



Telecom Decision CRTC 2019-433

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AFX Communications Inc. – Application with respect to reports and compensation for toll-free calls over payphones

*The Commission **approves** the application for relief made by AFX Communications Inc. (AFX) and **directs** Bell Canada to provide the monthly reports for toll-free calls made from AFX payphones connected to Bell Canada’s business lines. The Commission determines that the applicable compensation is \$0.25 per call for lines other than pay telephone access lines.*

Background

1. Pay telephone access line (PAL) service is a wholesale service that incumbent local exchange carriers (ILECs) provide to competitive pay telephone service providers (CPTSPs). It provides CPTSPs with access to the telephone network and enables them to provide retail pay telephone service.
2. In Telecom Order 99-1017, the Commission approved, on the basis of a cost study, a Bell Canada tariff notice that introduced per-call usage fees of \$0.25 for toll-free access from its public and semi-public payphones. In that order, the Commission also directed Bell Canada to file a tariff proposing to provide CPTSPs with reports for toll-free calls made from their payphones.
3. In Order 2000-538, the Commission imposed a condition of service pursuant to section 24 of the *Telecommunications Act* (the Act): in the absence of a specific compensation rate, defined in a tariff or a contract, for CPTSPs that provide toll-free access to an interexchange carrier’s (IXC)¹ network, Order 2000-538 set a default rate of \$0.25 per toll-free call and certain default conditions.
4. In Telecom Decision 2013-299, in response to an application made by AFX Communications Inc. (AFX), the Commission increased this compensation to \$0.80 per toll-free call, on the basis of a cost study filed by AFX that took the cost of PALs into consideration.
5. In Telecom Decision 2018-133, the Commission determined that, given the declining demand for PALs and the fact that they could easily be replaced with business lines, Bell Canada’s PAL services would no longer be mandated in its operating territories following a one-year phase-out period. Following the phase-out period, Bell Canada had to decide whether to continue to make their PAL services available or no longer provide them.

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

6. The Commission's decision to no longer mandate PALs took into consideration Bell Canada's assertion that business lines could provide the same functionalities as would PALs with regard to reporting and per call compensation, should the PAL service rate be eliminated or increased.

Application

7. On 30 May 2019, AFX, a CPTSP operating in Quebec, filed an application with the Commission for relief against Bell Canada, claiming compensation of \$0.80 per toll-free call and requesting the provision of monthly reports that would enable them to bill IXCs for toll-free calls originating from AFX payphones and made over Bell Canada's network.
8. More specifically, AFX criticized Bell Canada's decision, in March 2019, to stop paying compensation of \$0.80 per call and to no longer provide monthly reports for AFX payphones connected to Bell Canada's regular business lines.
9. Apart from Bell Canada's response, no interventions were received in this proceeding.

Issues

10. The Commission has identified the following issues to be addressed in this decision:
 - Is AFX entitled to compensation for toll-free calls originating from its payphones and made over Bell Canada's regular business lines?
 - If so, what would be the appropriate rate of compensation?
 - Is AFX entitled to receive monthly reports enabling it to obtain compensation for toll-free calls originating from its payphones and made over Bell Canada's regular business lines?

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

Positions of parties

11. AFX submitted that since June 2000, Bell Canada has been paying compensation per toll-free call and providing the associated monthly reports, for both PALs and regular business lines.
12. However, AFX submitted that in March 2019, Bell Canada decided, unilaterally and without notice, to stop providing per-call compensation and monthly reports for toll-free calls made over its regular business lines.
13. AFX also stated that no agreement for the payment of compensation had been negotiated between AFX and Bell Canada, and submitted that compensation of \$0.80 per toll-free call should apply pursuant to Telecom Decision 2013-299.

14. According to AFX, the principle of compensation per toll-free call established in previous Commission decisions is linked to payphone use, regardless of the line used, whether a PAL or a regular business line.
15. Bell Canada did not dispute the principle that compensation is owed for toll-free calls originating from payphones and made over a PAL. However, Bell Canada submitted that compensation for lines other than PALs, such as regular business lines, requires a commercial agreement between the parties.
16. Bell Canada also submitted that only calls appearing in a toll-free call report are eligible for compensation, and that according to its tariff, the report includes only toll-free calls made over PALs. For other types of lines, such as regular business lines, functionalities specific to PALs must be added through negotiation, which no CPTSP has undertaken to date.

Commission's analysis and determinations

17. The principle 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 requirement to provide compensation and reports by imposing this requirement on all IXC's as a condition of service under 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 IXC networks. Compensation per toll-free call therefore applies in the absence of a specific rate or tariff, regardless of the type of line used.
18. While it is true that the Commission has never explicitly applied these determinations to regular business lines, the Commission's previous decisions show that compensation is necessary for CPTSPs to recover costs related to toll-free calls originating from their payphones, regardless of the type of access line used. The type of line affects only the rate of compensation.
19. In light of the above, the Commission concludes that AFX is entitled to compensation for toll-free calls originating from its payphones and made over Bell Canada's regular business lines.

What is the appropriate rate of compensation?

Positions of parties

20. AFX submitted that the applicable rate of compensation for all types of toll-free calls originating from its payphones is the rate of \$0.80 per call set by the Commission in Telecom Decision 2013-299. According to AFX, the cost of the line has never been taken into consideration when compensation is calculated; rather, the rate of compensation depends on the nature of the call and the use of a payphone.
21. Furthermore, AFX claimed that the compensation should be applied retroactively to March 2019, when Bell Canada stopped paying compensation.

22. Bell Canada argued that the costs incurred by CPTSPs to obtain PALs are reflected in the rate of compensation, which was set in Telecom Decision 2013-299 on the basis of AFX's cost study. According to Bell Canada, the cost study, which led to the establishment of the \$0.80 compensation rate, did not take into consideration the use of lines that cost less than PALs, namely, regular business lines.
23. For these reasons, Bell Canada submitted that, should the Commission decide that compensation is owed, the only fair solution would be to revise the rate of compensation for toll-free calls made over regular business lines.
24. Bell Canada also offered a discounted service charge to AFX for the migration from regular business lines to PALs.

Commission's analysis and determinations

25. In the proceeding that led to Telecom Decision 2013-299, in which the Commission set the rate of compensation at \$0.80 per toll-free call, AFX filed with the Commission a cost study that took into consideration the cost of the lines used by AFX, which at the time were PALs. The cost of the line represented a considerable proportion of the costs incurred by AFX. Consequently, the Commission is of the opinion that, contrary to AFX's arguments, it would be inappropriate to apply the compensation rate of \$0.80 per toll-free call to calls made over regular business lines, which are offered at lower costs, since this rate was established on the basis of data specific to PALs.
26. In Telecom Order 99-1017, the Commission set a compensation rate of \$0.25 per toll-free call for calls made over Bell Canada's lines, and in Order 2000-538, it set a default rate of \$0.25 per toll-free call made over the lines of providers other than Bell Canada, in order to guarantee a minimum level of compensation for CPTSPs. These default compensation rates were not established in the context of a specific access line and therefore apply to payphones connected to the Bell Canada network via lines other than PALs, such as regular business lines.
27. Consequently, the Commission concludes that the default compensation rate of \$0.25 per toll-free call set in Telecom Order 99-1017 applies to Bell Canada lines other than PALs that enable CPTSPs to access the telephone network, including regular business lines. This compensation rate applies to all toll-free calls originating from AFX payphones and made over regular business lines. It also applied when Bell Canada stopped paying compensation in March 2019, since the requirement to pay compensation has been in force since Telecom Order 99-1017. The compensation rate of \$0.80 per toll-free call continues to apply to PALs. Moreover, parties may negotiate a different rate of compensation.
28. The compensation owed shall be paid by Bell Canada as soon as possible and shall include the arrears that have accrued since Bell Canada stopped paying compensation for toll-free calls made over lines other than PALs. For any month since March 2019 for which Bell Canada does not have the necessary billing data to calculate the compensation owed, it 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.

Is AFX entitled to receive monthly reports allowing it to obtain compensation for toll-free calls originating from its payphones and made over Bell Canada's regular business lines?

Positions of parties

29. AFX submitted that Telecom Order 99-1017 required Bell Canada to provide AFX with full reports of toll-free calls for all payphones connected to its network so that the CPTSPs can bill the IXC. According to AFX, nothing in that order makes this requirement conditional on the type of line used.
30. AFX also replied to Bell Canada's argument that reports are not automatically available for toll-free calls made over lines other than PALs. AFX indicated that Bell Canada provided reports automatically from 2014 to March 2019, and that these reports included toll-free calls made over both PALs and regular business lines.
31. Finally, regarding Bell Canada's argument that it cannot tell when a CPTSP uses regular business lines to connect its payphones, AFX submitted that until March 2019, it had always been clear to Bell Canada that AFX used regular business lines to connect payphones.
32. Bell Canada acknowledged that between the publication date of Telecom Decision 2018-133 and March 2019, the reports mistakenly included calls made from non-PALs. Upon noting the errors, Bell Canada corrected the reports to include only PALs.
33. In addition, Bell Canada indicated that in Telecom Order 99-1017, the Commission directed Bell Canada to file a tariff in order to provide CPTSPs with reports on toll-free calls originating from their payphones. Following that order, Bell Canada modified its tariff to provide billing information. However, Bell Canada submitted that this service included only the costs for providing billing information for toll-free calls originating from payphones connected to PALs. Such provisions for regular business lines do not exist in its General Tariff.
34. Bell Canada also indicated that, even though reports for regular business lines had been provided in error since at least April 2018, considerable development efforts would be required to provide such reports for regular business lines.

Commission's analysis and determinations

35. In Telecom Order 99-1017, the Commission determined that ILECs must provide the billing information required by CPTSPs in order to be able to invoice IXCs. This principle remains in effect; the Commission has issued no decisions that depart from it.
36. Given that the Commission has concluded that compensation per toll-free call also applies to lines other than PALs, and that the provision of a monthly report is required in order for CPTSPs to obtain such compensation, Bell Canada must provide AFX with the reports of the toll-free calls originating from its payphones and made over Bell Canada's regular business lines.

37. In the proceeding that led to Telecom Decision 2018-133, Bell Canada noted that if its application for forbearance from the regulation of PALs were accepted, it would be prepared to install PAL specifications for its regular business lines. The Commission is therefore of the view that Bell Canada should now be able to put in place the necessary mechanisms for the compensation regime for regular business lines.
38. Lastly, with respect to Bell Canada's argument that significant development efforts would be required to establish a mechanism that would enable it to verify when payphones are connected to regular business lines, Bell Canada was unable to demonstrate the way in which such efforts would be considerable.
39. Accordingly, the Commission **approves** AFX's application and **directs** Bell Canada to provide reports to AFX for all toll-free calls originating from its payphones and made over lines belonging to Bell Canada, including both PALs and lines other than PALs such as regular business lines.
40. The Commission also **directs** Bell Canada to provide AFX with the reports available for the months for which it did not compensate AFX for toll-free calls originating from AFX's payphones and made over Bell Canada's regular business lines.
41. The Commission **directs** Bell Canada and AFX 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.
42. In light of the above, the Commission
- determines that AFX is entitled to compensation for toll-free calls originating from its payphones and made over Bell Canada's regular business lines;
 - determines that the default compensation rate of \$0.25 per toll-free call applies to Bell Canada's lines other than PALs, including the period since March 2019 during which Bell Canada ceased to compensate AFX. Such compensation applies to all toll-free calls originating from AFX payphones and made over Bell Canada's regular business lines. The compensation rate of \$0.80 per toll-free call continues to apply to calls made over PALs;
 - **approves** AFX's application and **directs** Bell Canada to provide AFX with reports for all toll-free calls originating from its payphones and made over Bell Canada's lines, including both PALs and lines other than PALs such as regular business lines; and
 - **directs** Bell Canada to provide AFX with the reports available for the months for which it paid no compensation to AFX for toll-free calls originating from AFX payphones and made over Bell Canada's regular business lines. The compensation owed shall be paid by Bell Canada as soon as possible and shall include the arrears that have accrued since Bell Canada stopped paying compensation for toll-free calls made over lines other than PALs. If, for any month, Bell Canada does not have

sufficient data to determine compensation, it is to use as a proxy the month, since March 2019, with the highest known number of toll-free calls to determine compensation due.

43. 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.
44. The Commission invites the parties to continue discussions to find mutually acceptable alternative solutions to their current disagreement.

Policy Direction

45. 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 Direction.⁴
46. 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.
47. The Commission considers that its determinations are consistent 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 to the pay telephone sector, which is facing a significant decrease in demand, and will enable CPTSPs to continue to provide their services to those who rely on them.
48. 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

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, December 14, 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, June 17, 2019

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