



Telecom Decision CRTC 2023-417

PDF version

Reference: Part 1 application posted on 23 December 2022

Ottawa, 20 December 2023

Public record: 8662-B2-202209973

Bell Canada – Application to review and vary Telecom Regulatory Policy 2018-377 and Telecom Decision 2022-341

Summary

The Commission received an application from Bell Canada to review and vary Telecom Regulatory Policy 2018-377, which established the Broadband Fund. The Broadband Fund helps provide Canadians living in rural, remote, and Indigenous communities with access to high-speed Internet and cell phone service. Bell Canada also requested that the Commission review and vary Telecom Decision 2022-341, which set the final 2022 and interim 2023 National Contribution Fund contribution rates.

Bell Canada asked the Commission to (i) immediately cease collecting additional contributions for the Broadband Fund until the Commission has concluded the policy review that it announced in Telecom Regulatory Policy 2018-377 and ultimately launched in Telecom Notice of Consultation 2023-89; and (ii) release all funds retained in the Broadband Fund that were not awarded to any party at the date of the application.

Bell Canada argued that (i) there has been a significant increase in government funding available to broadband providers; (ii) the Commission has collected significantly more than the amounts it has awarded through the Broadband Fund and will not be able to distribute the total amounts already collected; and (iii) collecting an additional \$150 million in 2023 is not necessary to achieve the Broadband Fund's intended purpose.

The Commission **denies** Bell Canada's application.

Through the Broadband Fund, the Commission contributes to a broad effort by federal, provincial, and territorial governments to address the gap in connectivity in underserved rural, remote, and Indigenous communities across Canada. It is important that the Broadband Fund continue to help Canadians access affordable high-speed Internet and mobile wireless services. This is consistent with the objective outlined in paragraph 7(b) of the *Telecommunications Act*, which is to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada.

The Commission launched its third call for Broadband Fund applications in Telecom Notice of Consultation 2022-325. The amount of funding requested through the applications received far exceeds the amount collected by the Broadband Fund. In addition, the Commission must maintain sufficient funds to approve additional funding requests that are needed to complete projects that have already commenced. Accordingly, the Commission has determined that the \$150 million in funding to be collected in 2023 is appropriate.

The Commission notes that Bell Canada's application was filed shortly before the launch of the Broadband Fund policy review on 23 March 2023. In this policy review, the Commission is considering a number of the issues that Bell Canada raised in its application, including the appropriate amount of funding to collect on an annual basis going forward. Therefore, the Commission considers that a review and vary of Telecom Regulatory Policy 2018-377 would duplicate its ongoing review of future annual funding amounts within the broader policy review.

Background

1. In Telecom Regulatory Policy 2018-377, the Commission established the Broadband Fund. Through the Broadband Fund, the Commission contributes to a broad effort by federal, provincial, and territorial governments to address the gap in connectivity in underserved areas of Canada. In that regulatory policy, the Commission reiterated the determination made in Telecom Regulatory Policy 2016-496, which stated that for the first five years of the Broadband Fund, a maximum of \$750 million would be distributed as follows: no more than \$100 million in the first year, which would increase by \$25 million annually over the following four years to reach an annual cap of \$200 million.
2. In Telecom Decision 2022-341, the Commission set both the final contribution rate for 2022 and the interim rate for 2023 to 0.46% of contribution-eligible revenues. Contributions are paid by Canadian telecommunications companies earning more than \$10 million in contribution-eligible revenues. Each year, the Commission finalizes the revenue-percent charge to ensure the amount of money collected is sufficient to meet Video Relay Service (VRS) and Broadband Fund requirements. The Commission also sets an amount on an interim basis for the following year based on projections. The Commission stated in Telecom Decision 2022-341 that, because the Broadband Fund policy review had not yet been completed, \$150 million would be made available from the Broadband Fund in 2023 on an interim basis.
3. In Telecom Notice of Consultation 2023-89, the Commission launched its Broadband Fund policy review and determined that it would maintain a cap of \$150 million for annual distribution until the conclusion of that policy review.

4. The National Contribution Fund (NCF) is a fund established by the Commission that currently administers both VRS and the Broadband Fund. The NCF is overseen by the Canadian Telecommunications Contribution Consortium Inc. (CTCC)¹ and Commission staff to ensure that the proper amount is contributed by all contribution fee-payers to the NCF in accordance with the Commission's policies and decisions.

Application

5. On 21 December 2022, Bell Canada filed an application to review and vary Telecom Regulatory Policy 2018-377, citing a fundamental change in circumstances since the publication of that regulatory policy. Bell Canada also included in its application a request to review and vary Telecom Decision 2022-341, citing an error in fact. Bell Canada filed its application pursuant to section 62 of the *Telecommunications Act* (the Act) and Part 1 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure).
6. Bell Canada also requested a stay with respect to the revenue-percentage charge pertaining to the Broadband Fund for 2023 until the Commission ruled on its application. The request for a stay was denied by the Commission on 18 April 2023 via Secretary General [letter](#).
7. The Commission received interventions from Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink), Cogeco Communications inc. (Cogeco), the CTCC, the Independent Telecommunications Providers Association (ITPA), the Public Interest Advocacy Centre (PIAC), Saskatchewan Telecommunications (SaskTel), SSi Micro Ltd., doing business as SSi Canada (SSi), and TELUS Communications Inc. (TCI).

Review and vary criteria

8. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it would use to assess review and vary applications filed pursuant to section 62 of the Act. Applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example, due to (i) an error in law or in fact, (ii) a fundamental change in circumstances or facts since the decision, (iii) a failure to consider a basic principle which had been raised in the original proceeding, or (iv) a new principle which has arisen as a result of the decision.

¹ The CTCC is responsible for establishing the procedures related to its operation and contracting the Central Fund Administrator. The CTCC's board of directors is comprised of a cross-section of the industry (competitive local exchange carriers, incumbent local exchange carriers, long-distance service providers, and wireless service providers).

Issues

9. The Commission has identified the following issues to be addressed in this decision:
- Has there been a fundamental change in circumstances since the publication of Telecom Regulatory Policy 2018-377?
 - Did the Commission err in fact in Telecom Decision 2022-341?

Has there been a fundamental change in circumstances since the publication of Telecom Regulatory Policy 2018-377?

Positions of parties

Bell Canada

10. Bell Canada submitted that there has been a significant increase in government funding available to broadband providers since the Commission's determinations in Telecom Regulatory Policy 2018-377. Bell Canada added that the Commission has collected significantly more than the amounts it has awarded through the Broadband Fund and will not be able to distribute the total amounts it has already collected. Therefore, according to Bell Canada, this represents a fundamental change in circumstances.
11. Bell Canada acknowledged that it filed its request well past the 90-day deadline for filing a review and vary application, which was established in subsection 71(1) of the Rules of Procedure. However, it argued that this is a circumstance where it would be just and equitable to make an exception to that rule given what it considers to be the fundamental change in circumstances described above.

Interveners

12. Cogeco, Eastlink, the ITPA, and TCI supported Bell Canada's application to review and vary Telecom Regulatory Policy 2018-377 for the reasons stated above.
13. PIAC and SSi opposed the application. PIAC argued that as part of the ongoing Broadband Fund policy review, funds could still be disbursed, carried over from previous years, and/or reallocated in service of the policy objectives under the Act. SSi argued that the increased support for broadband expansion from other government funding programs does not preclude the existence of other suitable projects for the Broadband Fund. Therefore, in its view, there has not been a fundamental change in circumstances that would permit a review and vary.

Commission's analysis

14. Telecom Regulatory Policy 2018-377 was issued on 27 September 2018, and the application from Bell Canada was submitted on 21 December 2022.

15. The request to extend the review and vary deadline by over four years is a significant deviation from the timelines set out in the Rules of Procedure. Such an extension would only be just and equitable in limited circumstances. In Telecom Notice of Consultation 2023-89, the Commission launched a comprehensive review of the Broadband Fund policy, in which it is considering a number of issues, including the appropriate amount of funding to collect on an annual basis going forward. Therefore, the Commission considers that a review and vary of Telecom Regulatory Policy 2018-377 would duplicate its ongoing review of future annual funding amounts within the broader policy review. Consequently, extending the review and vary deadline would not be just or equitable.
16. Accordingly, the Commission **denies** Bell Canada's request to extend the deadline beyond 90 days to review and vary Telecom Regulatory Policy 2018-377. Given that it would not be just or equitable to extend the deadline, the Commission has not considered the arguments regarding whether there had been a fundamental change in circumstances.

Did the Commission err in fact in Telecom Decision 2022-341?

Positions of parties

Bell Canada

17. Bell Canada submitted that the Commission erred in concluding in Telecom Decision 2022-341 that \$150 million must be collected in 2023 to achieve the Broadband Fund's intended purpose. Bell Canada added that any uncalled contribution associated with the unpaid portion of the Broadband Fund must be retained by the NCF for future payments. Bell Canada argued that because the Commission will have distributed only \$46 million through the Broadband Fund by the end of 2022, this demonstrates that neither the uncalled contributions (\$148 million) nor the 2023 contributions (\$150 million) are necessary to achieve the Broadband Fund's intended purpose. In Bell Canada's view, this represents an error in fact.

Interveners

18. Cogeco, Eastlink, and the ITPA supported Bell Canada's application to review and vary Telecom Decision 2022-341. SaskTel and TCI supported Bell Canada's request to cease the collection of additional contributions. However, SaskTel was only in favour of the request to release the \$148 million in uncalled contributions if the Commission is unable to evaluate the remaining projects from previous calls for applications. TCI did not specify whether the \$148 million should be released.
19. PIAC and SSi, however, argued that a decision to release the \$148 million in uncalled contributions would be premature. SSi argued that Bell Canada's application would have the effect of making the determination that no more contributions are required before the Commission completes its policy review.

20. PIAC and SSI submitted that although Bell Canada's application indicates that contribution fee-payers could use the \$148 million in released funds for other customer value-enhancing initiatives, it would be at the fee-payers' discretion, and they are under no obligation to do so.
21. SSI also raised an issue with the overall proportionality of contributions to the NCF relative to the funding made available to contribution fee-payers. In SSI's view, all contribution fee-payers contribute proportionately the same amount to the NCF, but no other contribution fee-payer has received as much funding from the Broadband Fund as Bell Canada.
22. The CTCC submitted that the NCF has released the portion of uncalled contributions that were not associated with the Broadband Fund for many years. For non-Broadband Fund programs associated with the NCF such as VRS, this has the effect of returning excess contributions to fee-payers that were not required to meet the needs of the program for the year. The CTCC added that the release of the uncalled contributions not related to the Broadband Fund has considerably benefitted contribution fee-payers. The CTCC therefore recommended releasing uncalled contributions related to the Broadband Fund.

Bell Canada's reply

23. Bell Canada submitted that the interveners agreed that the uncalled contributions remain a significant and unnecessary liability for entities that contribute to the Broadband Fund.
24. Bell Canada disagreed with PIAC's and SSI's views in which they opposed the application to return the uncalled contributions and not to collect any further contributions until the completion of the Broadband Fund.
25. Bell Canada argued that its application, if approved, would be consistent with the 2023 Policy Direction.²

Commission's analysis

26. On 30 November 2022, the Commission launched its third call for Broadband Fund applications (Call 3) in Telecom Notice of Consultation 2022-325, with a submission deadline of 15 June 2023. The Commission received applications that request significantly more funding than is currently available. This demonstrates a large ongoing need for funding support to provide Canadians living in rural, remote, and Indigenous communities with access to high-speed Internet and cell phone service.
27. Further, as approved projects from the Commission's first and second calls for applications progress towards completion, the Commission continues to receive change requests. Change requests often include a request for additional funding due to inflationary pressures on capital projects and increased demand on infrastructure

² *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, SOR/2023-23, 10 February 2023

material and skilled labour. If the review and vary application were to be approved, the Commission would be limited in its ability to approve change requests seeking additional funding, which may jeopardize the completion of projects and the connectivity of numerous Canadian households.

28. Bell Canada submitted that the Commission's decision contained an error in fact, specifically that the \$150 million in funding to be collected in 2023 is not required to achieve the Broadband Fund's intended purposes.
29. The Commission launched the Broadband Fund policy review through Telecom Notice of Consultation 2023-89. During that proceeding, the Commission will determine how the Broadband Fund can best be used to fill connectivity gaps in Canada. This may include providing funding for operational costs and/or providing funding to projects that would increase resiliency in networks. Either of these new funding elements may require additional funding. The objectives of the Broadband Fund could also be expanded as a result of this proceeding, leading to a greater need for an increase in the amounts collected in 2023 and beyond rather than a reduction.
30. In addition, Bell Canada argued that due to the low level of distributions so far, the amounts to be collected in 2023 are not required. However, the Broadband Fund was established with the knowledge that there would be excess funds collected in the first years of operations. There was no intent to match the dollars collected to the distributions on a yearly basis. Furthermore, the objectives of the Broadband Fund are consistent with those in the 2023 Policy Direction, specifically paragraphs 8(b) and 8(d), which reference promoting investment in high-quality networks and supporting the provision of innovative services (in this case, fixed and mobile wireless broadband Internet access services).
31. Moreover, the Broadband Fund meets the objective outlined in paragraph 7(b) of the Act, which is to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada. This is one of the express purposes of the Broadband Fund. The Commission has determined that the \$150 million in funding to be collected in 2023 is appropriate.
32. In light of the above, the Commission concludes that it did not err in fact in Telecom Decision 2022-341 and **denies** Bell Canada's request to vary that decision. In the Commission's view, Bell Canada has not raised substantial doubt as to the correctness of that decision. The Commission established the Broadband Fund with the full knowledge that there would be excess funds collected in the first years of operation. Moreover, the collection of the funds is in line with both the 2023 Policy Direction and the policy objectives of the Act. The Commission established the Broadband Fund knowing that there would be some delay between the establishment of the Broadband Fund, the approval of projects, and the payment of claims to funded recipients. Moreover, the Broadband Fund policy review will allow the Commission to examine and review the objectives of the Broadband Fund and determine appropriate amounts of funding going forward.

Out-of-scope proposals

33. PIAC and SSi proposed other means by which the excess funding currently collected by the Broadband Fund could be better used. These proposals are out of scope of the current proceeding. They constitute issues that would be more suitably dealt with as either a Call 3 application or as policy questions that could be addressed during the Broadband Fund policy review.

Conclusion

34. The objective of the Broadband Fund is to address the gap in connectivity in underserved areas of Canada by funding projects to build or upgrade infrastructure for fixed and mobile wireless broadband Internet access services.
35. Since the Broadband Fund policy was established, there have been changes in the funding environment and a growing focus on reconciliation. To reflect this new funding environment, the Commission launched the Broadband Fund policy review to look ahead to the future need for funding to improve broadband Internet services and mobile wireless services in Canada.
36. The Commission **denies** Bell Canada's request to extend the deadline beyond the 90-day period to review and vary Telecom Regulatory Policy 2018-377. The process would duplicate its ongoing review of future annual funding amounts within the broader policy review. It is therefore not just or equitable to extend this deadline.
37. The Commission also **denies** Bell Canada's request to vary Telecom Decision 2022-341. The Commission received applications that request significantly more funding than is currently available. This demonstrates a large ongoing need for funding support to provide Canadians living in rural, remote, and Indigenous communities with access to high-speed Internet and cell phone service. The need for funding will continue to increase as the Commission approves new projects, responds to the increasing costs of existing projects, and conducts a broad review of the Broadband Fund. In the Commission's view, Bell Canada has not raised substantial doubt as to the correctness of that decision.

2023 Policy Direction

38. The Commission is required, in exercising its powers and performing its duties, to implement the policy objectives set out in section 7 of the Act, in accordance with the 2023 Policy Direction issued under section 8 of the Act.
39. The Commission's determination to deny Bell Canada's review and vary application is consistent with the policy objective set out in paragraph 7(b) of the Act to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada.

40. The Commission also considers that denying Bell Canada's application is consistent with paragraphs 2(c), 8(b), and 8(d) of the 2023 Policy Direction. By providing stable funding to the Broadband Fund, the Commission helps ensure adequate funding for selected Call 3 applications, future calls for applications, and any change requests. Moreover, the Commission has already launched the Broadband Fund policy review, and the question of future levels of funding is raised in that notice of consultation.

Secretary General

Related documents

- *Call for comments – Broadband Fund policy review*, Telecom Notice of Consultation CRTC 2023-89, 23 March 2023; as amended by Telecom Notice of Consultation CRTC 2023-89-1, 17 April 2023
- *Final 2022 revenue-percent charge and related matters*, Telecom Decision CRTC 2022-341, 15 December 2022
- *Broadband Fund – Third call for applications*, Telecom Notice of Consultation CRTC 2022-325, 30 November 2022; as amended by Telecom Notices of Consultation CRTC 2022-325-1, 13 March 2022; and 2022-325-2, 15 May 2023
- *Development of the Commission's Broadband Fund*, Telecom Regulatory Policy CRTC 2018-377, 27 September 2018
- *Modern telecommunications services – The path forward for Canada's digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011