



## Telecom Decision CRTC 2022-281

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Reference: Part 1 application posted on 4 November 2021

Ottawa, 13 October

*Public record: 8650-S191-202107656*

### **SDI Telecom (SDI) – Application to order Bell Canada and Rogers Communications Canada Inc. to pay SDI’s outstanding invoices and for the Commission to implement flat-rate compensation for toll-free calls made from pay telephones**

#### **Summary**

SDI Telecom (SDI) requested that the Commission (i) order Bell Canada and Rogers Communications Canada Inc. (RCCI) to pay charges to SDI for toll-free call compensation within 30 days, (ii) implement flat-rate compensation for toll-free calls made from pay telephones using any line type and from any Canadian carrier and (iii) find that Bell Canada has subjected SDI to unjust discrimination or an unreasonable disadvantage.

The Commission notes that it has forborne from the regulation of pay telephone access line services and has adequately addressed in various decisions the policy concerns related to toll-free compensation. Therefore, disputes related to compensation for unpaid invoices and related matters are more appropriately dealt with by the judicial system. The Commission further notes that this matter is currently before the courts. Accordingly, the Commission **denies** SDI’s request to order Bell Canada and RCCI to pay charges to SDI for toll-free call compensation within 30 days.

Regarding SDI’s filing about a flat rate toll-free call compensation regime, there is a lack of evidence provided to support the company’s request, and such information would be more appropriate within the scope of a formal notice of consultation regarding the Commission’s pay telephone regulatory framework. Given that the relevant circumstances that existed when the Commission issued its previous decisions have not changed, a notice of consultation to examine the pay telephone regulatory framework is not warranted. Therefore, the Commission **denies** SDI’s request.

The Commission considers that SDI has not presented any convincing evidence to support its claims that Bell Canada subjected it to unjust discrimination or an undue disadvantage and therefore **denies** SDI’s request to find that Bell Canada is in contravention of subsection 27(2) of the *Telecommunications Act*.

The Commission **approves** Bell Canada’s and RCCI’s procedural requests to exclude evidence provided after the close of record of the proceeding as an intervention by SDI.

The Commission also **denies** SDI's procedural request for a Commission order against Bell Canada's disconnection of SDI's remaining pay telephone access lines.

Potential applicants should note that the Commission will return any applications that raise issues that have already been determined by the Commission on this matter.

## **Background**

1. As a competitive pay telephone service provider (CPTSP) operating pay telephones in Toronto and surrounding areas, SDI Telecom (SDI) purchases regular business lines and pay telephone access line (PAL) services from Bell Canada to enable its customers to access the telephone network. The business line or PAL service provides SDI with access to the public switched telephone network, allowing it to provide retail pay telephone service. SDI also receives compensation for toll-free calls made from its pay telephones by invoicing the interexchange carriers (IXCs, or long distance carriers) over whose network the call was sent. The information SDI uses to invoice the IXCs is provided by Bell Canada's monthly PAL or business line reports.
2. The Commission initially established the regulatory framework for local competition in the pay telephone service market in Telecom Decision 98-8. In that decision, the Commission adopted the principle that all CPTSPs should be compensated for toll-free calls placed from their pay telephones to access a long distance carrier's network. The Commission considered it appropriate for CPTSPs to negotiate their compensation rates for toll-free calls with the long distance carriers.
3. Pursuant to Telecom Decision 98-8, it was necessary to account for cases where CPTSPs could not negotiate a mutually acceptable rate with long distance carriers. In Telecom Order 99-1017 and Order 2000-538, the Commission established the default compensation rates for toll-free calls. In those decisions, the Commission stated that compensation is necessary for CPTSPs to recover costs related to toll-free calls originating from their pay telephones.
4. In Telecom Decision 2018-133, the Commission determined that following a one-year phase-out period, PAL services 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 PAL services and Bell Canada's assertion that regular business lines could offer the same functionality as PAL services with regard to reporting and compensation.
5. In June 2019, SDI filed an application with the Commission after Bell Canada ceased compensating SDI for toll-free calls made over Bell Canada's regular business lines and did not make the associated toll-free reports available. In the resulting decision, Telecom Decision 2019-432, the Commission confirmed the per-call compensation regime for toll-free calls over business lines<sup>1</sup> and directed Bell Canada to compensate SDI accordingly and to provide SDI with the associated toll-free reports. Following

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<sup>1</sup> Business line toll-free calls were to be compensated at \$0.25 per call, while PAL toll-free calls were to be compensated at \$0.80 per call.

that decision, Bell Canada applied the toll-free call compensation charges established by the Commission for the invoices SDI generates<sup>2</sup> with respect to toll-free calls and provided the monthly reports necessary to bill other IXCs.

6. On 4 September 2020, the Commission received an application from Bell Canada requesting Commission approval to withhold payment of disputed charges from SDI for toll-free call compensation. Bell Canada alleged that the disputed charges were intentionally and artificially inflated by SDI. Bell Canada also requested approval to disclose SDI's confidential information to other IXCs in order for them to accurately validate SDI's invoices and detect illegitimate charges.
7. On 8 February 2021, Commission staff issued a [letter](#) returning Bell Canada's aforementioned application. Commission staff explained that the Commission had forborne from the regulation of PAL services and had adequately addressed the policy concerns related to toll-free compensation in various decisions. Commission staff added that disputes related to the legitimacy of calls or the payment of outstanding invoices were better dealt with by the judicial system.

### **Application**

8. On 31 August 2021, the Commission received a Part 1 application from SDI in which the company requested the Commission (i) order Bell Canada and Rogers Communications Canada Inc. (RCCI) to pay charges to SDI for toll-free call compensation within 30 days, (ii) implement flat-rate compensation for toll-free calls made from pay telephones using any line type and from any Canadian carrier, and (iii) find that Bell Canada has subjected SDI to unjust discrimination or an unreasonable disadvantage.
9. The Commission received replies to SDI's application from Bell Canada and RCCI.
10. On 6 December 2021, SDI provided further comments, which included a summary of unpaid invoices by Bell Canada and RCCI and a proposal for how a new flat-rate monthly compensation regime could work.

### **Procedural requests**

11. On 7 December 2021, Bell Canada filed a procedural request to have the Commission strike SDI's additional comments from the record. In particular, Bell Canada referred to section 24 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure), which prohibits applicants from filing supplementary documents related to their application after the application has been posted on the Commission's website.

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<sup>2</sup> Bell Canada stated that it had not been compensating SDI for its invoices given that calculations of several overpaid amounts and disputed invoices revealed that SDI was overcompensated in the past. Bell Canada's position is that the amounts overpaid to SDI offset the invoices received by Bell Canada.

12. Bell Canada also referred to section 27 of the Rules of Procedure, which states that an applicant may file a reply to an answer to its application, but it does not state that an applicant can add new evidence or arguments after the respondents have submitted their own evidence. Bell Canada stated that the Commission should not rely on section 7 of the Rules of Procedure to vary its rules to include these comments as part of the record. Bell Canada added that the information that SDI provided on 6 December 2021 was available to SDI when it filed its application, and varying the rules would only reward SDI's repetitive disregard for the Commission's procedural rules.
13. On 7 December 2021, RCCI filed a procedural request in support of Bell Canada's arguments and request.
14. SDI did not respond on the public record of the application.
15. On 31 August 2022, the Commission received another application from SDI, in which it requested that the Commission urgently order Bell Canada not to disconnect SDI's pay telephone services lines. Commission staff noted that this application was related to SDI's ongoing Part 1 application. Given that SDI is a self-represented litigant and the request on 31 August 2022 was for urgent relief, Commission staff considered this to be a procedural request within the scope of SDI's ongoing Part 1 application.
16. Bell Canada filed an answer with the Commission on 12 September 2022, which included calculations of its unpaid invoices, statements regarding the delay allowed to SDI, and several references to its tariff regarding disconnection for non-payment of services. SDI emailed Commission staff a reply to Bell Canada's response on 19 September 2022. It contained similar arguments as the ones filed in their application and in their procedural request, in which the company accused Bell Canada and RCCI of discrimination against SDI.

## **Positions of parties**

### **SDI**

17. Regarding its request that the Commission order Bell Canada and RCCI to pay charges to SDI for toll-free call compensation, SDI submitted that Bell Canada has not paid SDI since December 2018, and that Bell Canada has therefore failed to comply with Telecom Decision 2019-432. More specifically, it failed to comply with paragraphs 24 and 25, in which the Commission (i) directed 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 pay telephones 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 and (ii) stated that Bell Canada was to use, as a proxy, the month with the highest known number of toll-free calls since March 2019 to determine the monthly compensation due.

18. With respect to its request that the Commission implement flat-rate compensation for toll-free calls made from pay telephones, SDI provided arguments regarding the advantages and flexibility of such a compensation regime.
19. Concerning SDI's claims against Bell Canada for unjust discrimination, SDI submitted arguments related to Bell Canada's bad faith in its commercial negotiations, Bell Canada's payment to AFX Communications (AFX) following Telecom Decision 2019-433, and Bell Canada's pattern of behaviour related to non-compliance with the *Telecommunications Act* (the Act).<sup>3</sup>

### **Bell Canada's reply**

20. In its reply, Bell Canada submitted that in accordance with Telecom Decision 2019-432, it calculated the amounts due to SDI for toll-free calls and determined that SDI in fact owed Bell Canada, primarily because Bell Canada had been paying SDI an \$0.80 fee per call for pay telephones connected via regular business lines rather than the \$0.25 fee established by the Commission.
21. Bell Canada submitted that SDI commenced two actions against Bell Canada in Ontario's Small Claims Court for toll-free compensation that allegedly remain unpaid. Bell Canada noted that SDI acknowledged the court's jurisdiction by pleading in the first claim that the Small Claims Court has full jurisdiction to rule in this matter.
22. Bell Canada submitted that consistent with the Commission staff letter issued 8 February 2021, the financial dispute between SDI and itself is currently before the courts. It would be duplicative and a confusing precedent for the Commission to reverse course and rule on the matter.
23. In response to SDI's request that the Commission implement new flat-rate compensation for toll-free calls made from pay telephones, Bell Canada submitted that it opposes this proposal on a number of grounds. First, there is no evidence that the current regime is generally problematic for any party except SDI, and there is certainly not sufficient evidence to warrant an overhaul of the Commission's recently established framework. Second, the competitive pay telephone segment, like the overall pay telephone sector, has been in sharp decline. Third, a reform of the compensation model, this late into the life-cycle of pay telephones, would be inefficient and unwarranted, particularly in light of the lack of evidence for such a review.
24. Regarding SDI's procedural requests, Bell Canada submitted that it opposes those requests based on SDI's PAL account arrears and Bell Canada's General Tariff terms

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<sup>3</sup> In Telecom Decision 2021-131, the Commission found that Bell Canada had breached clauses of its National Services Tariff and therefore breached section 24 and subsections 25(1) and 27(2) of the Act by requiring Videotron to comply with construction standards that Bell Canada itself had not complied with.

related to disconnection for non-payment.<sup>4</sup> Bell Canada also referred to the Commission staff letter issued 8 February 2021, in which the Commission returned its application about the dispute with SDI and the ongoing court proceedings over the same dispute. Bell Canada submitted that it would be duplicative for the Commission to hear this matter while it is also in front of the courts and inconsistent with Commission staff's letter issued 8 February 2021. Bell Canada further submitted that it served SDI a disconnection notice in June 2021 and subsequently granted SDI a lengthy delay<sup>5</sup> to act upon this notice given the ongoing proceeding in Small Claims Court. Bell Canada added that SDI has not taken measures to respond to the notice during that delay.

### **RCCI's reply**

25. In response to SDI's request that the Commission order Bell Canada and RCCI to pay charges to SDI for toll-free call compensation, RCCI submitted that SDI's application included allegations relating to conduct by Bell Canada in respect of SDI invoices. However, there are no facts or allegations in the application relating to unpaid invoices by RCCI. Accordingly, there are no grounds in the application for relief against RCCI.
26. RCCI argued that more generally, disputes regarding CPTSP invoices for toll-free calls are more appropriately addressed by the courts rather than the Commission. RCCI pointed to the Commission staff letter issued on 8 February 2021, in which the Commission stated that such matters and any related issues were better dealt with by the judicial system. RCCI submitted that SDI's request for an order directing RCCI to pay SDI toll-free invoices should be dismissed on the same basis.
27. In response to SDI's request that the Commission implement flat-rate compensation for toll-free calls made from pay telephones, RCCI argued that SDI's application provides no basis for how a just and reasonable flat fee per pay telephone for toll-free calls could be established or allocated between IXCs. In any event, this is an issue that cannot be addressed by way of an application that is served on Bell Canada and RCCI only.

### **SDI's reply to Bell Canada regarding SDI's procedural request**

28. In response to Bell Canada's reply, SDI submitted that it does not have the financial capacity to obtain legal representation in order to bring its requested order against Bell Canada to another level of the Ontario Superior Court of Justice and wanted the Commission to intervene to prevent the closure of SDI's remaining PAL services with Bell Canada.

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<sup>4</sup> Bell Canada submitted that as per article 22 of the Terms of Service of Bell Canada's General Tariff, Bell Canada can issue a 30-day disconnection notice to SDI for non-payment. Bell Canada added that SDI's PAL account has been in arrears since February 2020.

<sup>5</sup> The delay will last until Small Claims Court makes a ruling on 18 October 2022.

29. SDI submitted that it attempted to negotiate with Bell Canada and RCCI regarding the payment of disputed invoices, to no avail. SDI added that Bell Canada and RCCI are acting in bad faith and in contravention of subsection 27(2) of the Act.

### **Commission's analysis**

#### **SDI's request for payments**

30. The Commission notes that it has forborne from the regulation of PAL services and has adequately addressed in various decisions the policy concerns related to toll-free compensation.<sup>6</sup> Moreover, in paragraph 42 of Telecom Decision 2019-432, the Commission encouraged CPTSPs and access line providers to negotiate mutually acceptable business arrangements.

31. Therefore, to the extent that the parties cannot agree on the determination of the legitimacy of certain calls and whether SDI should be compensated for them as a result, the Commission considers that these matters and any related issues are better dealt with by the judicial system.

32. Moreover, the ongoing legal proceedings mentioned by all parties indicate that this matter is already before the courts.

33. In light of the above, the Commission **denies** SDI's request to order Bell Canada and RCCI to pay charges to SDI for toll-free call compensation within 30 days.

#### **SDI's request for the Commission to implement flat-rate compensation for toll-free calls**

34. Regarding SDI's filing about a flat rate toll-free call compensation regime, there is a lack of evidence provided to support the company's request, and such information would be more appropriate within the scope of a formal notice of consultation regarding the Commission's pay telephone regulatory framework. Given that the relevant circumstances that existed when the Commission issued its previous decisions have not changed, a notice of consultation to examine the pay telephone regulatory framework is not warranted. Therefore, the Commission **denies** SDI's request.

#### **SDI's claims of unjust discrimination and undue disadvantage under subsection 27(2) of the Act**

35. SDI supported its unjust discrimination and undue disadvantage claims against Bell Canada with the information that a payment to AFX was made for similar pay telephone compensation matters as a result of Telecom Decision 2019-433, but that Bell Canada refused to pay SDI. The compensation payment between AFX and Bell Canada, as presented in SDI's application, is a unique, distinct, and specific

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<sup>6</sup> The Commission forbore from the regulation of PAL services in Telecom Decision 2018-133 and issued decisions related to toll-free compensation in Telecom Decisions 2018-133, 2019-432, and 2019-433, among others.

commercial relationship that has no bearing on Bell Canada and SDI's own commercial dispute. Therefore, it cannot be considered as evidence of discrimination or disadvantage.

36. The Commission considers that SDI has not presented any convincing evidence to support its claims that Bell Canada subjected it to unjust discrimination or an undue disadvantage and therefore **denies** SDI's request to find that Bell Canada is in contravention of subsection 27(2) of the Act.

#### **Bell Canada's and RCCI's procedural requests to exclude evidence provided as an intervention by SDI**

37. According to section 24 of the Rules of Procedure, applicants are prohibited from filing supplementary documents related to their application after the application has been posted on the Commission's website. The Commission does not find that public interest or fairness warrant allowing the additional information provided by SDI on 6 December 2021 to be added to the record of the proceeding because it was not material to the analysis of this application.

38. Therefore, the Commission **approves** Bell Canada's and RCCI's procedural requests.

#### **SDI's procedural request for an order against Bell Canada's disconnection of SDI's remaining PALs**

39. On the basis of the analysis of the commercial dispute between Bell Canada and SDI, the Commission's intervention is not appropriate. The Commission already forbore from PAL services and stated that parties should negotiate commercially for the provision of such services.

40. Therefore, the Commission **denies** SDI's procedural request for a Commission order against Bell's Canada disconnection of SDI's remaining PALs.

#### **Conclusion**

41. The Commission **denies** SDI's request to order Bell Canada and RCCI to pay charges to SDI for toll-free call compensation within 30 days.

42. Regarding SDI's filing about a flat rate toll-free call compensation regime, there is a lack of evidence provided to support the company's request, and such information would be more appropriate within the scope of a formal notice of consultation regarding the Commission's pay telephone regulatory framework. Given that the relevant circumstances that existed when the Commission issued its previous decisions have not changed, a notice of consultation to examine the pay telephone regulatory framework is not warranted. Therefore, the Commission **denies** SDI's request.

43. The Commission considers that SDI has not presented any convincing evidence to support its claims that Bell Canada subjected it to unjust discrimination or an undue

disadvantage and therefore **denies** SDI's request to find that Bell Canada is in contravention of subsection 27(2) of the Act.

44. The Commission **approves** Bell Canada's and RCCI's procedural requests to exclude evidence provided after the close of record of the proceeding as an intervention by SDI.
45. The Commission also **denies** SDI's procedural request for a Commission order against Bell Canada's disconnection of SDI's remaining PALs.

### **Notice**

46. The Commission will return any applications that raise issues that have already been determined by the Commission related to Telecom Decision 2019-432 and/or commercial negotiations related to business lines and PAL service between Bell Canada and SDI. Nevertheless, the Commission would consider an application that raises entirely new facts or requests a determination not yet covered by this decision and previous decisions.

### **Policy Directions**

47. The 2006 Policy Direction<sup>7</sup> requires that the Commission, in implementing the telecommunications policy objectives set out in section 7 of the Act, rely on market forces to the maximum extent feasible as the means of achieving the policy objectives. Further, when relying on regulation, the Commission should use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.
48. The Commission's determination to deny SDI's request regarding payment of disputed invoices is consistent with the 2006 Policy Direction in that the determination maintains the requirement for Bell Canada and SDI to negotiate mutually acceptable business arrangements with respect to the ongoing provision of services to CPTSPs and any disagreements that may arise and does not introduce any new regulatory measures.
49. The Commission's determinations also 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.

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<sup>7</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

50. Additionally, the 2019 Policy Direction<sup>8</sup> provides that when the Commission exercises its powers and performs its duties under the Act, it should consider how its decisions can promote competition, affordability, consumer interests, and innovation.
51. The Commission's determination to deny SDI's application is consistent with subparagraphs 1(a)(i) and (ii) of the 2019 Policy Direction, which state that the Commission should consider the extent to which its decisions (i) encourage all forms of competition and investment and (ii) foster affordability and lower prices, particularly when telecommunications service providers exercise market power. The Commission's determinations will maintain the determinations of Telecom Decision 2019-432, which encourage both competition and affordability going forward by enabling Bell Canada to maintain and improve the manner in which it delivers pay telephone services to CPTSPs and by enabling CPTSPs to continue to offer their services to those who rely on them.

Secretary General

### **Related documents**

- *Videotron Ltd. – Application concerning the issuance of orders related to the processing and granting by Bell Canada of access permit applications for support structures*, Telecom Decision CRTC 2021-131, 16 April 2021
- *AFX Communications – Application with respect to reports and compensation for toll-free calls over payphones*, Telecom Decision CRTC 2019-433, 20 December 2019
- *SDI Telecom – Application with respect to reports and compensation regarding toll-free calls over pay telephones*, Telecom Decision CRTC 2019-432, 20 December 2019
- *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
- *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

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<sup>8</sup> *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