

A-2011-114



Director - Directeur

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**SECRET**

**CCM# 10175**

**For Information**

**OCT - 5 2011**

## MEMORANDUM TO THE MINISTER

### LAWFUL ACCESS LEGISLATION

#### BACKGROUND:

Concerns have been voiced by portions of the telecommunications industry that 1) the telecommunications industry has not been consulted on the proposed Lawful Access legislation, former Bill C-52, and 2). Some Canadian telecommunications companies are of the mistaken impression that they are being required to buy more expensive and complicated equipment than is being asked for by the US.

#### DISCUSSION:

Formal consultations with the telecommunications industry on lawful access (former Bill C-52) took place in 2002, 2005 and 2007.

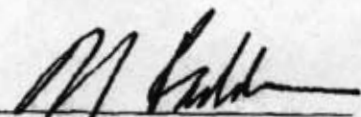
When comparing Lawful Access to the US equivalent (CALEA), CALEA required service providers to have the appropriate infrastructure in place within 3 months of the legislation being passed. Proposed Canadian legislation provides transitional provisions; it suspends a service provider's obligations for new equipment or new software to be intercept-capable for a period of 18 months beginning the day the legislation comes into force. In addition, smaller service providers (less than 100,000 subscribers) would have a three year transition period. This suspension of obligations will not apply to any telecommunications service provider (TSP) with equipment that is already in operation before the

legislation is passed, and already has interception capabilities; they will have to maintain their current ability to intercept. As with CALEA, service providers could apply for exemptions.

Contrary to the statement that Canadian telecommunications companies are being required to buy more expensive and complicated equipment than is being asked for by the US (i.e. A "Cadillac" in comparison), TSP will in fact not be tied to any government standards under the proposed legislation. Under CALEA the compliance regime depended on the development of detailed technical standards respecting how lawful interception must be done. These standards are developed by industry associations and standard-setting organizations. Unlike CALEA, Canada's proposed legislation will not require that certain technical standards for equipment be met, but instead will lay out the operational requirements for TSPs to follow, thereby allowing TSPs to achieve and maintain an intercept solution that best suits their network, using suppliers and technology that conform to their business and financial plans.

Similar to CALEA, the proposed Canadian legislation requires that the TSP have the capacity to provide a certain number of simultaneous interceptions. However, under CALEA, officials had initially expected that within a year of the legislation coming into force, service providers would be able to provide interceptions at a prescribed capacity. Due to a number of issues, including having to go back to the FCC to redefine the proscribed capacity, this did not in fact happen until 2000. The Canadian proposed legislation already lays out these obligations, making it clear for industry that they will be required to achieve these minimums and maximums after the transitional periods. Where these thresholds need to be exceeded, it is anticipated that the Government will provide compensation.

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Richard B. Fadden

c.c. Deputy Minister of Public Safety

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