regulatory/tariffs/bellcanada/details/tariff/GT> (accessed 27 October 2012).

¹⁶ *New procedures for disposition of applications dealing with the destandardization and/or withdrawal of tariffed services*

¹⁷ *Regulatory policy [:] Mandatory customer contract renewal notification and requirements for service destandardization/withdrawal*

42. Bell Canada is also in breach of section 27 of the *Act*.
43. Section 27 prohibits a Canadian carrier, such as Bell Canada from unjustly discriminating or giving an undue or unreasonable preference toward any person, including itself, or subjecting any person to an undue or unreasonable disadvantage. Bell Canada is in breach of section 27 of the *Act* because:
1. It has failed to adequately warn its payphone users of its decision to utilize a third party to handle certain long distance calls placed from its payphones or to provide notice of the third party's charges for such calls. As a result, the Respondent has conferred upon itself an undue preference to the detriment of its payphone users;
 2. Bell Canada has also conferred upon its third party operator services and long distance provider an undue preference. Bell Canada's transfer of its business associated with the handling and delivery of operator assisted long distance calls without providing payphone users adequate notice of the third party's rates has unjustifiably facilitated the imposition by the third party of excessively high charges, to the detriment of the company's payphone users;
 3. Bell Canada (and its delegate WiMacTel's) failure to disclose rates also unjustly discriminates against long distance service providers who compete with Bell Canada. If consumers were made aware of WiMacTel's excessive rates on a timely basis (i.e. prior to dialing a call), consumers could decide to seek other long distance service providers to carry these calls. Bell Canada's failure to provide rating information denies competitors the opportunity to compete for these customers' business
44. In section 47 of the *Act*, Parliament has directed the Commission to exercise its powers and perform its duties with a view to implementing the Canadian telecommunications policy objectives. These objectives are set out in section 7 of the *Act*. These objectives include the following:
- (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
 - ...
 - (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;
 - ...
 - (h) to respond to the economic and social requirements of users of telecommunications services
45. Bell Canada's and WiMacTel's handling of operator assisted calls in Bell Canada's payphones is not consistent with subsection 7(b). Respondent Bell

December 14, 2012

Canada's apparent 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 are not consistent with the delivery of affordable and accessible high quality service. Payphone users have been accustomed over the years to expect that Bell Canada's long distance service rates will apply to calls placed from Bell Canada payphones. We submit that Bell Canada's and WiMacTel's practice constitutes a form of bait and switch strategy in which users are drawn to a brand they know, Bell Canada, are provided a cryptic warning that operator assisted calls will be "processed" by WiMacTel but are provided no warning of WiMacTel's excessive rates and, with such misleading information, are unlikely to consider competitive alternatives. Providing service in this manner is not consistent with the objective set out in section 7(b).

46. Bell Canada's and its delegate WiMacTel's failure to provide adequate notice to payphone users that their collect calls will be handled by a third party at excessive charges is also not consistent with the objective of fostering reliance on market forces (subsection 7(f)). Bell Canada's and WiMacTel's failure to provide notice of its excessive rates will in many circumstances effectively deny users the ability or incentive to seek alternatives until it is too late (when the customer receives his/her bill). Such a way of doing business stifles competition.
47. The excessive charges for the handling of operator assisted calls characterize a payphone service which does not respond to the economic and social requirements of payphone service users. The Commission has already commented upon the needs of payphone users and the importance of meeting those needs. As the Commission is aware (and has found¹⁸), access to payphones is particularly important to consumers with limited financial means. Bell Canada's ill-advised decision to effectively hand-over a portion of its payphone business to a third party whose business objective appears to focus on gouging unwary payphone users is not consistent with the economic and social requirements of payphone users, contrary to subsection 7(h) of the Act. In these circumstances, we also question the company's commitment to serving its payphone users.
48. We also question how Bell Canada's decision to transfer the handling of operator assisted long distance calls to one particular third party operator services provider is consistent with reliance on market forces. In an environment in which competition in the payphone marketplace has become virtually non-existent, Bell Canada has, in effect, granted WiMacTel a monopoly on the handling of operator assisted payphone calls. The regulatory regime currently in effect in the payphone marketplace, however,

¹⁸ See for example, in Telecom Decision CRTC 2004-47 *Access to pay telephone service*, paragraphs. 32 and 33.

December 14, 2012

reflects market conditions premised upon the existence of vigorous competition. Bell Canada and its delegate WiMacTel appear to have been able to exploit this situation to impose on payphone users what appears to be monopoly pricing with virtually no fear that payphone users will be able to desert Bell Canada's payphone service in favour of competitors who offer more reasonable payphone pricing.

49. Because of forbearance, Bell Canada and WiMacTel have been able to implement their business arrangement with no regulatory oversight. WiMacTel's handling of operator assisted calls in Bell Canada payphones appears to have been in effect for several months now. To our knowledge, this is the first time this matter has been the subject of a formal application before the Commission.
50. In a functioning competitive marketplace, business practices such as those engaged in by Bell Canada and WiMacTel, once they became public, would likely lead to substantial customer defections in favour of competitors. The payphone marketplace today, however, is no longer driven by vigorous competition.

Implications for other proceedings regarding payphone services

51. PIAC/CWP further note that in the Part 1 application filed before the Commission on 18 January 2012, Bell Canada and some of its affiliates (collectively, the Bell companies) sought the "flexibility" to raise payphone rates for local calls paid with cash or using authorized cash cards or debit cards. We find it ironic – and revealing -- that in that proceeding, the Bell companies went to great lengths to reassure the Commission that they were aware of the potentially negative impact upon payphone usage if rates were raised too quickly, that they were seeking to minimize loss of payphone customers through excessive increases and that they were merely seeking flexibility to experiment with higher rates:

The Companies do not want to witness another sharp decline in usage relating to rate increases like that seen in 2007 and so require flexibility in payphone rate setting, within the bounds identified in this Application, to experiment and determine the optimal rates. As a result, the Companies hope to minimize incentives, for the Companies and for payphone location providers, to remove payphones.

[...]

...the Companies request the flexibility to experiment with different rates and find the right balance between recapturing expenditures and market tolerance for increased local call rates. With [the ability to raise rates they

December 14, 2012

are seeking], the Companies will be able to experiment and slowly move the rates to where they need to be to ensure that fewer payphones are decommissioned and to avoid another sharp decline in usage, like that seen in mid-2007.¹⁹

52. Bell Canada appears to have had no hesitation whatsoever, however, to enter into a business arrangement with a third party service provider whose business plan appears to be based on high pricing for routine payphone uses. Bell Canada appears to have implemented its business arrangement with WiMacTel without providing its payphone customers any notice of the considerable rate increases the third party had in store for them. We would expect that if Bell Canada was genuinely concerned about striking a “right balance”, Bell Canada would not have conveyed a portion of its payphone business to WiMacTel and exposed its payphone users to this firm’s business practices. The experience of payphone users with WiMacTel’s rates should send the Commission a cautionary message regarding Bell Canada claims about the avoidance of “sharp decline in usage, like that seen in mid-2007” and the company’s commitment to meeting the needs of its payphone customers.

Need for broader review of payphone marketplace

53. 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. Market conditions have changed substantially since the Commission established terms and conditions regarding payphone competition. Today, there is virtually no competition in the payphone marketplace in Bell Canada’s serving territory. Yet Bell Canada continues to enjoy the flexibility the Commission granted it on the basis of its expectation that a vigorous contested payphone services marketplace would develop. Absence of competition in today’s marketplace means that there are no market forces to constrain Bell Canada from seeking to increase rates for payphone calls directly, as demonstrated by the Bell companies’ 18 January 2012 rate increase proposal, or more surreptitiously through business arrangements such as that Bell Canada has entered into to permit its

¹⁹ Paragraphs 16 and 18 of the Bell companies’ 18 January 2012 application.

We also submit that Bell Canada’s business relationship with WiMacTel should give the Commission pause regarding the Bell companies’ claims regarding “the declining profitability of payphones” (paragraph 17 of the Bell companies’ 18 January 2012 application). We have had no ability to determine whether and, if so, to what extent, Bell Canada’s arrangements with WiMacTel for the handling of operator assisted long distance calls have either a) had an impact upon the profitability of the company’s payphones or, b) precipitated a decline in demand for payphone service.

December 14, 2012

delegate WiMacTel to overcharge payphone users for operator-assisted long distance calling.²⁰

54. In the proceeding associated with the Bell companies' payphone increase application, we expressed scepticism regarding the Bell companies' commitment to continued presence in the payphone marketplace. Bell Canada's treatment of its payphone users raises significant questions regarding the extent to which the company may be altering payphone service so as to render it completely inaccessible to prospective users.

55. We submit that the time has arrived for the Commission to initiate a review of its policies regarding payphone service.

Relief sought

56. In this application, we contend that Bell Canada has failed to comply with consumer safeguards established by the Commission for the payphone marketplace.

57. We also seek orders from the Commission to Bell Canada directing the company to:

- a) To provide an audited report setting out all of the charges billed to customer accounts or to customer's credit cards in relation to calls handled by WiMacTel. Then, to order the company 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 before Bell Canada transferred its operator assisted long distance calling business to WiMacTel;
- b) order Bell Canada to abide by the consumer safeguards Canadian carriers were directed to implement in Order 95-316 and 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);

58. The Commission should also take strong exception to the manner in which Bell Canada appears to have withdrawn operator services in relation to operator-assisted long distance calls placed in its payphones. In doing so, the company appears to have ignored the requirements established by the Commission in Circular 2005-7 and Decision 2008-22. The Commission should also order the company to develop adequate procedures to ensure

²⁰ This situation, more particularly, raises questions regarding the issue whether the marketplace for long distance calling from payphones continues to be subject to competition sufficient to protect the interests of users (a condition which is at the foundation of forbearance).

December 14, 2012

compliance with these requirements and to periodically confirm its compliance status.

59. Finally, the Commission should initiate a proceeding to examine the state of the payphone marketplace in Canada and, in particular, the adequacy of current consumer safeguards in a re-monopolized marketplace.

*****End of Document*****