



Telecom Decision CRTC 2024-129

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TerreStar Solutions Inc. – Application to review and vary Telecom Decision 2023-182

Summary

All telecommunications service providers (TSPs) that generate \$10 million or more in annual revenues from Canadian telecommunications services must contribute to the National Contribution Fund (NCF). Contributions are critical to ensuring that all Canadians have access to reliable, accessible, and high-quality telecommunications services. The NCF supports important Commission initiatives such as the Broadband Fund and Video Relay Service. The Commission relies on TSPs' annual contribution reports to determine the amounts that they must pay to the NCF.

In August 2023, TerreStar Solutions Inc. (TerreStar) filed an application to review and vary Telecom Decision 2023-182, which addressed how TerreStar calculated its Canadian telecommunications service revenues. In that decision, the Commission (i) determined that spectrum sale and subordination is a telecommunications service, as defined by the *Telecommunications Act*; and (ii) denied TerreStar's request that TSPs be allowed to deduct revenues generated from this service from their total Canadian operating revenues.

The Commission finds that TerreStar has failed to demonstrate that there is substantial doubt as to the correctness of Telecom Decision 2023-182.

Background

1. In Telecom Decision 2000-745, the Commission introduced a revenue-based contribution regime to finance the National Contribution Fund (NCF). Under this regime, telecommunications service providers (TSPs), or groups of related TSPs, that generate \$10 million or more in Canadian telecommunications service revenues (CTSRs), based on their contribution-eligible revenues, are required to contribute to the NCF. The NCF supports the Broadband Fund and Video Relay Service, which are vital in ensuring that Canadians have access to reliable, accessible, and high-quality telecommunications services.
2. The Commission determined that all TSPs would be required to contribute based on their total CTSRs less certain Commission-approved deductions. It was also

determined that the starting point for TSPs would be total operating revenues, with allowable deductions for non-Canadian revenues, Canadian non-telecommunications service revenues (CNTSRs), terminal equipment revenues, and inter-carrier payments made to other TSPs for a telecommunications service and incurred to earn contribution-eligible revenues.

3. In March 2022, TerreStar Solutions Inc. (TerreStar) filed its annual revenue report with the Commission, as required under the revenue-based contribution regime. In that report, it listed a deduction for ancillary spectrum component sub-lease (the subordination of spectrum) and the sale of spectrum.
4. Commission staff subsequently notified TerreStar by letter that the deduction was not eligible and was therefore rejected. Specifically, Commission staff stated that generating revenues from a spectrum licence is a telecommunications service within the meaning of the *Telecommunications Act* (the Act) and, therefore, the related revenues, whether from sale or subordination, would not be eligible for deduction as CNTSRs within the contribution regime.
5. TerreStar filed an application in November 2022 in which it requested that the Commission declare that the subordination of spectrum licence is not a telecommunications service under the Act.
6. In Telecom Decision 2023-182, the Commission denied TerreStar's application after determining that spectrum sale and subordination is a telecommunications service as defined by the Act, and that the associated revenues cannot be deducted as CNTSRs. The Commission also directed TerreStar to file revised monthly contribution reports with the Central Fund Administrator of the NCF.

Application

7. The Commission received an application from TerreStar, dated 25 August 2023, in which it requested that the Commission review and vary Telecom Decision 2023-182. TerreStar argued that there was substantial doubt as to the correctness of the decision.
8. TerreStar also requested a stay of that decision until the Commission ruled on its review and vary application. The Commission denied TerreStar's stay request via [letter](#) dated 5 February 2024.
9. The Commission received an intervention regarding TerreStar's application from TELUS Communications Inc. (TCI).

Review and vary criteria

10. 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. Specifically, the Commission stated that 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.

Issues

11. TerreStar provided arguments related to the following issues to support its request for the Commission to vary the determinations set out in Telecom Decision 2023-182:

- Unreported revenues related to spectrum sale and subordination
- Duty of fairness – Incidental services
- Duty of fairness – Sale of spectrum
- Inconsistency of Telecom Decision 2023-182 with generally accepted accounting principles (GAAP)
- Inconsistency of Telecom Decision 2023-182 with previous determinations
- No jurisdiction
- Retroactive decision-making
- Implications of incidental services determination – Tariff approval or forbearance

Unreported revenues related to spectrum sale and subordination

Positions of parties

12. TerreStar argued that to the extent Telecom Decision 2023-182 was in part based on the conclusion that the revenues from all other spectrum subordination arrangements were reported as CTSRs, this constitutes an error in fact. Moreover, TerreStar argued that the Commission ignored its submission that TSPs appeared to report spectrum subordination revenues inconsistently, which constitutes a failure to consider a basic principle that was explicitly raised in the original proceeding.

13. TerreStar cited several major transactions that involved the sale of significant spectrum licences: BCE Inc.'s (BCE) 2017 acquisition of MTS Inc. (MTS), and Shaw Communications Inc.'s sale of its Freedom Mobile business to Quebecor Media Inc. / Videotron Ltd. and of its other telecommunications business to Rogers Communications Canada Inc. TerreStar submitted that if these sales are indeed considered to be incidental services, and the Commission considers them to have been contribution eligible, the transactions should have resulted or will result in significant contribution payments by the sellers.

Commission's analysis

14. TerreStar did not provide evidence demonstrating that TSPs are inaccurately reporting the sale and subordination of spectrum and including these amounts in their total operating revenues. As a result, the Commission does not consider that it committed an error in fact or failed to consider a basic principle in this regard in Telecom Decision 2023-182.
15. The Commission diligently reviews TSPs' submissions to ensure that their audited financial statements match their annual revenue reports, and that each item listed to be deducted involves legitimate non-contribution-eligible revenues or inter-carrier payments.
16. The purpose of these reviews is to ensure the integrity and accuracy of the information filed. Depending on the size of the operation, items such as the sale or subordination of spectrum may not be an individual line item within the audited financial statements but would likely be grouped in the Other Revenue line. If revenues are not separated and instead grouped together, the Commission generally does not have direct insight into what is included in this line item.
17. This is why TSPs are required to have either an external auditor's opinion or a signed affidavit from senior officers to ensure that all appropriate revenues are included within the Total Operating Revenue line. The Commission relies on this information and does additional reviews to ensure all deductions from total revenues are consistent with its determinations.
18. The Commission confirms its statement in Telecom Decision 2023-182 that no company other than TerreStar has attempted to deduct revenues from the sale or subordination of spectrum.
19. Furthermore, the Commission has seen no evidence to support TerreStar's suggestion that there is inconsistent reporting of total operating revenues among TSPs.
20. TerreStar's argument regarding major transactions assumes that these transactions involve a significant amount of the purchase price being attributed to the transfer of spectrum licences when it has no evidence and is not privy to the contracts. In addition, BCE acquired MTS prior to the Commission modifying the calculations in January 2020 and including Internet and mobile wireless service revenues as part of the contribution revenue base. Finally, the Commission notes that none of the parties involved in the other cited transactions attempted to deduct revenues from the sale or subordination of spectrum.

Duty of fairness – Incidental services

Positions of parties

21. TerreStar argued that it had no notice of the fact that the Commission, or its staff, considered section 23 of the Act to be relevant in determining whether spectrum sale

or subordination is a telecommunications service. In addition, TerreStar argued that it could not have reasonably anticipated that section 23 was relevant based on earlier opinions of staff and the Commission's previous application of section 23. TerreStar submitted that this amounts to a breach of the duty of fairness and constitutes an error in law.

Commission's analysis

22. Section 23 of the Act defines "telecommunications service" as follows:

For the purposes of this Part and Part IV, telecommunications service has the same meaning as in section 2 and includes any service that is incidental to the business of providing telecommunications services.^[1]

23. The relevance of section 23 was stated in a staff letter sent to TerreStar in June 2022, which referred to the definition of CNTSRs approved in Order 2001-288:

"Canadian non-telecommunications service revenues" include all Canadian revenues that are derived from services other than telecommunications service as defined in section 23 of the *Telecommunications Act*, i.e. "telecommunications service" has the same meaning as in section 2 [of the *Telecommunications Act*] and includes any service that is incidental to the business of providing telecommunications services.

For the purposes of calculating contribution eligible revenues pursuant to Decision 2000-745, services that are incidental to the business of providing telecommunications services are services that the Commission has treated as or determined to be telecommunications services, in accordance with section 23 of the Act.

24. Nonetheless, in the proceeding that led to Telecom Decision 2023-182, the Commission was not required to notify TerreStar that it considered section 23 relevant for interpreting what is a telecommunications service. Parties before the Commission are assumed to know the Act and the sections applicable to their case. TerreStar made fulsome arguments in its initial application on what it considered a telecommunications service, which indicates familiarity with the Act.

25. Consequently, the Commission finds that there was no breach of the duty of fairness and no error in law committed in Telecom Decision 2023-182.

¹ Section 2 of the Act provides the following definition, among others: "telecommunications service means a service provided by means of telecommunications facilities and includes the provision in whole or in part of telecommunications facilities and any related equipment, whether by sale, lease or otherwise."

Duty of fairness – Sale of spectrum

Positions of parties

26. TerreStar argued that its original application made no mention of the treatment of revenues from the sale of spectrum, nor did it request any relief on that issue. As a result, TerreStar argued that there was no indication leading to Telecom Decision 2023-182 that the treatment of revenues from the sale of spectrum was at all in issue. Accordingly, TerreStar argued that the Commission's decision that the sale of a spectrum licence is an incidental service, and therefore a telecommunications service to be included in CTSRs, was made without TerreStar or any other potentially affected TSP having notice of the issue or an opportunity to make submissions on this point. TerreStar submitted that this amounts to a breach of the duty of fairness and constitutes an error in law.

Commission's analysis

27. Even if the argument is accepted that the Commission should have provided notice that it was also considering the sale of spectrum, any concerns with the process followed in Telecom Decision 2023-182 are addressed in the present proceeding.
28. TerreStar's review and vary application presented the opportunity to cure any procedural concerns in the initial decision since parties, including TerreStar, could have made submissions on the sale of spectrum. No other party took issue with the Commission's conclusion on the sale of spectrum. For TerreStar's part, it made multiple arguments in its application related to both the sale and subordination of spectrum.

Inconsistency of Telecom Decision 2023-182 with GAAP

Positions of parties

29. TerreStar submitted that in Telecom Information Bulletin 2019-396, the Commission confirmed that the calculation of contributions stems from total operating revenues. TerreStar noted that, in that bulletin, "total operating revenues" refers to "a TSP's reported non-consolidated operating revenues, prepared in accordance with generally accepted accounting principles." TerreStar also submitted that from an accounting perspective, the term "operating revenues" is generally understood to capture only the revenues associated with the normal daily operations of a business.
30. Accordingly, TerreStar argued that any finding that revenues associated with activities outside of the normal daily operations of a business are required to be included in CTSRs (or are prohibited from being included in CNTSRs) is contrary to the Commission's own decisions on the calculation of contributions. TerreStar submitted that this constitutes an error in law or, alternatively, a new principle that has arisen as a result of the decision.

31. TCI supported TerreStar's argument on this point and submitted that Telecom Decision 2023-182 is at odds with how the Commission has historically defined total operating revenues under its contribution regime. TCI submitted that the Commission's determination that spectrum-related revenues are total operating revenues departs from its previous, well-founded determinations that Canadian TSPs must prepare their contribution statements following GAAP. TCI noted that the Commission has the discretion to stray from GAAP in its contribution regime; however, it cautioned the Commission against doing so because this would increase the administrative burden on TSPs. For example,

- they would have to develop new financial reports for contribution purposes;
- it would create irregularities in TSP financial reporting that could lead to confusion among stakeholders; and
- it would reduce transparency and accountability under the contribution regime because contribution statements that are not prepared according to GAAP cannot be audited for completeness, consistency, and accuracy.

Commission's analysis

32. The Commission is of the view that Telecom Decision 2023-182 is consistent with GAAP. However, the Commission has the discretion to depart from GAAP if necessary.
33. TerreStar's filings with the Commission showed revenues relating to both the subordination and the sale of spectrum included in its operating revenues. This means that TerreStar itself, in preparing its filings in accordance with GAAP, recognized that such revenues were derived from its ongoing normal daily operations and included them within operating revenues. TerreStar's present argument with respect to inconsistencies with GAAP is contrary to its filings with the Commission. As a result, the Commission considers that Telecom Decision 2023-182 presented no inconsistencies with GAAP.

Inconsistency of Telecom Decision 2023-182 with previous determinations

Positions of parties

34. TerreStar argued that although the Commission stated in Telecom Decision 2023-182 that its determination was consistent with past Commission determinations as to what constitutes a telecommunications service, it was, in fact, inconsistent because the sale and subordination of spectrum is not an incidental service to TerreStar's business of providing mobile satellite service (MSS) in Canada. TerreStar submitted that this constitutes an error in law.
35. TerreStar cited Telecom Decision 2003-41 (referring to Decision 90-12) as the most recent articulation of the test that the Commission has used to determine what constitutes an incidental service:

27. The Commission further notes that in interpreting the meaning of the words “service incidental to a telephone business” under the *Railway Act*, in Decision 90-12, it stated that:

The Commission’s approach has been to consider the extent to which the service in question engages fundamental elements of the telephone system or the relationship that the service in question bears to the essential nature of the telephone business. The greater the degree to which the service in question involves components or facilities fundamental to the provision of telephone services and the more closely related the services may be to those generally provided by telephone systems, the more likely is the service to be one contemplated by the definition of “toll” in the *Railway Act*.

36. TerreStar noted that the Commission confirmed that it was appropriate, when assessing whether a service is “incidental to the business of providing telecommunications services” within the meaning of section 23 of the Act, to apply the same approach that the Commission previously used to consider whether a service was “incidental to a telephone business” under section 2 of the *Railway Act*.

37. In this regard, TerreStar argued that the subordination of spectrum to other TSPs is neither critical to ensuring the ongoing operation of TerreStar’s MSS network nor fundamental to the company’s provision of telecommunications services. Rather, it is simply an arrangement to monetize unused assets. TerreStar likened it to a TSP leasing out an unused vehicle from its fleet, vacant buildings, or office space.

Commission’s analysis

38. Based on revenue information filed by TerreStar, the Commission does not consider TerreStar presenting itself as solely a provider of MSS to be reasonable and considers that revenues from the sale and subordination of spectrum are a key element of the company’s business.

39. Importantly, TerreStar’s position does not take into account that spectrum is a direct input with a specific purpose to provide wireless telecommunications services. Given the critical nature of spectrum in providing telecommunications services, the Commission finds that its determination in Telecom Decision 2023-182 – that revenues from the sale and subordination of spectrum must at least be considered incidental to the business of providing telecommunications services under section 23 of the Act – is consistent with previous Commission determinations.

No jurisdiction

Positions of parties

40. TerreStar submitted that if the Commission imposes contribution charges on revenues generated from activities that are not properly considered telecommunications

services under the Act, this goes beyond the Commission's statutory and constitutional jurisdiction and constitutes a clear error in law.

Commission's analysis

41. TerreStar's argument rests on the premise that the sale and subordination of spectrum is not a telecommunications service. As discussed in Telecom Decision 2023-182, and confirmed in the present decision, the Commission considers that the sale and subordination of spectrum is a telecommunications service within the meaning set out in the Act. Therefore, the Commission is within its jurisdiction to base its calculation of contribution charges on revenues generated from this service.

Retroactive decision-making

Positions of parties

42. TerreStar submitted that if Telecom Decision 2023-182 requires it to give retroactive effect to the Commission's determination that spectrum sale and subordination revenues cannot be deducted as CNTSRs, this is contrary to the Commission's own established definition of an incidental service, as set out in Order 2001-288. TerreStar argued that this constitutes an error in law or a new principle that has arisen as a result of the decision.

43. TerreStar noted that the definition of an incidental service provided in Order 2001-288 (set out in paragraph 23 above) uses the past tense. Moreover, TerreStar submitted that prior to Telecom Decision 2023-182, there were no Commission decisions, guidance documents, or instructions that explicitly indicated that spectrum sale and subordination was considered an incidental service. Therefore, in TerreStar's view, no contribution filings prior to 15 June 2023, the date that decision was issued, would have been required to include the associated revenues.

Commission's analysis

44. The Commission and TSPs have always treated the sale and subordination of spectrum as a telecommunications service for the purpose of calculating contribution amounts. Therefore, Telecom Decision 2023-182 did not require TerreStar to give retroactive effect to a Commission determination by simply directing TerreStar to do what it was already required to do.

45. Spectrum subordination is a common practice within the industry. For example, in 2023, there were 14 agreements from other TSPs.² None of the TSPs involved in these agreements that are subject to the contribution regime deducted spectrum subordination revenues as part of the reporting process.

² See Innovation, Science and Economic Development Canada's webpage [Decisions on Licence Transfers of Commercial Mobile Spectrum](#).

46. In addition, the Commission is not required to list every telecommunications service to be included as a CTSR (or excluded as a CNTSR) for the purpose of the contribution regime. Instead, a broad and purposive analysis of the Act that considers the contribution regime in its full and proper context, along with previous Commission decisions and guidance regarding the calculation of contributions, makes clear what must be included as a telecommunications service for the purpose of calculating contribution-eligible revenues.

Implications of incidental services determination – Tariff approval or forbearance

Positions of parties

47. TerreStar submitted, in both the proceeding that arose from its original application, as well as the current review and vary proceeding, that if spectrum sale and subordination is a telecommunications service, it can only be offered pursuant to a tariff, unless the Commission has forbore from regulation. TerreStar submitted that the Commission's failure to consider this argument in its decision amounts to a failure to consider a basic principle raised in the original proceeding.

Commission's analysis

48. In Telecom Decision 2023-182, the Commission addressed the key issues raised in TerreStar's original application. The absence of analysis regarding TerreStar's above-noted argument did not impact the ultimate determination and does not give rise to substantial doubt as to the correctness of the decision.

49. In any event, TerreStar had the opportunity to present the argument again in its review and vary application, and it did so. The Commission considers that its mid-1990's forbearance from the regulation of mobile wireless services includes the sale and subordination of spectrum.³ Therefore, the service does not have to be offered pursuant to a tariff.

Conclusion

50. In light of all the above, the Commission finds that TerreStar did not demonstrate that there was substantial doubt as to the correctness of Telecom Decision 2023-182. Accordingly, the Commission denies TerreStar's application.

51. The Commission **directs** TerreStar to pay any outstanding amounts owed to the NCF.

³ The forbearance framework was first established in Telecom Decision 94-15 and was refined in Telecom Decision 96-14. In a number of follow-up company-specific decisions and orders, the framework was extended to the mobile wireless services provided by Canadian carriers that were not captured by Telecom Decisions 94-15 and 96-14. In Telecom Decision 2010-445, the Commission amended the forbearance regime for mobile wireless data services to be consistent with the forbearance regime applicable to mobile wireless voice services.

52. The Commission considers that its decision 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. By ensuring that parties are clear on their contribution requirements, they will continue to provide stable, adequate, and competitively equitable funding to the NCF to support Canadians' continuing access to basic telecommunications services.
53. The Commission also considers that its decision is consistent with the 2023 Policy Direction,⁴ specifically paragraphs 2(c) and 18(a).⁵ This decision affects the NCF and the funds are vital in supporting Canadians' access to reliable, accessible, and high-quality telecommunications services.

Secretary General

Related documents

- *TerreStar Solutions Inc. – Request for a declaration that subordination of spectrum licence is not a telecommunications service*, Telecom Decision CRTC 2023-182, 15 June 2023
- *The Canadian revenue-based contribution regime, effective 1 January 2020*, Telecom Information Bulletin CRTC 2019-396, 4 December 2019
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *Modifications to forbearance framework for mobile wireless data services*, Telecom Decision CRTC 2010-445, 30 June 2010
- *Aliant Telecom Inc. – Part VII application with respect to late payment charges*, Telecom Decision CRTC 2003-41, 20 June 2003
- *Definition of Canadian non-telecommunications service revenues for the purpose of the contribution regime*, Order CRTC 2001-288, 11 April 2001

⁴ *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, SOR/2023-23, 10 February 2023

⁵ Paragraph 2(c) states that the Commission should consider the extent to which its decisions would “ensure that affordable access to high-quality, reliable and resilient telecommunications services is available in all regions of Canada, including rural areas, remote areas and Indigenous communities.” Paragraph 18(a) states that the Commission should “[continue] to administer a funding mechanism, making any adjustments that the Commission determines are necessary.”

- *Changes to the contribution regime*, Decision CRTC 2000-745, 30 November 2000
- *Regulation of mobile wireless telecommunications services*, Telecom Decision CRTC 96-14, 23 December 1996
- *Regulation of wireless services*, Telecom Decision CRTC 94-15, 12 August 1994
- *Bell Canada – Provision of telephone directory data base information in machine-readable form*, Telecom Decision CRTC 90-12, 14 June 1990