



Telecom Decision CRTC 2004-11

Ottawa, 23 February 2004

Extension of toll-free per-call compensation to the hospitality and health services industry

Reference: 8661-O25-01/02

*The Commission **denies** OPCOM Hospitality Solutions Inc.'s and the Alberta Hotel & Lodging Association's application requesting that hospitality and health entities be permitted to receive per-call compensation for toll-free traffic originated on their telephone infrastructure or, alternatively, for a declaratory ruling permitting hospitality and health services entities to block, re-route or otherwise dispose of calls originated on their telecommunications infrastructure.*

1. The Commission received an application filed pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure*, dated 16 August 2002, from OPCOM Hospitality Solutions Inc. and the Alberta Hotel & Lodging Association (collectively, OPCOM et al.), requesting that the Commission:
 - a) introduce a hospitality/health services access line (HAL) designation service that would provide hospitality and health services entities with a similar opportunity to collect compensation, on a per-call basis, for toll-free traffic originating on their telephone infrastructures in the same manner as that provided to competitive pay telephone service providers (CPTSPs) through approved tariffs; and
 - b) modify existing competitive payphone toll-free tracking (CPTT) report service tariffs to include, as traffic eligible for per-call compensation, all toll-free traffic carried on access lines assigned the HAL designation, in addition to similar eligible toll-free traffic currently carried on pay telephone access lines (PALs).
2. As an alternative to the proposed HAL designation service, OPCOM et al. sought a declaratory ruling from the Commission confirming that hospitality and health services entities have total control over the traffic originating on their telecommunications infrastructures regardless of the actual digits dialled by the guests/patients. OPCOM et al. submitted that such a ruling should specifically indicate that hospitality or health services entities may, at their own discretion, block, re-route or otherwise dispose of a call originated by their guests/patients.
3. The Commission received comments from the following parties: Aliant Telecom Inc., Bell Canada, MTS Communications Inc., Northwestel Inc., Saskatchewan Telecommunications (collectively, the Companies); TELUS Communications Inc. (TELUS); Canopco Inc. (Canopco); the Hotel Association of Canada (HAC); and Choice Hotels Canada Inc., Ontario Restaurant Hotel and Motel Association, Association des hôteliers du Québec, Best Western Denham Inn & Suites, Best Western Gold Rush Inn, Best Western Kamloops,

Bonanza Gold Motel & RV Park, British Columbia & Yukon Hotels' Association, Canad Corporation of Manitoba, Canadian Hotel Income Properties, Coast Hotels & Resorts, Crest Hotel Limited, the Hotel Association of Nova Scotia, the Hotels Association of Saskatchewan, Kingfisher Oceanside Resort and Spa, Listel Canada Ltd., Manitoba Hotel Association, Prestige Inns - Hotels & Resorts, Ramada Inn & Suites Pitt Meadows, Sandman Hotels, Inns & Suites, The Bonanza Inn and The Stratford Motel (collectively, the other hospitality services entities and associations).

4. The Commission received reply comments from OPCOM et al. on 26 September 2002.
5. Further information from OPCOM et al. was requested by Commission staff letter dated 7 November 2002; OPCOM et al. filed its responses on 22 November 2002. Comments on OPCOM et al.'s responses were filed by the Companies, TELUS and HAC on 2 December 2002. OPCOM et al. filed reply comments on 9 December 2002.

Request for a HAL designation service

Position of parties

OPCOM et al.'s comments

6. OPCOM et al. indicated that, as a result of the separation of the calling card databases of Bell Canada and TELUS, Bell Canada's and TELUS' customers could no longer complete a calling card call in each other's territories using the historic 0 + dialling method. To complete calling card calls, those customers must now dial a 1 + toll-free dial-around number to reach either Bell Canada's or TELUS' network prior to originating a long distance call. OPCOM et al. also indicated that, as a result of the separation of the calling card databases, alternative operator service providers (AOSPs) were unable to process, validate, bill and collect for calling card calls placed by one telephone company's customer in the other telephone company's territory. As a consequence, AOSPs were unable to pay a commission to hospitality and health services entities, thereby reducing revenues for both the AOSPs and the hospitality and health services entities.
7. OPCOM et al. submitted that the commission paid on calling card calls helped the hospitality and health services entities recover some of the costs used to purchase and maintain their telephone infrastructure. OPCOM et al. also submitted that the additional revenues generated by the proposed HAL tariff would encourage smaller entities that may be blocking outgoing toll-free calling, to unblock those calls in order to generate additional revenues. OPCOM et al. added that extending toll-free per-call compensation to hospitality and health services entities would also put pressure on the larger entities to stop their practice of charging their guests/patients for toll-free calling and receiving revenues from the long distance provider carrying the call.

8. OPCOM et al. submitted that the in-room telephone service provided by hospitality and health services entities was similar to the service provided by CPTSPs to the general public, noting the technical parallels between the completion of in-room telephone calls and calls originated from pay telephones. In particular, OPCOM et al. noted the similarity between the way hospitality and health services entities provided and maintained terminal equipment as a service to and for the benefit of their guests/patients, a subset of the general public, and the way CPTSPs provided pay telephone service to and for the benefit of the general public. OPCOM et al. further noted that hospitality and health services entities levied a charge for calls from in-room telephones in the same way as pay telephone service providers charged the end-users for calls from their facilities.
9. OPCOM et al. noted that in-room terminal equipment provided by hospitality and health services entities do not necessarily meet the CPTSP regulatory safeguards mandated by the Commission. However, OPCOM et al. submitted that some of the mandated safeguards provided by the CPTSPs might not be appropriate in this context.
10. OPCOM et al. indicated that, under its proposal, hospitality and health services entities would designate which public switched telephone network (PSTN) access lines would be used to transmit eligible toll-free calls. OPCOM et al. proposed that only those trunk lines used by guests/patients to originate toll-free calls would be designated as a HAL, thus excluding lines used for administrative purposes.
11. OPCOM et al. also proposed that hospitality and health services entities, or their agents, who request HALs would have to register as a CPTSP in order to be eligible for access to the CPTT report. The CPTT report would be modified to capture, record and document all toll-free calls placed from hospitality and health services entities' telecommunications infrastructures and allow them to collect for each call. OPCOM et al. further proposed that hospitality and health services entities that did not comply with the proposed tariff would lose the HAL designation and would not be able to bill and collect for toll-free calls.

Other parties' comments

12. The Companies submitted that OPCOM et al.'s application should be denied. The Companies argued that the main concern expressed by OPCOM et al. with the separation of Bell Canada's and TELUS' calling card databases was the hospitality and health services industry's reduced opportunity to generate revenues by routing calls to their AOSP of choice and by charging rates significantly higher than Bell Canada and TELUS for the completion of such calls.
13. The Companies stated that the Commission implemented a toll-free pay telephone access charge, on a per-call basis, to maintain the health of the pay telephone industry. The Companies submitted that the financial health of the hospitality and health services industry would not be jeopardized if these entities could not bill for in-room 1-800 toll-free calls as they could generate revenues from other sources. The Companies noted that hospitality and health services entities already generated revenues by directly charging their guests/patients for the use of the telecommunications infrastructure. The Companies noted, for example, that hotels commonly levy a surcharge on their guests each time a toll-free call is made. The Companies submitted that hospitality and health services entities would be compensated twice if they received compensation for in-room 1-800 toll-free calls while, at the same time, levying a surcharge on the same call.

14. The Companies argued that the service provided by CPTSPs differed from that provided by hospitality and health services entities as the CPTSPs are subject to a variety of Commission-mandated obligations that are not imposed on hospitality and health services entities. The Companies submitted that hospitality and health services entities require a telephone infrastructure for administrative purposes and for their customers in private rooms while CPTSPs usually place pay telephones in public places for the use of the general public, and not for the CPTSPs' own use. The Companies also submitted that, in that respect, hospitality and health services entities were similar to their other large private branch exchange customers. The Companies also expressed their concern that, in approving OPCOM et al.'s application, the Commission would be encouraging applications from other end-users for the same considerations.
15. TELUS opposed OPCOM et al.'s application and submitted that the nature of the service provided by the CPTSPs was essentially different from that of hospitality and health services entities. TELUS submitted that pay telephone service is the CPTSPs' core business and their sole source of revenue to defray their pay telephone infrastructure costs. TELUS submitted that CPTSPs receive compensation for 1-800 toll-free calls made on pay telephones because there are no per-use charges associated with toll-free calls. However, these calls generated a portion of the fixed and common costs associated with providing pay telephone service. TELUS further submitted that hospitality and health services entities could defray their telecommunications infrastructure costs from revenues earned from their core business activities. TELUS noted that hospitality and health services entities already impose charges for local calls and, when offered, long distance calls. TELUS further noted that the primary intended use of a pay telephone was for the benefit of the general public while hospitality and health services entities provided in-room access to a telephone primarily for the convenience of the authorized occupant.
16. TELUS submitted that the Commission allowed CPTSPs to receive compensation for 1-800 toll-free calls made from their pay telephones to encourage competition in this telecommunications services sector. TELUS argued that allowing compensation for 1-800 toll-free calls for hospitality and health services entities would not encourage competition in this industry and would only give hospitality and health services entities an additional source of revenue. TELUS further argued that OPCOM et al.'s underlying reason for its application was to enhance the revenue generating opportunities for AOSPs and hospitality and health services entities and not to help them improve their telecommunications infrastructure.
17. TELUS stated that in-room terminals provided by hospitality and health services entities might not satisfy the Commission-mandated consumer safeguards required for pay telephone service providers.
18. TELUS submitted that Commission approval of OPCOM et al.'s application would open the door for similar applications by other businesses with their own telecommunications infrastructure, such as wireless or Internet service providers, to request compensation for 1-800 toll-free calls originated on their facilities. TELUS also noted that other entities, such as universities and toll resellers/rebillers, also provisioned and maintained their telecommunications infrastructure to supply service to and for the benefit of the general public or a subset of the general public. TELUS submitted that approving OPCOM et al.'s

request could confer an undue preference on hospitality and health services entities without just cause and unjustly discriminate against all other end-users, contrary to subsection 27(2) of the *Telecommunications Act* (the Act).

19. Canopco indicated that it was an AOSP that provides operator services to competitive local exchange carriers (CLECs), alternative providers of long distance services, CPTSPs and more than 900 hotels in Canada. Canopco supported OPCOM et al.'s request that hospitality and health services entities be compensated for in-room 1-800 toll-free calls made by their guests/patients. Canopco recommended that the Commission establish a CRTC Interconnection Steering Committee working group to propose unique industry-specific guidelines which would, as a substitute for end-user safeguards, permit the levying of surcharges, on a per-call basis, by hospitality and health services entities.
20. Canopco noted that OPCOM et al. did not state whether hospitality and health services entities should be subject to all the regulatory safeguards imposed upon the CPTSPs and submitted that the Commission should consider whether these entities should be subjected to specific regulatory safeguards to address their unique issues without impinging on service innovation.
21. HAC supported OPCOM et al.'s application and submitted that allowing hospitality entities to receive compensation for outgoing 1-800 toll-free calls would encourage them to unblock those calls to generate revenues. HAC further submitted that these additional revenues would allow the hospitality entities to upgrade their telecommunications infrastructure.
22. The other hospitality services entities and associations generally stated that the mechanisms to place calls from hotel rooms to access the PSTN in order to place a 1-800 toll-free call were the same as those used to place a pay telephone call. Given these similarities, they fully supported the extension of toll-free, per-call compensation to hospitality and health services entities.

Commission analysis and determination

23. The Commission opened the local pay telephone market to competition in *Local pay telephone competition*, Telecom Decision CRTC 98-8, 30 June 1998 (Decision 98-8). To ensure that consumers were protected from potential abuses and address the concerns which have historically militated against the opening of the pay telephone service market to competition, the Commission imposed various consumer safeguards with respect to the provision of pay telephone services. Since CPTSPs were not regulated by the Commission, the Commission required that the consumer safeguards be incorporated in the incumbent local exchange carriers' (ILECs) pay telephone access tariffs, and in the CLECs' service contracts when CPTSPs obtained service from a CLEC. Furthermore, the Commission noted that non-compliance by a CPTSP with either the ILEC tariff or the CLEC contract would constitute reason for the termination of the access service.
24. In *Pay Telephone Compensation per Call for Toll-free Calls*, Telecom Order CRTC 99-1017, 22 October 1999 (Order 99-1017), the Commission found it appropriate to assess to interexchange carriers a contribution of \$0.25 per toll-free call towards the incremental costs and fixed common costs associated with payphones. The Commission further accepted Bell Canada's rationale that the additional revenues would alleviate the declining pay telephone

revenues because of the increased use of pay telephones for competitors' toll-free calls. Furthermore, the Commission directed Bell Canada to make the required billing information available to CPTSPs that wished to implement a similar compensation per toll-free call charge.

25. The Commission considers that both the nature of the service provided by pay telephone service providers and the circumstances permitting compensation for 1-800 toll-free calls placed on their pay telephones are very different from those of hospitality and health services entities.
26. First, the Commission notes that, in Order 99-1017, it considered it appropriate to assess toll-free calls a rate of \$0.25 as an appropriate contribution towards fixed common costs associated with pay telephones. In so doing, the Commission acknowledged that pay telephone service providers were losing revenues due to the increased use of their pay telephones for competitors' toll-free calls. The Commission notes that pay telephones are the CPTSPs' sole or main source of revenues. Hospitality and health services entities can earn revenues from sources other than their in-room telephone service. The Commission also notes that hospitality and health services entities' financial viability will likely not be jeopardized if they cannot charge for in-room toll-free calls. Accordingly, the Commission considers that the underlying rationale to compensate pay telephone service providers for toll-free calls made from their terminal equipment does not apply to hospitality and health services entities.
27. Second, the Commission notes that in Decision 98-8, it found that introducing competition in the local pay telephone market would stimulate service innovation, foster a viable domestic industry and increase total market revenues. Conversely, the Commission notes that it has not taken steps to mandate a competitive regime for the hospitality and health services industry and, accordingly, this industry is treated in the same way as any other end-users of telecommunications services.
28. Third, the Commission notes that public or semi-public pay telephones are located in public places or premises accessible to the general public and must meet the Commission-mandated consumer safeguards. The Commission also notes that providing pay telephone service that meets the mandated regulatory safeguards has an impact on the costs to pay telephone service providers when purchasing terminal equipment and providing service. On the other hand, in-room telephone service provided by hospitality and health services entities is offered for the convenience of guests/patients. The telephones are located in private premises and are usually only accessible by the paying guests/patients for their personal use. Accordingly, the Commission considers that the nature of the service and the conditions under which it is provided by pay telephone service providers are essentially different from those associated with the service provided by hospitality and health services entities.
29. Fourth, the Commission notes that, in providing in-room telephones, hospitality and health services entities are not obligated to meet the mandatory regulatory safeguards like those imposed on the pay telephone service providers. In fact, the Commission notes that OPCOM et al. submitted that some of the safeguards may not be appropriate to hospitality and health services entities. The Commission also notes that adherence to the mandatory consumer safeguards by pay telephone service providers is an essential element of the PAL service, and a breach of those obligations would constitute reason for the termination of the access service.

Therefore, the Commission is of the view that hospitality and health services entities should not benefit from a tariff similar to the PAL tariff as there is no requirement on their part to meet the obligations imposed on pay telephone service providers.

30. Accordingly, the Commission **denies** OPCOM et al.'s request for a HAL tariff in order to allow hospitality and health services entities the ability to receive compensation for 1-800 toll-free calls originated by their guests/patients. In view of this, the Commission finds it unnecessary to modify the existing CPTT report service tariff, as requested by OPCOM et al.

Declaratory ruling

OPCOM et al.'s comments

31. OPCOM et al. noted that hospitality and health services entities received complaints from customers unable to place toll-free calls using the historic 0 + dialling sequence. The customers also blamed the hospitality and health services entities for forcing them to use the 1-800 dial-around method to place toll-free calls. OPCOM et al. submitted that a declaratory ruling that hospitality and health services entities have total control over the traffic originating on their telecommunications infrastructures regardless of the actual digits dialled by the guests/patients would allow hospitality and health services entities to address these customer concerns with the knowledge that their activities have been subject to the Commission's review. Additionally, OPCOM et al. submitted that the declaratory ruling would enable hospitality and health services entities to route a blocked or non-revenue generating 1-800 calling card dial-around call to its AOSP of choice for processing and potential compensation.
32. OPCOM et al. submitted that the declaratory ruling would put them on the same footing as corporations and governments, as some of these organizations either block or restrict outgoing long distance calls to reduce or eliminate non-business related charges. OPCOM et al. also noted that some corporations and government departments or agencies can route long distance calls to their long distance service provider of choice. Sophisticated telecommunications infrastructures enabled these organizations to route and track long distance calls in the most cost-effective manner. OPCOM et al. submitted that if hospitality and health services entities are similar to corporations or governments, as claimed by the Companies and TELUS, then they should be allowed to control their telecommunications infrastructures in the same manner as corporations and government do.

Other parties' comments

33. The Companies submitted that, with the declaratory ruling, hospitality and health services entities could prevent their guests/patients from choosing their own long distance service providers when placing a call using their calling cards. The Companies submitted that this would contradict the Commission's long standing policy to promote end-user choice. The Companies also submitted that hospitality and health services entities would use the declaratory ruling to deflect blame to the Commission when customers complain that they cannot use their calling cards to place long distance calls and to justify their rate levels to their customers.

34. TELUS submitted that the declaratory ruling would subject the hospitality and health services entities' guests/patients to a less-than-customer friendly telecommunications environment, which would be contrary to the Commission's commitment to safeguard the interests of consumers in terms of choice of local and toll-call service providers.
35. Canopco submitted that the Commission should not issue any ruling that might restrict hospitality and health services entities from controlling the routing of their traffic without broad industry and public consultation. Canopco submitted that while OPCOM et al. did not indicate why hospitality and health services entities should be allowed to discriminate amongst alternate providers of long distance services, market forces would most likely prevent hospitality and health services entities from doing so, as their guests/patients would likely want to use their calling cards when in their establishments.

Commission analysis and determination

36. The Commission notes that it does not regulate the telecommunications services provided by hospitality and health services entities as it considers them, in this context, as resellers. The Commission notes that it has, in the past, found it appropriate to impose conditions on ILECs and other carriers with respect to the provision of certain telecommunications services by resellers. In Telecom Order CRTC 95-316, 15 March 1995 (Order 95-316), in response to Unitel Communications Inc.'s (Unitel¹) application to provide operator-assisted calling for its calling card holders and consumer safeguards for their operator services, the Commission adopted Unitel's proposed consumer safeguards as well as additional safeguards to prevent customer confusion, complaints and price gouging. For example, where Unitel provided operator services on behalf of another party, the Commission adopted Unitel's proposed safeguard to withhold payment of any compensation to that party if access to 10-XXX or 1-800 numbers was blocked to competitive carriers. The Commission further directed the ILECs to adopt and include the safeguards in their contracts with operator service providers.
37. The Commission also notes that in Telecom Order CRTC 95-1438, 28 December 1995, it extended to other federally-regulated carriers the obligations imposed on the ILECs in Order 95-316 when providing operator service or when offering and providing the use of their telecommunications services to third-party operator service providers, pursuant to section 24 of the Act.
38. The Commission considers that OPCOM et al.'s request for a declaratory ruling would prevent end-users from choosing their own long distance service provider, would be at odds with the Commission's long standing policy to promote end-user choice and could lead to customer confusion and complaints, including complaints about price gouging problems from end-users.

¹ Unitel is now known as Allstream Corp.

39. In light of the above, the Commission **denies** OPCOM et al.'s request for a declaration that hospitality and health services entities be allowed to block, re-route or otherwise dispose of calls originated by their guests/patients from hospitality and health services entities' telecommunications infrastructure, as such relief is not appropriate in these circumstances.

Secretary General

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