



Telecom Decision CRTC 2019-432

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Ottawa, 20 December 2019

Public record: 8650-S191-201904483

SDI Telecom – Application with respect to reports and compensation regarding toll-free calls over pay telephones

The Commission finds that SDI Telecom (SDI) is entitled to receive, from Bell Canada, compensation of \$0.25 per toll-free call made over Bell Canada-provided business lines to support retail pay telephone service. SDI is also entitled to receive, from Bell Canada and RCCI, the associated reports for toll-free calls originating from payphones owned by SDI and made over business lines provided by Bell Canada and RCCI.

Background

1. Pay telephone access line (PAL) service is a wholesale access line service offered by incumbent local exchange carriers (ILECs) to competitive pay telephone service providers (CPTSPs). PALs enable CPTSPs to access the telephone network to provide retail pay telephone services. Bell Canada's regular business line service also allows access to the telephone network for this purpose.
2. In Telecom Order 99-1017, the Commission approved, on the basis of a cost study, Bell Canada's proposed rate of \$0.25 per toll-free call originating from CPTSPs' payphones. Further, the Commission directed Bell Canada to provide CPTSPs with billing information with respect to toll-free calls originating from their payphones made over Bell Canada's network.
3. In Order 2000-538, the Commission expanded its regulation of the local pay telephone market to include all interexchange carriers (IXCs).¹ That order imposed the following condition of service under section 24 of the *Telecommunications Act* (the Act): in the absence of a per-call compensation rate set out in a tariff or an agreement, the Commission set a default compensation rate of \$0.25 per toll-free call for CPTSPs that provide toll-free access to an IXC's network. Further, the Commission directed competitive local exchange carriers (CLECs) to provide sufficient information to a CPTSP for the purposes of billing IXCs for toll-free calls originating from the CPTSP's payphones.

¹ An IXC is an incumbent or competitive local exchange carrier that provides connections between local exchanges in different geographic areas.

4. In Telecom Decision 2013-299, the Commission set a default compensation rate of \$0.80 per call for toll-free calls originating from CPTSPs' payphones. That rate was based on a cost study submitted by AFX Communications Inc. (AFX) for toll-free calls originating from its payphones using PALs, and it would apply in the absence of an agreement for another rate.
5. In Telecom Decision 2018-133, the Commission determined that, following a one-year phase-out period, PALs would no longer be mandated in Bell Canada's and TELUS Communications Inc.'s respective operating territories. The Commission took into consideration the decline in demand for PALs and Bell Canada's assertion that regular business lines could offer the same functionality as would PALs with regard to reporting and compensation.

Application

6. SDI Telecom (SDI), a CPTSP, filed an application, dated 5 June 2019, with respect to its public payphones. SDI submitted that in 2015, it switched from Bell Canada's PAL service to that company's less expensive regular business line service, and that since March 2019, Bell Canada has not compensated it for toll-free calls made over Bell Canada's regular business lines or made available the associated toll-free reports. Further, SDI submitted that Rogers Communications Canada Inc. (RCCI) has refused to make available the toll-free report associated with toll-free calls originating from SDI payphones made over RCCI business lines.
7. The Commission received interventions from AMG Vending and Payphones (AMG) and PLDT Canada Inc. (PLDT) in support of SDI's application, while Bell Canada and RCCI opposed it.

Issues

8. The Commission has identified the following issues to be addressed in this decision:
 - Is SDI entitled to compensation for toll-free calls originating from its payphones made over Bell Canada's regular business lines?
 - If so, what is the appropriate rate of compensation?
 - Does Bell Canada have an obligation to make toll-free reports available to SDI with regard to toll-free calls originating from SDI payphones made over Bell Canada's regular business lines ?
 - Does RCCI have an obligation to make toll-free reports available to SDI with regard to toll-free calls originating from SDI payphones made over RCCI's business lines?

Is SDI entitled to compensation for toll-free calls originating from its payphones made over Bell Canada's regular business lines?

Positions of parties

9. SDI submitted that Bell Canada is using loopholes in its General Tariff to avoid compensating SDI for toll-free calls originating from its payphones made over Bell Canada's regular business lines.
10. SDI noted that in Telecom Order 99-1017, the Commission determined that Bell Canada must pay compensation to CPTSPs, at a rate of \$0.25 per call, for toll-free calls originating from CPTSPs' payphones. SDI claimed that CPTSPs cannot continue to operate without the revenues generated by toll-free calls originating from their payphones, noting that it incurs costs related to the maintenance and repair of its telephone equipment.
11. Bell Canada submitted that pay telephone service using regular business lines is not covered in its tariffs, which cover only PALs, and that it is not required to compensate SDI for toll-free calls made over its regular business lines.
12. Bell Canada also submitted that between the publication of Telecom Decision 2018-133 (20 April 2018) and March 2019, its reports for toll-free calls made over PALs had mistakenly included toll-free calls made over regular business lines. It later corrected the reports to include only calls placed over PALs.
13. Bell Canada recognized that the ineligibility of regular business lines for toll-free call compensation may not have been evident when SDI switched from Bell Canada's PAL service to its regular business line service. Bell Canada submitted that, in light of this, it has offered SDI a discounted service charge for the migration of regular business lines back to PALs.
14. AMG submitted that regular business lines provide the same level of service as PALs and that switching from PALs to regular business lines provided relief to CPTSPs and allowed many payphones to remain viable.

Commission's analysis and determinations

15. When the Commission opened the local pay telephone market to CPTSPs in Telecom Decision 98-8, it considered it appropriate to establish a per-call compensation regime to reflect the fact that the network service provider benefitted from the access to its network provided by the CPTSP.
16. The concept of compensation per toll-free call is the result of various Commission determinations, not of commercial agreements or general tariffs. More specifically, in Order 2000-538, the Commission expanded the obligation to compensate and report toll-free calls to include all IXCs as a condition of service pursuant to section 24 of the Act. This obligation was imposed on all services,

whether regulated or forborne from regulation, that were used when CPTSPs provided toll-free access to an IXC's network. Compensation per toll-free call is therefore to be applied in the absence of a specific rate set out in a tariff or an agreement between the parties involved, regardless of the type of line used.

17. In light of the above, and considering that SDI incurs costs associated with toll-free calls made over Bell Canada's regular business lines, the Commission finds that SDI is currently entitled to compensation from Bell Canada for toll-free calls originating from SDI payphones made over Bell Canada-provided regular business lines, in accordance with the condition of service imposed by Order 2000-538.

What is the appropriate rate of compensation?

Positions of parties

18. SDI noted that the Commission set a compensation rate of \$0.25 per toll-free call in Order 2000-538. SDI submitted that it should be able to invoice Bell Canada at that rate for the months for which Bell Canada did not provide compensation for toll-free calls originating from SDI's payphones over Bell Canada-provided regular business lines.
19. Bell Canada submitted that because it has no tariff for its regular business lines, SDI is not entitled to any compensation for toll-free calls made over them.

Commission's analysis and determinations

20. When the Commission applied the default rate of compensation of \$0.25 per toll-free call to all IXCs as a condition of service, it considered that this rate would ensure a minimum level of compensation to CPTSPs while permitting parties to negotiate alternative compensation structures. The Commission did not exempt any specific type of access line from the default rate.
21. The Commission considers that, in the absence of a tariffed rate or an agreement for another rate, the default compensation rate of \$0.25 per toll-free call applies to toll-free calls originating from payphones made over any of Bell Canada's access lines other than PALs, including regular business lines.
22. In light of the above, the Commission finds that the default compensation rate of \$0.25 per toll-free call applies to all of Bell Canada's non-PAL access lines, including regular business lines. The default compensation rate of \$0.80 per toll-free call applies only to toll-free calls made over PALs. However, parties may negotiate an alternative compensation structure.
23. Further, the Commission finds that the compensation rate of \$0.25 per call for toll-free calls made over Bell Canada's regular business lines is applicable for the period during which Bell Canada ceased making payment to SDI for such calls, because Bell Canada's obligation to compensate has been in place since the issuance of Telecom Order 99-1017.

24. The Commission therefore **directs** Bell Canada to pay, in a timely manner, the default rate of \$0.25 per call for all toll-free calls originating from SDI's payphones made over Bell Canada's regular business lines, including the amount that accrued during the period when Bell Canada ceased to compensate SDI for such calls.
25. The Commission notes that Bell Canada may not have sufficient data to determine the compensation due to SDI for certain months after March 2019. In such cases, Bell Canada is to use as a proxy the month, since March 2019, with the highest known number of toll-free calls to determine the monthly compensation due.

Does Bell Canada have an obligation to make toll-free reports available to SDI with regard to toll-free calls originating from SDI payphones made over Bell Canada's regular business lines?

Positions of parties

26. SDI submitted that Bell Canada is no longer making available to SDI the reports for toll-free calls made from its payphones over Bell Canada's regular business lines. It alleged that Bell Canada is using loopholes in its General Tariff to avoid making these reports available.
27. Bell Canada submitted that the use of its regular business lines for payphone service is not covered in its tariff and that it is not required to make reports available for toll-free calls made over its regular business lines, because its tariff covers only reports for toll-free calls made over PALs. Bell Canada suggested that should SDI wish to have toll-free reports for regular business lines made available, it must negotiate that as an additional service.
28. Further, Bell Canada noted that its PAL service includes the option for CPTSPs to purchase a toll-free report, and that SDI could switch its access lines from regular business lines to PALs in order to have toll-free reports made available to it.
29. Bell Canada also indicated that it has no way to validate whether regular business lines are connected to payphones, and that manual labour would be required to determine which lines were in service at which point in time for the purpose of creating the toll-free report.
30. PLDT submitted that Bell Canada should make the toll-free reports available, because they are integral to the ability of CPTSPs to benefit from the pay telephone phone market.

Commission's analysis and determinations

31. When, in Telecom Order 99-1017, the Commission directed Bell Canada to file a tariff indicating that CPTSPs were entitled to receive compensation per toll-free call, it also directed Bell Canada to give CPTSPs a report providing sufficient billing information for them to verify that they were receiving proper compensation.

32. Given the Commission's finding that SDI is entitled to compensation for toll-free calls originating from its payphones made over Bell Canada's regular business lines, Bell Canada must also make toll-free reports available to SDI for such calls. Such reports are vital for SDI to verify that it is receiving the proper compensation.
33. During the proceeding that led to Telecom Decision 2018-133, Bell Canada indicated that CPTSPs could use regular business lines to connect their payphones, and that Bell Canada could make toll-free reports available should the Commission forbear from regulating PAL service. The Commission is therefore of the view that Bell Canada has the capability to make toll-free reports available to CPTSPs that use its regular business lines.
34. In light of the above, the Commission finds that Bell Canada is currently required to make available to SDI the toll-free reports associated with toll-free calls originating from its payphones made over any of Bell Canada's access lines, including regular business lines. Further, Bell Canada must provide to SDI all available toll-free reports associated with the toll-free calls made over Bell Canada-provided regular business lines from the date on which Bell Canada ceased making payment to SDI for such calls.
35. The Commission **directs** Bell Canada and SDI to negotiate the terms and conditions for the provision of these reports. If the parties cannot come to a mutual agreement for the provision of these reports, the terms and conditions related to PALs in Bell Canada's General Tariff will be used.

Does RCCI have an obligation to make toll-free reports available to SDI with regard to toll-free calls originating from SDI payphones made over RCCI's business lines?

Positions of parties

36. SDI submitted that, while RCCI has compensated it for toll-free calls originating from its payphones made over RCCI-provided business lines, RCCI has refused to make available the associated toll-free reports.
37. RCCI submitted that it does not have a tariff in place for the provision of toll-free reports to CPTSPs for calls originating from their payphones and made over RCCI-provided business lines, and that the provision of such reports must be negotiated between the two parties prior to the signature of any commercial agreements. SDI did not request toll-free reports prior to signing a contract with RCCI.

Commission's analysis and determinations

38. In Telecom Order 99-1017, the Commission established the principle that the availability of toll-free reports is required, to enable CPTSPs to verify that they have received appropriate compensation for toll-free calls.

39. In Order 2000-538, the Commission directed CLECs that provide access service to CPTSPs to provide sufficient billing information so that CPTSPs can bill IXCs. The Commission stipulated that this requirement be included in any agreement or contract entered into between CLECs and CPTSPs.
40. Given that RCCI-provided business lines are an access service, and given the absence of a Commission determination indicating otherwise, the above-noted Commission determination in Order 2000-538 applies to all of RCCI's access lines, including RCCI-provided business lines.
41. In light of the above, the Commission finds that RCCI currently has an obligation to make toll-free reports available to SDI for any access lines it provides, and that any commercial agreement between SDI and RCCI for access lines must include this obligation.

Other issues

42. Notwithstanding the foregoing, the Commission recognizes that, in Telecom Decision 2018-133, it sent a strong signal to CPTSPs regarding the potential future of PAL services. Accordingly, the Commission encourages CPTSPs and access line providers to negotiate mutually acceptable business arrangements with respect to the ongoing provision of services to CPTSPs, as well as with respect to any disagreements that may arise, including, for example, disagreements related to payments made as a result of the determinations set out in this decision.

Policy Directions

43. The Commission considers that its determinations in this decision are consistent with the policy objectives set out in subsections 7 (b), (c), (f), and (h)² of the Act, as well as with the 2006 Policy Direction³ and the 2019 Policy Direction⁴.
44. The 2019 Policy Direction provides that when the Commission is exercising its powers and performing its duties under the Act, it should consider how its decisions can promote competition, affordability, consumer interests, and innovation.

² The cited policy objectives are 7(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; (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; (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; and (h) to respond to the economic and social requirements of users of telecommunications services.

³ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

⁴ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

45. The Commission considers that its determinations are in accordance with subparagraph 1(a)(iii) of the 2019 Policy Direction, which indicates that the Commission must ensure that affordable access to high-quality telecommunications services is available in all regions of Canada. The Commission's determinations will provide a level of financial certainty for the pay telephone sector, which is facing a significant decrease in demand, and will enable CPTSPs to continue to offer their services to those who rely on them.
46. The Commission also considers that its determinations clarifying CPTSPs' right to compensation and toll-free reports interfere with the operation of competitive market forces to the minimum extent necessary, in accordance with subparagraph 1(a)(ii) of the 2006 Policy Direction.

Secretary General

Related Documents

- *Bell Canada and TELUS Communications Inc. – Applications for forbearance from the regulation of pay telephone access line services*, Telecom Decision CRTC 2018-133, 20 April 2018
- *AFX Communications – Compensation for toll-free calls payable to competitive payphone service providers*, Telecom Decision CRTC 2013-299, 21 June 2013
- *Compensation for toll-free calls payable to competitive payphone service providers*, Order CRTC 2000-538, 14 June 2000
- *Pay Telephone Compensation per Call for Toll-free Calls*, Telecom Order CRTC 99-1017, 22 October 1999
- *Local Pay Telephone Competition*, Telecom Decision CRTC 98-8, 30 June 1998