



Telecom Decision CRTC 2004-49

Ottawa, 22 July 2004

Operator services – Reverse search directory assistance

Reference: 8651-C12-01/01 and Bell Canada Tariff Notices 6508 and 6508A

In this decision, the Commission finds that a limited form of Reverse Search Directory Assistance (RSDA) service is appropriate and establishes a framework, including safeguards, for the provision of RSDA service by incumbent local exchange carriers.

I Introduction

1. Beginning in the early 1990s, the Commission approved Reverse Search Directory Assistance (RSDA) service tariffs for several incumbent local exchange carriers (ILECs) including NBTel Inc., MTS Communications Inc. (MTS), NewTel Communications Inc., BC TEL Inc. (now known as TELUS Communications Inc.) and TELUS Communications (Québec) Inc., among others. Generally, these tariffs provided that the ILEC would undertake a search when presented with a telephone number, and would disclose the subscriber's name and general locality information, such as a subscriber's town, city or postal code. Over time, several ILECs, including Bell Canada, and a number of smaller independent telephone companies in Ontario, withdrew this service.
2. In *Denied tariff for reverse directory service*, Order CRTC 2000-253, 31 March 2000 (Order 2000-253), the Commission denied Tariff Notices 1063 and 93 submitted by TELUS Communications Inc. (TELUS) and TELUS Communications (Edmonton) Inc. (TCEI) respectively. These tariff notices proposed tariff revisions which would have expanded their then existing directory assistance services by permitting the disclosure of a listed name and/or address when provided with a telephone number. The Commission stated that the degree of detail proposed in the tariff revisions was inappropriate in light of privacy concerns.
3. On 23 August 2000, Bell Canada filed Tariff Notice 6508, amended on 18 September 2000, which proposed that, when presented with a telephone number contained in its white page directories, the company would provide a subscriber's listed name and locality, but not the street address or postal code.
4. Rather than disposing of Bell Canada's application, the Commission initiated a public proceeding by way of *Operator services – Reverse search directory assistance*, Public Notice CRTC 2001-56, 25 May 2001 (Public Notice 2001-56). In that Public Notice, the Commission invited parties to provide submissions on:
 - a) whether the provision of RSDA service by the telephone companies is appropriate in light of the objectives of the *Telecommunications Act* (the Act), and, if so,

- b) what common tariff provisions should exist for telephone companies under the Commission's jurisdiction.

The process

5. Public Notice 2001-56 provided for comments and reply comments from parties. The record closed on 9 August 2001. However, in a letter dated 6 February 2002, the Commission invited parties, including the Privacy Commissioner of Canada (the Privacy Commissioner), to comment on the relevance and applicability to the proceeding, if any, of the Privacy Commissioner's report regarding a complaint by Mr. Mathew Englander under the *Personal Information Protection and Electronic Documents Act (PIPEDA)* against TELUS Corporation, TELUS and TELUS Communications (B.C.) Inc. Comments were to be filed by 13 February 2002 and reply comments by 18 February 2002. However, because the Privacy Commissioner's comments were submitted on 11 March 2002, the deadline for reply comments was extended to 5 April 2002.

Parties to the proceeding

6. The Commission received submissions from: the Public Interest Advocacy Centre on behalf of Action Réseau Consommateur, the Consumers' Association of Canada and the National Anti-Poverty Organization (ARC et al.); the British Columbia Public Interest Advocacy Centre on behalf of the BC Old Age Pensioners' Organization, Consumers' Association of Canada (BC Branch), Council of Senior Citizens' Organizations of BC, federated anti-poverty groups of BC, Senior Citizens' Association of BC, West End Seniors' Network, End Legislated Poverty, and Tenants Rights Action Coalition, Information Policy Committee – B.C. Library Association (collectively, BCOAPO et al.); Saskatchewan Telecommunications (SaskTel); Bell Canada on behalf of itself, Aliant Telecom Inc. (Aliant Telecom), and MTS (collectively, Bell Canada et al.); TELUS; Northwestel Inc. (Northwestel); the Privacy Commissioner; the Information and Privacy Commissioner of Ontario (the IPC); and four individual consumers: Ms. Dym, Mr. Negus, Mr. Piggott and M. Simard.
7. BCOAPO et al. stated that it adopted ARC et al.'s submissions, while Northwestel stated that, in general, it agreed with the submissions of Bell Canada et al. and SaskTel.

II Appropriateness of RSDA service

Positions of parties

8. Bell Canada et al., Northwestel, SaskTel and TELUS (collectively the Companies) were of the view that the provision of RSDA service would be appropriate and would be consistent with the objectives of the Act. The Companies submitted that RSDA service struck an appropriate balance between requests for the service and customer expectations of privacy. They noted that information associated with telephone lines, where the delivery of the calling line information display had been suppressed on a per-line basis, and/or where customers had specifically requested per-line blocking and/or "private name" display, would not be provided.

9. Bell Canada et al. submitted that RSDA service would support the objectives of the Act because it would respond to the social requirements of users of telecommunications services and to the protection of their privacy by:
 - adding value to existing services such as calling line identification; and
 - enhancing the protection of privacy of persons receiving calls (called parties) by allowing them to obtain additional non-confidential information with respect to unfamiliar telephone numbers, thereby allowing them to make more informed decisions as to whether to return the calls of persons who made them (calling parties).
10. SaskTel submitted that RSDA service would not only support the protection of privacy but would also be consistent with the objective of encouraging innovation in the provision of telecommunications services as set out in section 7(h) of the Act.¹
11. TELUS submitted that the RSDA service, as proposed by TELUS in Tariff Notice 1063 and by TCEI in Tariff Notice 93, posed no privacy concerns that would be inconsistent with section 7(i) of the Act.²
12. TELUS also argued that if Canadian carriers were prohibited from providing RSDA service, they would be at a competitive disadvantage vis-à-vis other service providers not subject to the Commission's jurisdiction, such as competitive operator service providers, that provide essentially the same service. In TELUS's view, approval of RSDA service would, among other things, provide customers with more choice among service providers and delivery media.
13. Both the IPC and ARC et al. argued that RSDA service is contrary to the privacy protection objective set out in section 7(i) of the Act. For this reason, and because, in its view, RSDA service would, among other things, diminish a subscriber's privacy and would not promote any of the objectives set out in section 7 of the Act, the IPC submitted that the telephone companies should not be allowed to provide RSDA service. By contrast, ARC et al. stated that invasions of privacy may be justified for public policy reasons, or where individual consent to the invasion has been obtained or can be reasonably implied. However, in ARC et al.'s view, no public policy rationale would justify the non-consensual provision of RSDA service.

Commission determination

14. In the Commission's view, the issue of whether RSDA service is appropriate in light of the objectives set out in section 7 of the Act requires an assessment of the appropriate balance to be struck between the respective privacy interests of calling parties and called parties.
15. On the one hand, because RSDA facilitates the disclosure of a person's identity and/or location, the service could erode the privacy interests of calling parties.

¹ 7. It is hereby affirmed that... the Canadian telecommunications policy has as its objectives...
(h) to respond to the economic and social requirements of users of telecommunications services.

² 7. It is hereby affirmed that... the Canadian telecommunications policy has as its objectives...
(i) to contribute to the privacy of persons.

16. On the other hand, called parties may want to know the identity of a caller before deciding to return a call or to answer the telephone. Moreover, in certain circumstances, such as in the case of a call received from a person whom the called party has reason to fear, obtaining the caller's identity could be crucial. In this respect, RSDA service could enhance the security of called parties.
17. The Commission considers that the enhancement of called parties' security interests stemming from RSDA is a significant and valuable feature of the service. The Commission also considers that the possible reduction of calling parties' privacy interests can be adequately addressed through the establishment of appropriate safeguards. The safeguards in question are discussed below. In the Commission's view, these safeguards allow the privacy interests of both calling and called parties to be appropriately accommodated in the provision of RSDA service.
18. In light of the above, the Commission finds that, subject to appropriate safeguards, it is appropriate for the ILECs to offer RSDA service and it is consistent with the objectives set out in section 7 of the Act.

III Appropriate safeguards and whether they should be common to all ILECs

19. Based on the record of this proceeding, the Commission has considered possible safeguards pertaining to the following matters:
 - a) search criteria and information disclosed;
 - b) use of RSDA service by commercial entities;
 - c) subscriber consent; and
 - d) whether the safeguards should be common to all ILECs that currently, or in the future, provide RSDA service.

A) Search criteria and information disclosed

Positions of parties

20. Northwestel, SaskTel and TELUS submitted that searches by listed street address or telephone number, and the disclosure of listed street address and name, should be permitted.
21. Bell Canada et al. submitted that while Bell Canada and Aliant Telecom were of the view that the provision of general locality information, as distinct from actual street address, would be satisfactory, other telephone companies should be permitted to provide actual street address information.
22. ARC et al. submitted that street address information should not be permitted to be disclosed as such disclosure would unduly threaten the privacy and safety of subscribers. ARC et al. argued that some individuals, including those that seek refuge from abusers or stalkers, as well as social workers and other professionals that deal with troubled persons, would have a legitimate need to remain anonymous or to keep their location confidential.

23. ARC et al. noted that the Commission had denied a previous application by TELUS for the provision of RSDA service that would have provided listed addresses. ARC et al. submitted that Bell Canada's proposed service is significantly less privacy-invasive than the service proposed by TELUS.
24. ARC et al. also submitted that if the purpose of RSDA were simply to identify a caller, the provision of street address information would be unnecessary.

Commission determination

25. The Commission notes that there are significant privacy and safety concerns associated with the use of street address information as a search criterion, and the disclosure of such information, in the context of RSDA service. For example, if street address information is available as a search criterion, a person driving by a residence could use the address to determine the identity and the telephone number of a telephone subscriber at the residence. This could result in the invasion of privacy through unwanted telephone calls, harassment or even more serious harm. Similar harm could result where a specific street address is disclosed merely on the basis of a telephone number provided by the caller.
26. The Commission further notes that none of the approved RSDA tariffs currently in effect permits the use or disclosure of specific street addresses.
27. On balance, the Commission considers that the potential negative consequences associated with the disclosure, or use as search criteria, of street addresses outweigh the potential benefits stemming from such use or disclosure. Accordingly, the use of street addresses as search criteria, and the disclosure of street addresses, will not be permitted. However, the Commission considers that the disclosure, and use as search criteria, of general locality information, such as a city, town or postal code, are appropriate, and will be permitted. In the Commission's view, such use and disclosure reflect an appropriate balance between the privacy interests of called parties and those of calling parties.

B) Use of RSDA service by commercial entities

Positions of parties

28. Bell Canada et al. argued that RSDA service would not be used by commercial entities such as telemarketers, as the rates proposed for the service would make this implausible. Further, Bell Canada stated that it was prepared to include in its proposed tariff an explicit restriction to the effect that RSDA service would not be available for the purpose of compiling or updating telemarketing lists.
29. Bell Canada et al. also proposed to limit the number of searches to one per call to deter abuse of the service.
30. SaskTel submitted that RSDA service would not provide any additional information to telemarketers as they already have access to the same information through other sources.

31. Northwestel argued that the number of searches should not be limited to one, as forcing customers to call back to finish their requests would result in unnecessary customer inconvenience and reduced operator services efficiency. Instead, the Commission should establish a reasonable limit per call. Northwestel suggested that this approach would provide an effective disincentive to persons engaging in telemarketing, while allowing customers to have their requests addressed effectively.
32. In support of its position that RSDA service should not be permitted, the IPC submitted that RSDA service, when combined with Call Display, would facilitate data matching and profiling. The IPC stated that, for example, commercial enterprises could use this service to determine the names and addresses of those calling for information about products or services, without the knowledge or consent of the called parties. In the IPC's view, this would be particularly intrusive as it could provide marketers with personal information about individuals, which was obtained from a source other than the individuals themselves.

Commission determination

33. The Commission notes the significance of privacy interests and of privacy concerns associated with RSDA service. Further, the Commission notes Bell Canada's position that it would be prepared to include in its tariff a prohibition against the use of RSDA for compiling and updating telemarketing lists. The Commission is of the view that such use should be prohibited. The Commission also considers that, in order to allay any concerns that RSDA service could be used by other commercial interests to compile, or update, marketing lists, the number of searches per call should be limited to one.

C) Subscriber consent

Positions of parties

34. The Privacy Commissioner stated that to the extent that individuals consent to have their names and addresses listed in the white pages of the telephone directory, the regulations made under the PIPEDA permit the subsequent collection, use and disclosure of that information without the knowledge or consent of the individuals concerned. The Privacy Commissioner stated however, that this should not be interpreted as support, on his part, for RSDA service. The Privacy Commissioner stated that he was concerned that: (i) the regulations made under the PIPEDA do not impose any constraints on secondary uses of information listed in the white pages of the telephone directory; and (ii) revenues will be generated from a service that may be seen to be an invasion of privacy.
35. The Companies submitted that disclosure of information contained in the white pages of the telephone directory is permitted pursuant to the PIPEDA without express consent being required. The Companies argued that there is no compelling reason for the Commission to establish higher standards of privacy protection than those provided for under the PIPEDA.
36. ARC et al. submitted that the Commission should not fetter its discretion by treating the PIPEDA as conclusive on all matters respecting privacy. They argued that the Commission must consider other relevant factors and policy objectives when exercising its obligations under the Act. ARC et al. submitted that the Commission is free to establish higher standards of privacy protection under the Act than those required under the PIPEDA.

37. ARC et al. submitted that, in order for RSDA service to be compatible with subscriber privacy under the Act, the availability of an opt-out process must be effectively brought to subscribers' attention before their information is provided via RSDA service, as well as regularly after the fact. ARC et al. argued that all opt-outs should be effected within a short period, such as 48 hours, of the request. Further, ARC et al. proposed that the opt-out option be brought to subscribers' attention annually via the monthly bill and/or billing inserts, as well as via the printed telephone directory and Bell Canada et al.'s privacy policies.
38. SaskTel argued that an annual opt-out reminder via the monthly bill or other means would be unnecessary and an undue administrative burden.
39. While arguing that RSDA service is not appropriate, the IPC submitted that if it were implemented, in order to maintain the effectiveness of the current Call Display privacy features, subscribers would have to be able to opt-out of having their information made available through RSDA service.

Commission determination

40. The Commission notes that, as stated by the Privacy Commissioner, under the PIPEDA and its attendant regulations, information contained in the white pages of the telephone directory may be collected, used and disclosed without the further consent of subscribers. However, the Commission also notes that its jurisdiction in this matter stems not from the PIPEDA, but from the Act, and that in exercising its discretionary powers pursuant to the Act, it may apply different standards to those contemplated by the PIPEDA.
41. The Commission notes that the current Terms of Service of the ILECs provide that all information regarding subscribers, other than their name, address and listed telephone number, is confidential and is not to be disclosed, except in circumstances specified therein, absent subscribers' written consent. The Commission notes, however, that the Terms of Service were initially approved in a non-RSDA environment when the various privacy concerns specific to RSDA service were not at issue.
42. The Commission considers that the reason subscribers decide to list their name, telephone number and other information in the telephone directory is so that other persons can find these subscribers' telephone numbers to communicate with them by telephone. The Commission is not convinced that a decision by subscribers to permit the listing of such information in the white pages of the telephone directory includes their consent to this information being used to allow others who may possess their telephone numbers to identify who they are, or as a means of determining their location.
43. The Commission is of the view that given the significant privacy implications associated with RSDA service, it is important in the specific context of this service that subscribers have the right to control the use and disclosure of such directory-related information that pertains to them.
44. In light of the above, the Commission considers that express subscriber consent must be obtained for the use or disclosure of subscriber information in the provision of RSDA service.

45. The Commission notes that various methods of obtaining express customer consent have been approved by the Commission with respect to the customer transfer process for migrating customers to protect customers from the unauthorized transfer of their long distance and/or local exchange service.
46. The Commission finds that the use of any of the four methods approved by the Commission for the customer transfer process is appropriate as a means of demonstrating express consent, for RSDA purposes, for disclosure of customer information. These methods include:
- written confirmation;
 - oral confirmation verified by an independent third-party;
 - electronic confirmation through the use of a toll-free number; or
 - electronic confirmation via the Internet.
47. The Commission considers that in order to be meaningful, subscribers' express consent must be informed. In this respect, the Commission considers that ILECs should explain to their subscribers: (i) what RSDA service consists of, including what information may be used by way of search criteria and what information may be disclosed; and (ii) the requirement for subscriber express consent. The Commission considers that such information should be provided by means of a billing insert, telephone directories and, for those telephone companies that have them, privacy brochures. Details are set out in Section V of this decision.

IV Rates

Positions of parties

48. Those parties that addressed this issue proposed that the rate charged for RSDA service should be the same as the tariff rates applicable to an ILEC's directory assistance service.
49. Northwestel submitted that while the current directory assistance service should continue to be provided at no cost to customers calling from pay telephones, such customers should be required to pay for RSDA service because it is a value-added service.

Commission determination

50. The Commission considers that the rate for RSDA service should be the same as the rate applicable to a telephone company's directory assistance service given that RSDA service utilizes the directory assistance database.
51. The Commission notes that it has never permitted users of public pay telephones to be charged for the directory assistance access charge. It was often the case, and remains so, that telephone directories are not available at public pay telephones as a result of which users may be forced to use directory assistance service to be able to make a call. In contrast, users of public pay

telephones would not require RSDA to obtain information to make a telephone call and so the same considerations would not apply. The Commission notes that no party in this proceeding provided any compelling policy reason insofar as RSDA access from public pay telephones is concerned to vary, the Commission's usual rating approach that permits telephone companies to charge rates that cover their costs. Accordingly, the Commission finds that the rate applicable to RSDA service should be applied when RSDA service is provided to callers from pay telephones.

V Implementation

52. The Commission directs the ILECs that currently provide RSDA service, and intend to continue to do so, to:
 - file proposed tariff pages reflecting the determinations set out in this decision within **45 days** from the date of this decision;
 - file for Commission approval proposed billing inserts as well as proposed changes to telephone directories and, where applicable, privacy brochures, within **45 days** from the date of this decision;
 - include the approved changes in the front pages of each telephone directory coincident with the next release of the directory in the normal course of publication, and annually thereafter;
 - amend all privacy brochures to include the approved wording within **45 days** from the date that approval is given for the proposed wording.
53. The Commission directs the ILECs that currently provide RSDA service and do not file, pursuant to paragraph 52, the proposed tariff pages and other material identified in paragraph 52, to file proposed tariff pages, proposing the withdrawal of RSDA service, within **45 days** from the date of this decision.
54. The Commission directs the ILECs that do not currently provide RSDA service, but intend to do so in the future, to:
 - file proposed tariff pages reflecting the determinations set out in this decision **90 days** before the proposed commencement date of the service;
 - file for Commission approval proposed billing inserts as well as proposed changes to telephone directories and, where applicable, privacy brochures, **90 days** before the proposed commencement date of the service;
 - include the approved changes in the front pages of each telephone directory coincident with the next release of the directory in the normal course of publication, and annually thereafter; and

- amend all privacy brochures to include the approved wording within **45 days** from the date that approval is given for the proposed wording.
55. Billing inserts, telephone directories and, where applicable, privacy brochures are, at a minimum, to clearly inform subscribers that:
- the ILEC is providing, or will provide, RSDA service, whichever applies;
 - RSDA service consists of a person providing the ILEC with a telephone number and the ILEC disclosing to that person, for a fee, the name and general locality information associated with that telephone number;
 - only the names and general locality information of subscribers who are listed in the telephone directory will be disclosed through the RSDA service; no information pertaining to subscribers will be used or disclosed through the provision of RSDA service unless the ILEC obtains their express consent to such use and disclosure;
 - express consent may be given in the following manner:
 - a signed document as customer confirmation;
 - oral confirmation verified by an independent third party;
 - electronic confirmation through the use of a toll-free number; or
 - electronic confirmation via the Internet; and
 - subscribers may withdraw such express consent at any time, free of charge, through any one of the means set out above to convey express consent.
56. In light of the above, the Commission denies Bell Canada's Tariff Notices 6508 and 6508A for Operator Services. The Commission notes that, pursuant to paragraphs 54 and 55, that Bell Canada may file an application consistent with this decision to provide RSDA service.

Secretary General

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