



PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC

285 McLeod Street, Suite 200, Ottawa, ON K2P 1A1

9 February 2021

Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON K1A 0N2

Re: Commission file no.: 8665-C12-202000280, *Unauthorized Mobile Telephone Number Transfers and SIM Swapping*

Request for Disclosure of the Public Interest Advocacy Centre

Dear Mr. Doucet,

The Public Interest Advocacy Centre (PIAC) is writing to ask for public disclosure of the reports the Commission requires each month, on the second Monday of each month, beginning 11 January 2021, of the wireless service providers (WSPs) who were copied on the Commission staff's letter of 22 December 2020.¹ The most recent reports were filed yesterday (8 February 2021).

WSPs' Reports to the Commission on SIM-swap Fraud

The Commission now, thanks to the letter above, requires the WSPs to:

1. Provide, separately for each wireless brand operated by your company or affiliates, the monthly data for December 2020 to March 2021 inclusive, as was requested in the Commission staff letter dated 28 May 2020, question 1a. - 1d.
2. Comment on your monthly data, including but not limited to any significant variations with previous months and any trends observed, and describe any new process, initiative, measure or other that may be having an impact on the data.

¹ Online: <https://crtc.gc.ca/eng/archive/2020/lt201222.htm>

The referenced staff letter of 28 May 2020, para. 1a. – 1d. lists the following data the Commission is interested in tracking regarding SIM-swap fraud:

1. Bell, Eastlink, Rogers, SaskTel, Shaw, TbayTel and TELUS, to update your initial respective response to include, by month and separately for each wireless brand operated by your company or affiliates, from August 2019 to May 2020:
 - a. the total number of customer transfers (ports);
 - b. the number of unauthorized customer transfers, separately for prepaid and postpaid accounts, as well as indicating whether the number of unauthorized transfers attributable to carrier or customer error were excluded;
 - c. the total number of SIM swaps; and
 - d. the total number of unauthorized SIM swaps.

In short, the Commission is requiring the WSPs to provide details, from January 2021 going forward, on how many SIM-swaps are occurring with their services, in order to get a sense of scale, scope and seriousness of the problem, as well as whether it is being brought under control or is growing.

All of the WSPs, in all of their responses to these questions, including those for in January 2021 and February 2021, have claimed confidentiality regarding these numbers. Consumers and the public looking at these responses have no idea at all, whatever, of the size and scope of the problem of SIM-swap fraud occurring in Canada.

WSPs' Confidentiality Claims

The companies' claimed reasons for confidentiality under s. 39 of the *Telecommunications Act* are all based on harm to their competitive position and that release of the information could allow competitors to develop strategies against them.

For example, Bell writes that its January 2021 response:

Release of this information on the public record would provide existing or potential competitors with invaluable information that would not otherwise be available to them, and which would enable them to develop more effective business strategies. Release of such information could prejudice our competitive position resulting in material financial loss and cause specific direct harm. The abridged version of this response is provided for the public record.²

Bell explains in a footnote that: "This information is filed in confidence with the Commission pursuant to section 39 of the Telecommunications Act [presumably subs. 39(1)(c)(i) and (ii)] and the directions provided by the Commission in the Appendix to Broadcasting and Telecom Information Bulletin CRTC 2010-961, *Procedures for filing confidential information and*

² Bell Mobility(CRTC)22Dec20-1 Unauthorized Mobile TN Transfers (Abridged), at p. 1.

requesting its disclosure in Commission proceedings, dated 23 December 2010, as amended in Broadcasting and Telecom Information Bulletin CRTC 2010-961-1, dated 26 October 2012.”³

Bell correctly notes that the bare wording of subs. 39(1) is to be interpreted in light of the Commission’s directions and guidelines. However, Bell omits explicit reference to the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (“Rules of Procedure”) and in particular, rules 31 to 34. In BTIB 2010-961, the Commission explains in some detail the Commission’s expected use of the confidentiality sections of the Act and the Rules.

At paras. 5-7 of BTIB 2010-961, the Commission explains that the party filing confidential information must not only designate the nature of the basis of the confidentiality claim but also be prepared to provide additional explanatory detail and argument for confidentiality if the item is not a “usual suspect” listed in the appendix to the Bulletin (simple reference to such listed items is permitted) and also to be prepared to provide more detail and argument if the claim of confidentiality is challenged by another party:

5. At the time that the party files the information it designates as confidential, it must provide an abridged version of the document along with an explanation of how the information falls into a category of information listed in section 31. The party must provide a detailed rationale to explain why the disclosure of the information is not in the public interest (section 32(1)).

6. In articulating these reasons, *parties must address the test for disclosure discussed below. Generic statements such as “the release of this information to competitors would result in specific, direct harm to the company” are not sufficient. Parties must provide sufficient reasons to allow meaningful analysis by the Commission or another party who may wish to request disclosure of the information. Parties will generally not be permitted to provide additional reasons in their reply to such a request.*

7. However, to make the process for designating information more efficient, the Commission will generally accept as reasons a statement that the information is of a type listed in the appendix to this information bulletin. Parties doing so must keep in mind that this *list is only a guideline*. If the Commission or another party requests disclosure of the information, the party must be prepared to explain in its reply why the disclosure of the information is not in the public interest in the context of the particular proceeding. [Emphasis added.]

PIAC challenges the confidentiality claims of Bell and the other WSPs to this proceeding.

Bell does not, as required by para. 6, “provide sufficient reasons to allow meaningful analysis by the Commission or another party who may wish to request disclosure of the information”. PIAC

³ *Ibid.*, fn. 1.

cannot understand how the release of simply the numbers of frauds committed against Bell customers maps to a competitive harm that will result in material loss. Bell is not, in addition, allowed to “backfill” an explanation in its reply.

Bell likewise does not locate a permitted listed exemption in the Appendix to the explanation requirement. SIM-swap fraud numbers, or any kind of fraud, is simply not listed in the appendix as standard confidential information. Therefore, Bell should have claimed confidentiality with sufficient detail for PIAC to determine, based on its designation alone, how and why it was claiming that disclosure of the fraud numbers would affect its competitive position nor why such specific commercial harm (if any) would outweigh the public interest.⁴ It has not done so.

In our view, the Commission should not provide Bell with an opportunity to explain in reply. Bell and all of the other WSPs had notice of PIAC’s desire to have this information disclosed when it made requests in the fall of 2020 for such disclosure. Bell and the other WSPs therefore should have filed such detailed claims of causation of harm from disclosure and a justification of why any such harm, in any case, outweighed the intense public interest in this fraud on the public.

PIAC’s Argument Why Such Disclosure is in the Public Interest

In any case, PIAC submits the bare descriptions of commercial harm do not withstand scrutiny, even if they are supplemented. First, the problem of SIM-swap fraud is not a matter on which companies compete. To our knowledge, based on news reports of victims, all WSPs are susceptible to SIM-swap fraud. The Commission’s “proceeding” on this file also acknowledges the pan-industry nature of this problem by including all WSPs in Canada.

What appears, rather, to be hidden, is the overall scope of the problem, which is of course not harmful to any one provider to all and, additionally, the scope and volume of complaints within particular carriers, if they diverge greatly from their share of the wireless market.

Direct evidence from victims, the frequency of news reports, as well as Commission attention to this problem and as well the appearance of this problem at a large scale in the U.K. and Australia, all indicate that the problem of SIM-swap fraud is large in absolute numbers in Canada. In other words, the sheer scale of the problem likely is embarrassing to the industry. That very size of problem, and the corresponding consumer financial losses and inconvenience, fear and distrust generated by such a serious fraud argue for public disclosure to help PIAC, consumers and other advocates to work for the public interest by eliminating the effects of this fraud on consumers, who experience significant personal and financial harm as a result.

In our submission, the public interest in disclosure outweighs clearly commercial harms, in particular if the Commission were to order aggregated total numbers. However, we also submit that the public interest in particular WSPs’ SIM-swap fraud numbers are important for consumers. With such knowledge, consumers can both pressure their WSP to do better and can gauge the level of risk to their own accounts and take precautionary measures accordingly.

⁴ Rules of Practice, subs. 32(1).

Further, in our opinion, if one or two WSPs clearly are experiencing higher levels of fraud, the spotlight on this inconsistency should lead these companies to expend more resources on solving the SIM-swap fraud problem rather than treating it as a cost of doing business. We also see more public interest in allowing other carriers to explicitly court consumers that are uncomfortable with their own WSP's work on this issue. Consumer direct financial loss and resulting pressure would improve the market and be in the public interest and would outweigh protecting certain WSPs' hidden failure to address the problem.

Reasons for Commission's Initial Rejection of Disclosure Request No Longer Apply

On 23 July 2020, PIAC filed a request for disclosure of redacted information for which the WSPs had then on the record claimed confidentiality. As this information in part is the same as that now provided monthly by the WSPs and for which PIAC now again claims public disclosure, it is important to examine Commission staff's determination, expressed in a 16 October 2020 letter,⁵ that public disclosure would not be ordered. As we shall see, things have changed sufficiently that the Commission letter's rationale no longer applies to the information we request today.

Request for disclosure of data

In the circumstances of this case, Commission staff considers that the disclosure of the data on the number of unauthorized mobile telephone number transfers and SIM swaps would not meaningfully benefit the public interest.

In this regard, staff notes that the requested data is historical as it covers the period August 2019 to June 2020 and would not reflect the impact of the measures the mobile carriers have put in place since then, nor their initial (albeit suspended for a short period of time) roll-out of certain additional measures.

Given this, the data would shed little to no light as to the efficacy of the measures taken or contemplated but would rather serve to inform the question as to whether additional measures are needed to combat fraudulent activities, which the CWTA and mobile carriers have already agreed is the case.

Further, releasing the data on the number of unauthorized mobile telephone number transfers and SIM swaps on the public record would provide competitors with access to commercially sensitive information, or insights that might allow them to derive such information, and which might allow them to develop new and more effective business plans and marketing strategies. In view of this, the specific direct harm of the disclosure of the data to other competitive mobile carriers also outweighs the public interest in disclosure.

⁵ Online: <https://crtc.gc.ca/eng/archive/2020/lt201016.htm>

Therefore, Commission staff conclude that the data on the numbers of unauthorized mobile telephone number transfers and SIM swaps should not be disclosed.

The data now line up with the “fix”

The first rationale is that the “historical data” is not relevant, given the WSPs have implemented changes (unknown) to the porting process. It is now relevant because the data from January 2021 on is now under the new porting process (whatever that is). Therefore, the “efficacy of the measures” can now not be “historical”. It measures fraud during the period of the “fix”. For example, if consumer numbers of frauds stay high or close to previous levels, or even too high in absolute numbers and consumer loss is socially unacceptable, the new system is not effective. Only by letting the public see the numbers can the public tell the Commission if the level of fraud is socially acceptable. We refuse to take the Commission’s or WSPs’ word for it that matters are under control. PIAC also flatly rejects the Commission’s paternalistic assumption that the CWTA and carriers are working on the matter and that that is enough. They must publicly demonstrate that they are doing so.

There is no competitive harm to companies

Second, to maintain the position that this information is commercially-sensitive information – to the point of outweighing the clear public interest in not being defrauded for potentially thousands of dollars – is also misguided. If that were the case, there would be advertising and market offers touting one carrier’s superior protection of consumers from fraud over another providers. There is no such advertising and consumers are still suffering losses due to SIM-swap fraud.

Finally, for those WSP members of the CWTA, PIAC is not convinced that although the WSPs may file their numbers in confidence with the Commission, that they do not, in CWTA meetings, also discuss the numbers and scope of the problem openly between carrier representatives. Therefore, each of these CWTA members very likely know of the numbers and scope of the problem with other members and the claim that there are competitive concerns is farcical.

There is real, monetary, tangible harm to consumers

If the Commission opens a public process on SIM-swap fraud (see below), PIAC intends to work with groups representing victims and will present personal testimonies of SIM-swap fraud and how it operated on these victims under both the prior and present porting process. There is real, monetary, tangible harm being done to consumers under this secretive proceeding with the industry alone that should be heard to inform the Commission. PIAC will present testimonies as to the weaknesses of the new porting process and will provide evidence of why ignoring the consumer experience of the porting process will doom it to being ineffective. In short, the Commission requires this information to make a fair and durable solution. It cannot trust the industry alone. Consumers are still losing money every day and deserve more protection.

We continue to call for a public inquiry (and so does Parliament)

We bring to the Commission's attention, not only PIAC's previous call for an open public hearing on SIM-swap fraud but also the Standing Committee on Industry, Science and Technology (INDU) report entitled: "FRAUDULENT CALLS IN CANADA: A FEDERAL GOVERNMENT'S FIRST START" (November 2020), notably the discussion of "Unauthorized Porting" at pp. 21-23.⁶ In case the Commission missed it, we underline two recommendations made by the Committee:

Recommendation 12

That the Government of Canada support efforts by the Canadian Radio-television and Telecommunications Commission to conduct a public inquiry into unauthorized porting.

Recommendation 13

Should the Canadian Radio-television and Telecommunications Commission fail to launch a public inquiry into unauthorized porting within six months, that the Government of Canada introduce legislation to protect Canadians against unauthorized porting.

Therefore the Commission should heed the call of Parliament, as well as consumers and consumer advocates like PIAC who are loudly and repeatedly calling for a public inquiry into SIM-swap fraud. There is now no excuse for continuing with the ridiculous "cone of silence" that the Commission is placing over its attempt to solve SIM-swap fraud. To do its job, the Commission needs consumer input. We stand ready to provide that input before the INDU Report's deadline of June 2021.

Conclusion

For the reasons given above, PIAC seeks public disclosure of the filings of all responding WSPs on SIM-swap fraud for January and February 2021, in their entirety, with no redactions and that the Commission direct the WSPs to file public, unredacted records going forward.

Sincerely,

John Lawford

Counsel to PIAC

cc WSPs, CWTA, INDU Committee Chair, Canadian SIM-swap Victims United, OpenMedia
The Honourable François-Philippe Champagne, Minister of ISI

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⁶ <https://www.ourcommons.ca/Content/Committee/432/INDU/Reports/RP10991946/indurp01/indurp01-e.pdf>