



Telecom Decision CRTC 2021-131

PDF Version

Ottawa, 16 April 2021

Public record: 8660-Q15-202003614

Videotron Ltd. – Application concerning the issuance of orders related to the processing and granting by Bell Canada of access permit applications for support structures

The Commission determines that Bell Canada violated section 24 and subsections 25(1) and 27(2) of the *Telecommunications Act* and violated its National Services Tariff and the Support Structure Licence Agreement between it and Videotron Ltd (Videotron). Accordingly, the Commission determines that enforcement action regarding these violations may be taken against Bell Canada. The Commission’s preliminary view is that an administrative monetary penalty (AMP) should be imposed on Bell Canada to deter future violations and promote compliance with regulatory requirements. The Commission will initiate a follow-up proceeding through a notice of consultation to determine if an AMP is appropriate and, if so, the amount of the AMP.

The Commission **approves in part** Videotron’s application for relief and **directs** Bell Canada to complete, at its own cost, the make-ready work required under applications for access permits V01-B25-16-041679 (application 1) and V01-BK1-19-060389 (application 2) within **30 days** of publication of this decision, to issue the permits related to applications 1 and 2 within **5 days** of completion of the make-ready work, and to issue the permits related to applications V01-B15-19-063856 and V01-B25-17-046237 within **5 days** of publication of this decision.

The Commission **denies** Videotron’s other requests for orders because they raise national issues concerning support structures and the regulatory framework by regulating access, and those issues will be addressed in depth in the proceeding related to Telecom Notice of Consultation 2020-366.

The Commission aims to ensure that consumers can enjoy the benefits of healthy competition between providers and have access to differentiated, affordable, and high-quality services. With this decision, the Commission sends a clear message to Canadian companies that own poles or other support structures, and it expects them to promote faster and more affordable access for competitors. In particular, the Commission’s determinations are intended to ensure compliance with Bell Canada’s National Services Tariff and any agreements between Bell Canada and Videotron, and ensure greater collaboration in the provision of telecommunications services. This will help meet the needs of Canadians by promoting competition in the telecommunications services market and access to broadband Internet access services with higher speeds.

Application

1. The Commission received an application, dated 16 June 2020, from Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron), in which Videotron requested the issuance of orders related to the processing and granting by Bell Canada of access permit applications to support structures in accordance with Bell Canada's National Services Tariff (the Tariff).
2. Videotron requested that the Commission intervene to stop anti-competitive practices used by Bell Canada with respect to access to support structures.
3. Videotron submitted five examples of access permit applications to illustrate the alleged anti-competitive tactics used by Bell Canada that, in Videotron's view, violate section 24 and subsections 25(1) and 27(2) of the *Telecommunications Act* (the Act). These tactics are (i) unreasonable delays in processing permit applications; (ii) unreasonable and discriminatory application of construction standards; (iii) delays due to the need to carry out work that Bell Canada should have already done; and (iv) making applicants responsible for the cost of replacing structures.
4. Videotron requested that the Commission direct Bell Canada to
 - a) correct, at its own expense, within 30 days of the publication of a decision, the irregularities affecting the aerial support structures covered by access permit applications V01-B25-16-041679 (application 1), V01-BK1-19-060389 (application 2), and V01-BK7-17-042816 (application 3) submitted by Videotron;
 - b) grant Videotron, within five days of correcting the irregularities, the permits requested in applications 1, 2, and 3, when the corrections referred to in paragraph 4(a) are completed;
 - c) grant, within five days of the publication of a decision, the permits requested by Videotron in access permit applications V01-B15-19-063856 (application 4) and V01-B25-17-046237 (application 5).
5. Videotron also requested that the Commission address the following orders:
 - By using the anti-competitive tactics described in this application, Bell Canada acted in violation of the Tariff, the Support Structure Licence Agreement (SSLA) between Bell Canada and Videotron, and section 24 and subsections 25(1) and 27(2) of the Act.
 - For any future access applications submitted in accordance with the Tariff, Bell Canada may no longer require the party submitting the application to agree in advance to pay the costs of replacing a support structure for which it is already paying a rental fee.

- Bell Canada must stop causing unreasonable delays in processing access permit applications for its support structures, particularly when Videotron asks Bell Canada to grant it access to a support structure that is affected by irregularities that render it non-compliant with construction standards.
 - Bell Canada must stop applying construction standards in an unreasonable and discriminatory manner.
 - Bell Canada must stop delaying access to its support structures on the grounds that it needs to perform make-ready work that it should have already completed.
6. The Commission received interventions from the Canadian Communication Systems Alliance, the Community Fibre Company, the Independent Telecommunications Providers Association, and Rogers Communications Canada Inc.

Regulatory background

7. In Telecom Decision 95-13, the Commission found that access to telephone company support structures is a telecommunications service within the meaning of the Act and is therefore subject to the Act's provisions.
8. Accordingly, under section 24 and subsection 25(1) of the Act, access to support structures must be provided in accordance with the conditions established and the tariff approved by the Commission. The Commission approved the national tariffs related to accessing telephone company support structures and the SSLA model.¹
9. Subsection 27(2) of the Act prohibits Bell Canada from unjustly discriminating or giving an undue or unreasonable preference toward any person, including itself, or subjecting any person to an undue or unreasonable disadvantage.

Issues

10. The Commission has identified the following issues to be addressed in this decision:
- Should some of Videotron's requests for orders be denied because they raise issues of a more general nature that more closely align with the proceeding related to Telecom Notice of Consultation 2020-366?
 - Is Bell Canada acting in violation of the Tariff and the SSLA, as well as section 24 and subsection 25(1) of the Act, particularly regarding the four allegations mentioned in paragraph 3 of this decision?
 - Did Bell Canada give itself preference under subsection 27(2) of the Act? If so, is the preference Bell Canada gave itself undue?
 - Should the Commission undertake enforcement actions against Bell Canada for violating section 24 and subsections 25(1) and 27(2) of the Act?

¹ See Order 2000-13.

Should some of Videotron's requests for orders be denied because they raise issues of a more general nature that more closely align with the proceeding related to Telecom Notice of Consultation 2020-366?

Positions of parties

Videotron

11. Videotron submitted that Bell Canada's poor management of the corrective work required to grant certain access permit applications for its support structures is systemic, and that the examples highlighted by Videotron are not isolated cases, as evidenced by all of the interventions in support of its application.
12. Videotron criticized the existence of a two-tier system: one cumbersome, slow system for licensees,² and an expedited system reserved for Bell Canada's fibre-to-the-home (FTTH) deployment teams.
13. Videotron submitted that Bell Canada's anti-competitive practices had a detrimental effect on industry players and consumers.

Interveners

14. All of the interventions supported Videotron's claims, and the parties submitted examples of their own findings regarding Bell Canada's delays and actions (described as unreasonable, slow, and anti-competitive) in response to applications for access to Bell Canada's support structures.

Bell Canada

15. Bell Canada argued that the examples cited by Videotron were exceptions to the rule that did not support a finding that there is any violation of the Tariff or the regulations concerned or that there is a systemic issue.
16. Bell Canada provided a list of detailed explanations for each of Videotron's access permit applications, citing various grounds that Bell Canada considers reasonable for delays and denials.
17. Bell Canada highlighted the difficulties inherent in managing a complex system such as its support structure network. It mentioned certain initiatives to improve the procedures for giving various telecommunications service providers access to its network. Bell Canada also highlighted its involvement in the [coordination table](#) (available in French only) launched by the Government of Quebec regarding access to support structures in the province, and mentioned certain measures that need to be implemented quickly.

² The term "licensee," in the context of the SSLA between Bell and Videotron and between Bell and other companies, refers to Videotron or any other company that wants access to Bell's support structures.

18. Bell Canada specified that only 7% of Videotron's applications have been denied (at least temporarily) for any reason (including the need for make-ready work), and that only 5% of all poles and strands required make-ready work. Bell Canada submitted that those percentages are comparable with other licensees and are also comparable with the denial rate for Bell Canada's applications to other owners of support structures elsewhere in Canada.

Videotron's reply

19. In contrast to the figures presented by Bell Canada, Videotron submitted that 26% of its permit applications were denied (at least temporarily) for various reasons, while only 3% of all the poles and strands ultimately required make-ready work.

Commission's analysis and determinations

20. The Commission considers that Telecom Notice of Consultation 2019-406 contains a specific section on efficient access to support structures. In addition, on 30 October 2020, the Commission issued Telecom Notice of Consultation 2020-366, in which it focuses exclusively on possible regulatory recommendations and solutions to make access to poles owned by Canadian carriers more efficient.

21. The Commission therefore determines that the orders requested by Videotron referred to in paragraph 5 of this decision – which addresses the costs for replacing structures, the processing of access permit applications, the application of construction standards, and Bell Canada's treatment of make-ready work – should be treated, generally, as part of the proceeding related to Telecom Notice of Consultation 2020-366 because that proceeding will more thoroughly address regulatory shortcomings and the recommendations for improving access to poles.

Is Bell Canada acting in violation of the Tariff and the SLA, as well as section 24 and subsection 25(1) of the Act, particularly regarding the four allegations mentioned in paragraph 3 of this decision?

Permit V01-B25-16-041679 (application 1)

Positions of parties

Videotron

22. Regarding Bell Canada's alleged unreasonable delays in processing access permit applications for support structures, Videotron submitted that following an on-site visit, Bell Canada informed Videotron that it was refusing to grant the requested permit for certain poles in application 1. Videotron added that Bell Canada justified its denial due to an irregularity, despite the fact that this irregularity was not caused by Videotron's facilities, but rather by a strand belonging to another tenant, Cogeco Communications inc. (Cogeco).

23. Videotron submitted that Bell Canada notified it that it would need to wait for Bell Canada to address the situation with Cogeco and for the situation to be corrected before Videotron could proceed with the installation. Videotron then submitted an application to prioritize the corrective work. Videotron indicated that Bell Canada denied this application despite the agreement between the parties during a conference call in which Bell Canada confirmed that it would handle Videotron's prioritization application.
24. Videotron also submitted that Bell Canada informed it that the on-site verification process for this application would need to start again because too much time had passed since the initial application.
25. With regard to Bell Canada's alleged unreasonable and discriminatory application of construction standards in processing access permit applications for its support structures, Videotron submitted that during a visit of certain poles mentioned in application 1 on 3 and 23 September 2019, it noticed that Bell Canada had completed work on the poles to which Videotron had been denied access, including work to install a fibre optic cable.
26. On the basis of the photos it provided, Videotron submitted that the work completed by Bell Canada on some of the poles mentioned in application 1 involved installing FTTH equipment.
27. Videotron also submitted that some of the poles mentioned in application 1 contained irregularities that should have been corrected by Bell Canada before any intervention, in accordance with construction standards. Videotron also indicated that Bell Canada should have fixed these irregularities before installing its FTTH equipment on those poles, and that Bell Canada therefore contravened the construction standards with which both Bell Canada and Videotron must comply.
28. Videotron therefore submitted that Bell Canada was requiring it to meet standards that Bell Canada itself was not meeting, in violation of clause 2.8 of the SSLA.

Bell Canada

29. With regard to Bell Canada's alleged unreasonable delays in processing the access permit applications for its support structures, Bell Canada submitted that it denied application 1 because of non-compliance with the structure's existing facilities, and that those non-compliant facilities needed to be corrected before any access permits could be granted or any installation could be made by licensees on the structure.
30. Bell Canada submitted that it could not grant the permit because it had to consult with Cogeco so that Cogeco could complete the work on its own facilities. Bell Canada added that it had reached an impasse because Cogeco was refusing to cooperate. Bell Canada submitted that it could not complete engineering work on a third party's network without risking disconnection of the third party's customers, given that the work affects the third party's cables and equipment and has an effect on how the third party serves its subscribers.

31. Bell Canada submitted that, typically, when a licensee denies access, Bell Canada can refer to clause 2.7 of the SSLA to complete the required work. However, Bell Canada specified that in the case of application 1, it was impossible to install a guy wire directly onto the pole in question because the anchor would be in the middle of an entrance.
32. Bell Canada submitted that, in light of Videotron's Part 1 application and Cogeco's refusal to cooperate, it decided to take charge of the issue to resolve the impasse and, to the extent that was possible, find a solution.
33. With regard to Bell Canada's alleged unreasonable and discriminatory application of construction standards in processing access permit applications for its support structures, Bell Canada submitted that as part of its own projects to deploy an FTTH network, its fibre deployment teams must comply with the same construction standards that apply to licensees.
34. Bell Canada indicated that there have been cases of non-compliance, such as the example mentioned by Videotron as part of application 1. Bell Canada specified that it is by far the company that deploys the most fibre in Canada,³ and that, given the volume of installations it performs, it is practically impossible to prevent certain errors from occurring.
35. Bell Canada submitted that it had reminded teams and engineering companies of the need to comply with construction standards. Bell Canada also submitted that it implemented a review to determine whether fibre deployment teams had been deployed to a site before a licensee's request for access in order to proactively detect cases of non-compliance on its fibre deployment teams. Bell Canada added that its support teams would soon be offering new training for detecting irregularities in the external network to all concerned teams to emphasize this requirement.

Videotron's reply

36. Regarding Bell Canada's alleged unreasonable delays in processing access permit applications for its support structures, Videotron submitted that the cases of non-compliance that affect application 1 date back to the permit granted by Bell Canada to a third party between 2011 and 2012 for Bell Canada's own strand.
37. Videotron added that its internal analyses revealed that it would not be possible to issue an exemption for application 1, and that it had submitted a prioritization application that Bell Canada had denied.

³ Bell Canada submitted that it deploys thousands of kilometres of fibre every year; it has deployed over 40,000 kilometres in Quebec since 2009.

38. Videotron indicated that it was only after it submitted its application that Bell Canada decided to take charge of the issue, but it did so three and a half years after the submission of application 1 and two years after Cogeco's refusal to complete the work.
39. With respect to Bell Canada's alleged unreasonable and discriminatory application of construction standards in processing access permit applications for its support structures, Videotron submitted that Bell Canada, in its reply, did not deny having installed FTTH equipment on the poles covered by application 1 during summer and fall 2019, which violates the construction standards (that are imposed by Bell Canada).
40. Videotron indicated that Bell Canada's work to install FTTH equipment was completed despite the safety risk alleged by Bell Canada to deny Videotron access to the structures. Videotron submitted that while it was being denied access, Bell Canada was expanding its own network in violation of its own construction standards.

Commission's analysis and determinations

41. The Commission considers that the current delay for processing application 1 is now more than three years since the application was submitted and more than two years since Cogeco refused to complete the work. The Commission also considers that when a third party (licensee) refuses or neglects to carry out work to rectify non-compliance in its facilities, making the structure that is the subject of Videotron's permit application inaccessible, clause 2.7 of the SSLA allows Bell Canada to perform the work itself and charge the licensee for the costs.
42. The prescribed deadlines for notices to licensees,⁴ permit applications,⁵ and work completed by licensees⁶ provide a general idea of what would be a reasonable time period for completing the work required when a licensee refuses to do so.
43. The language of clause 2.7 does not require Bell Canada to carry out the work if a licensee refuses to do so. However, the Commission considers that Bell Canada is the owner of the structures and did not avail itself of this clause even after a delay much longer than the minimum time limits prescribed for a licensee to carry out similar work. Bell Canada is therefore delaying and hindering Videotron's legitimate and regulatory access to Bell Canada's support structures.

⁴ For instance, clause 9.1 of the SSLA requires 60 days' notice to licensees in case of termination.

⁵ Item 901.4(a) of the Tariff includes time periods within which Bell must approve or deny permit applications. These time periods are 15 calendar days for applications of 20 poles or less and 30 calendar days for applications of 21 to 49 poles. The Tariff also states that a date must be negotiated for applications of 50 poles or more.

⁶ For instance, item 901.3(1) of the Tariff includes a maximum time period of 90 days following notice from the company for licensees to fix problems related to their equipment.

44. The Commission also considers that according to evidence, specifically the photos provided by Videotron, Bell Canada deployed its own FTTH network on its structures without correcting the irregularities, while also denying Videotron's application. Consequently, the facts relating to application 1 demonstrate that Bell Canada is requiring Videotron to comply with construction standards with which Bell Canada itself is not complying, in violation of clause 2.8 of the SSLA.⁷

Permit V01-BK1-19-060389, line 9 (application 2)

Positions of parties

Videotron

45. Videotron argued that application 2 illustrates that Bell Canada was using another alleged unfair tactic against Videotron by delaying the access requested on the grounds that Bell Canada needed to perform make-ready work that it should have already completed.
46. Videotron indicated that Bell Canada refused to grant the requested permit. Videotron added that Bell Canada alleged that work was underway at that location, and that Videotron would not be able to perform the requested installation until that work was completed.
47. Videotron submitted that Bell Canada should have completed this work several years earlier. Videotron argued that this is because in a previous permit application for the same work, Videotron had paid \$1,211 for make-ready work, for which Bell Canada had subsequently granted the permit that Videotron had requested. Videotron added that, on the basis of the photographs it submitted in its application, it appears that Bell Canada did not complete this work for which Videotron had paid.
48. Videotron argued that, nearly one year after it submitted application 2, it still did not have access to this support structure despite having paid for work that had never been done.

Bell Canada

49. In its reply, Bell Canada indicated that application 2 had been denied because of non-compliance involving Bell Canada's and Hydro-Québec's guy wires. Bell Canada submitted that the work should have been performed several years ago, and that it is probably a mistake by a subcontractor. Moreover, Bell Canada maintained that Videotron could have filed an application for a waiver but did not do so and therefore did not take advantage of the opportunity to immediately carry out its work.

⁷ Clause 2.8 of the SSLA states that the both the company and the licensee must comply with construction standards: "Both the licensee and the company shall comply with the construction standards as defined in the tariff. The licensee shall not be required to comply with any construction standard that the company itself does not follow."

Videotron's reply

50. In its reply, Videotron submitted that Bell Canada should have known that the work had not been done several years earlier and should have been proactive in following up on permits and work on its own network. Videotron argued that its internal engineering calculations demonstrated that an exemption waiver was not possible based on criteria set by Bell Canada.

Commission's analysis and determinations

51. The Commission considers that non-compliance had been identified several years ago and should have been corrected by Bell Canada given that Videotron had to bear the costs. In its reply, Bell Canada submitted that it was an oversight by one of its subcontractors. The Commission considers that it was Bell Canada's responsibility to adequately follow up on the permit application and on the repair and maintenance of its network and to inspect its network.

DUSS Permit V01-BK7-17-042816 (application 3)

Positions of parties

Videotron

52. Videotron argued that it often experiences delays during its deployments because of Bell Canada's failure to carry out corrective work on irregularities that Bell Canada should have identified during proactive inspections or, at the very least, prior to the installation of its equipment on support structures.
53. Videotron submitted that Bell Canada denied application 3 on the grounds that the pole did not comply with a Canadian Standards Association standard, and that the irregularity had to be corrected by Hydro-Québec as the owner of the line. Videotron argued that Bell Canada was responsible for fixing the irregularity involving this pole because Bell Canada owned it. Videotron added that despite this non-compliance, Bell Canada carried out its own installation work on the pole in question and allowed a third party to do the same, demonstrating the arbitrary nature of Bell Canada's application of the construction standards.

Bell Canada

54. Bell Canada indicated that the application had to be denied because the pole was not compliant with Hydro-Québec's power grid. Bell Canada added that the power grid was not attached to the pole that is the subject of application 3, but to another support structure nearby. This proximity was the reason for the denial. Bell Canada submitted that, for safety reasons, it could not allow work to be performed under a non-compliant electrical line. Bell Canada added that the file was transferred to Hydro-Québec so that it could make the necessary corrections.

55. Bell Canada submitted that it did not grant an installation permit to a third party. Bell Canada added that the work performed by another licensee on the structure in 2016 was repair work and had not been disclosed to Bell Canada. Bell Canada indicated that it performed make-ready work at no cost to Videotron, which resulted in the permit for application 3 being granted on 26 May 2020.

Videotron's reply

56. Videotron submitted that this application, which Bell Canada delayed for nearly a year and a half, demonstrates Bell Canada's practices. Videotron argued that the make-ready work, for which solely Bell Canada was responsible, should have been completed in August 2011.
57. Videotron argued that Bell Canada did not deny having performed work on this pole sometime before August 2011 despite the non-compliance, which Bell Canada claimed was a serious safety risk. Videotron indicated that Bell Canada's claims that a third party performed the repairs without a permit are false because the work involved adding a cable, which requires a permit.

Commission's analysis and determinations

58. The Commission considers that Videotron's application 3 is moot because Bell Canada already performed make-ready work at no cost to Videotron and issued the permit on 26 May 2020. However, the Commission considers that the delays that Videotron experienced in Bell Canada's processing of application 3 clearly illustrate the extent of the problem of access to Bell Canada's support structures.

Permit V01-B15-19-063856 (application 4)

Positions of parties

Videotron

59. Videotron submitted that application 4 demonstrates Bell Canada's unreasonable and discriminatory application of construction standards. Videotron argued that Bell Canada unjustly denied its permit application 4 and required load calculations for one of the two poles specified in the application, even though the application does not involve the strand in question. Videotron indicated that the application involved another strand connected to the pole.
60. Videotron argued that given that business imperatives required that the permits requested be obtained, it provided the load calculations mistakenly requested by Bell Canada and paid for Bell Canada to rearrange an attachment that is outside the scope of application 4.

Bell Canada

61. Bell Canada submitted that application 4 was denied because of two hazardous irregularities. Bell Canada also submitted that in such a situation, licensees may provide load calculations and carry out corrective work if the load calculations allow it.
62. Bell Canada argued that Videotron could have exercised due diligence given that the two companies have calls every two months to discuss various topics and specific files. Bell Canada added that Videotron could have mentioned this file but did not.
63. Bell Canada submitted that the replacement work has begun, that the project is now under Hydro-Québec's responsibility, and that Hydro-Québec must move its guy wire. Bell Canada indicated that licensees can submit a request directly to Hydro-Québec for certain work to be prioritized by providing the reference number of the work cost application related to the project.

Videotron's reply

64. Videotron submitted that Bell Canada's reply failed to account for News Release 07-06 – *Norme commune pour la conception, l'installation et la vérification des structures aériennes, révision 2*⁸ [Common Standard for the Design, Installation, and Inspection of Aerial Structures, revision 2] (available in French only), which was submitted to support Videotron's application and which states that the licensee does not need to provide a load calculation under such circumstances.
65. Videotron also submitted that it exercised due diligence in its handling of application 4 when the file was escalated as per standard procedures and discussed during a conference call between the two companies.
66. Videotron argued that the irregularities affecting application 4 should have been resolved when Bell Canada installed the FTTH cable. Videotron added that Bell Canada's negligence in enforcing its own construction standards is the root of the problem and the delays that Videotron is currently experiencing.

Commission's analysis and determinations

67. The Commission considers that Bell Canada processed the application and handled the make-ready work in a way that unreasonably delayed access to one of its support structures, which violates item 901.3(h) of the Tariff. The evidence that Videotron provided shows that Bell Canada should have fixed the irregularities identified in application 4 while installing its own FTTH equipment in 2014 given that the situation already existed at that time.

⁸ A news release from Bell Canada to all licensees stating that amendments were made to the Common Standard.

Permit DUSS V01-B25-17-046237 (application 5)

Positions of parties

Videotron

68. Videotron submitted that application 5 demonstrates another alleged anti-competitive tactic used by Bell Canada against Videotron. Videotron specified that this tactic involves using a permit application as an opportunity to have the licensee pay the full cost of replacing an obsolete or deteriorating structure, regardless of whether the licensee is already paying Bell Canada a rental fee for access to the structure in question.
69. Videotron indicated that it has paid rental fees to Bell Canada for the two poles covered by application 5 for many years. Videotron submitted that Bell Canada approved this application on the condition that Videotron pay the cost of replacing the two poles (\$11,294), which Bell Canada deemed deteriorated or damaged.
70. Videotron submitted that Bell Canada acted improperly by requiring Videotron to pay the repair costs for the two poles that Bell Canada had failed to maintain, even though Videotron had been paying a rental (and therefore maintenance) fee for those two poles for several years.

Bell Canada

71. Bell Canada submitted that Videotron's application had been denied because the two poles in question have irregularities. Bell Canada added that the pole rental fee mentioned by Videotron is only \$12.48 per year, which in no way covers Bell Canada's maintenance fees. Bell Canada further submitted that the applicable construction standards require all parts of the structure to comply with construction standards when work is performed on the structure. Therefore, any non-compliance must be resolved at the licensee's cost.
72. Lastly, Bell Canada argued that all companies, including itself, are subject to the same construction standards and related costs for the preparation, installation, repair, and replacement of structures when requesting facilities. With respect to the delays Videotron faced in this particular application, Bell Canada submitted that Hydro-Québec and not Bell Canada is responsible for the make-ready work, and that Videotron can therefore submit a prioritization request to Hydro-Québec.

Videotron's reply

73. Videotron highlighted Bell Canada's shortcomings in maintaining its own network. Videotron added that telecommunications equipment maintenance is performed when cables are installed, and that the requesting licensee also pays for tree pruning. As for rental costs, Videotron argued that it would be unreasonable for the rental costs to cover all maintenance costs because Bell Canada and sometimes other licensees also use these structures.

Commission's analysis and determinations

74. The Commission considers that the cost of the make-ready work required by Bell Canada in this case seems unreasonable and inconsistent with the language used in the Tariff given that it is equal to the total cost of replacing an obsolete structure (as described in application 5).

Conclusion

75. Regarding construction standards, the Commission considers that the record as a whole contains enough details and explanations to demonstrate that – although Bell Canada identified instances of non-compliance that affected its structures and resulted in the refusal of Videotron's permit applications 1 and 4 – Bell Canada nonetheless installed its own equipment on the lines (or structures) during the same period in which Videotron was denied access to them. The Commission considers that through these actions, and taking into account the delays imposed on its competitor, Videotron, Bell Canada applied its construction standards in a way that unreasonably prevents licensees from gaining access to its structures, contrary to item 901.3(h) of the Tariff, and therefore contrary to section 24 and subsection 25(1) of the Act.
76. Furthermore, the Commission considers that Bell Canada cannot rely on arguments relating to the complexity of its own network management system to explain the delays to and the denial of Videotron's access applications if Bell Canada itself is benefiting from more efficient and timely access when deploying FTTH on the same support structures. The Commission also considers that its intervention, as requested by Videotron, is necessary and consistent with the Government of Canada's strategic policy directions (e.g. subparagraphs 1(a)(i), 1(a)(iii), 1(a)(iv), 1(a)(v) and 1(a)(vi) of the 2019 Policy Direction)⁹ aimed at consumer interests, market forces, and access to differentiated, affordable, and high-quality services. When Bell Canada's handling of a competitor's formal permit application is delayed by months or even years, and this situation is repeated for that same competitor and other competitors operating in the company's serving territory, potentially hundreds or thousands of consumers and small businesses are deprived of choosing a provider or innovative telecommunications services. As a result, they are unable to enjoy the full benefits of a competitive, dynamic, and efficient market.
77. The Commission considers that Bell Canada, in its handling of the permit applications, is using its position as the owner of the network to give itself a competitive advantage when deploying its own FTTH network on the very structures with irregularities that caused Videotron's applications for permits to be denied.

⁹ *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

78. In light of the above, the Commission finds that Bell Canada violated clause 2.8 of the SSLA by requiring Videotron to meet construction standards that Bell Canada itself did not meet. By applying these same construction standards in a manner that unreasonably impedes, at least temporarily, access by other licensees, Bell Canada violated item 901.3(h) of the Tariff and therefore section 24 and subsection 25(1) of the Act.

Did Bell Canada give itself preference under subsection 27(2) of the Act? If so, is the preference Bell Canada gave itself undue?

Commission's analysis and determinations

79. The Commission's general approach to allegations of unjust discrimination or undue preference is to require the party making the allegations to first establish the discrimination or preference. Once it is established, the company targeted by these allegations must prove that there is no unjust or undue discrimination or preference, as required by subsection 27(4) of the Act.
80. To determine whether Bell Canada has granted itself a preference under the Act, the Commission must answer the following question: By denying, even temporarily, the permit applications in Videotron's application, while continuing its own FTTH network deployment, did Bell Canada treat Videotron unfavourably or grant itself a preference?
81. In the Commission's view, Bell Canada has given itself a competitive preference: it deployed its own FTTH network on structures with irregularities that caused Videotron's permit applications to be denied, and it required Videotron to meet construction standards that Bell Canada itself does not meet. All of the evidence on the public record demonstrates that Bell Canada's actions and omissions amount to a form of discrimination, as defined in subsection 27(2) of the Act, against Videotron and its end-users. Canadian consumers ultimately bear the brunt of unreasonable delays, denials, and a telecommunications services market that is not as dynamic as it could be.
82. The Commission considers that denying access, even temporarily, along with the unreasonable delays in processing Videotron's permit applications and in managing the required make-ready work, puts Videotron at a disadvantage.
83. In light of the above, the Commission finds that Bell Canada granted itself a preference and put Videotron and its potential customers at a disadvantage. It would be highly beneficial if Bell Canada increased its collaboration with the various licensees to improve its efficiency when processing access applications to its structures and to reduce delays to a minimum.
84. The Commission considers that the disadvantage experienced by Videotron, caused by the delays and the high access costs for the support structures, is also shared by consumers and small businesses who are deprived, at least temporarily, of the benefits of true competition in telecommunications services.

85. The Commission finds that Bell Canada failed to demonstrate that the preference it granted itself is not unjust or undue. The Commission considers that Bell Canada cannot rely on arguments relating to the complexity of its own network management system to explain the very long delays to and the denial of Videotron's access applications, while itself benefiting from more efficient and timely access when deploying FTTH on the same support structures. The Commission was not convinced by Bell Canada's arguments regarding the exceptional nature of the denials that Videotron described.
86. Videotron submitted that 26% of its permit applications were denied. The statistics that Videotron provided take into account that a permit application is rejected when a single line of the application is denied. Bell Canada's statistics indicated that 7% of Videotron's applications were denied. These statistics are based instead on the number of lines denied within a single permit application. Consequently, the Commission considers that the statistics presented by Videotron paint a more realistic picture of the situation and are indicative of a systemic issue, or at least a pattern of inefficient practices on Bell Canada's part, which frequently impede the efforts of licensees to the disadvantage of consumers.
87. The Commission finds that Bell Canada violated clause 2.8 of the SSLA by requiring Videotron to meet construction standards that Bell Canada did not itself meet. By applying these same construction standards in a manner that unreasonably impeded, at least temporarily, the access of other licensees, Bell Canada violated item 901.3(h) of the Tariff. Bell Canada, in its response to Videotron's allegations, failed to demonstrate that this advantage is not unjust, undue, or unreasonable. Therefore, the Commission finds that the preference Bell Canada has granted itself and the disadvantage it has imposed on Videotron are undue and unreasonable.

Should the Commission undertake enforcement actions against Bell Canada for violating section 24 and subsections 25(1) and 27(2) of the Act?

Commission's analysis and determinations

88. The Commission responds to cases of non-compliance by using the most appropriate tools available, such as enforcement measures – which the Commission may use to promote compliance with the Act – regulations, or any decisions that it makes. Non-punitive enforcement measures, such as AMPs, may be used if they are the appropriate tool to enforce compliance with regulatory requirements and discourage the repetition of non-compliant conduct.¹⁰
89. Section 72.001 of the Act establishes a framework for individuals to receive AMPs if they contravene the Act, regulations, or a decision made by the Commission under the Act. To impose an AMP on Bell Canada under section 72.001 of the Act,¹¹ the

¹⁰ See Compliance and Enforcement and Telecom Information Bulletin 2015-111.

¹¹ The maximum penalties for a company under the general AMP regime, as set out in section 72.001 of the Act, are \$10 million for a first violation and \$15 million for a subsequent violation.

Commission must find that Bell Canada contravened a provision of the Act, a regulation, or a decision made by the Commission. The Commission is able to make this determination based on the finding that Bell Canada contravened item 901.3(h) of the Tariff and clause 2.8 of the SSLA, and therefore section 24 and subsections 25(1) and 27(2) of the Act.

90. Accordingly, the Commission is of the preliminary view that imposing an AMP on Bell Canada is appropriate. The Commission will initiate a follow-up proceeding through a notice of consultation to determine whether it is appropriate to impose an AMP, and, if so, the amount of the AMP.
91. The 2019 Policy Direction and the most recent statements from various levels of government paint a clear picture of the importance of competition and the development of telecommunications service offerings, including broadband Internet services for all Canadians. In the Commission's view, the violations identified above impede the development of the enhanced telecommunications network promised to Canadians and are clearly contrary to the public interest. In this regard, the use of enforcement measures is an effective means of deterring subsequent violations.

Conclusion

92. The Commission considers that the record as a whole contains sufficient detailed evidence regarding Videotron's applications related to the slowness and inefficiency of the system for issuing permits to use Bell Canada's support structures for the Commission to rule in Videotron's favour and issue most of the requested orders.
93. The Commission **approves in part** Videotron's application for relief and **directs** Bell Canada to complete, at its own cost, the make-ready work required under access permits applications V01-B25-16-041679 (application 1) and V01-BK1-19-060389 (application 2) within **30 days** of publication of this decision, to issue the permits related to applications 1 and 2 within **5 days** of completion of the make-ready work, and to issue the permits related to access permit applications V01-B15-19-063856 (application 4) and V01-B25-17-046237 (application 5) within **5 days** of publication of this decision.
94. In light of Bell Canada's violations of section 24 and subsections 25(1) and 27(2) of the Act, the Commission states the preliminary view that an AMP should be imposed on Bell Canada. As a result, the Commission is initiating a follow-up proceeding, in Telecom Notice of Consultation 2021-132, to consider the appropriateness of imposing an AMP on the company and, if necessary, to determine the amount of the AMP.

Policy Directions

95. The Commission is required, in exercising its powers and performing its duties under the Act, to implement the policy objectives set out in section 7 of the Act, in accordance with the 2006 Policy Direction¹² and the 2019 Policy Direction (collectively, the Policy Directions). The Commission considers that the determinations set out in this decision are in accordance with the Policy Directions for the reasons stated below.
96. The 2006 Policy Direction requires the Commission to rely on market forces to the greatest extent possible and regulate, where there is still a need to do so, in a manner that interferes with the operation of market forces to the minimum extent necessary to meet the policy objectives of the Act. It also requires the Commission to specify, when relying on regulatory measures, the policy objective that is advanced by those measures.
97. The Commission's findings above advance the Canadian telecommunications policy objectives set out in paragraphs 7(a), 7(b), 7(c), 7(f), and 7(h) of the Act.¹³ In addition, they rely on market forces to the maximum extent feasible by stating the expectation that the parties respect the terms of the Tariff or any other agreement they enter into, and collaborate more closely to meet the needs of Canadians who wish to benefit from competition in the telecommunications services market and from access to broadband Internet access services with higher speeds.
98. The 2019 Policy Direction states that, in exercising its powers and duties under the Act, the Commission should consider how its decisions can promote competition, affordability, consumer interests, and innovation.
99. The Commission considers that its determinations in this proceeding are consistent with the 2019 Policy Direction and promote competition, affordability, consumer interests, and innovation, particularly with respect to subparagraphs 1(a)(i), 1(a)(iii), 1(a)(iv), 1(a)(v) and 1(a)(vi). For example, the Commission's recommendations outlined above are aimed at ensuring compliance with the Tariff and any agreements between the parties, and greater collaboration in the provision of telecommunications services so that consumers can enjoy the benefits of healthy competition between providers and have access to differentiated, affordable, high-quality services. The Commission considers that the proposed recommendations send a clear message to Canadian pole owners and may promote faster and cheaper access for licensees.

¹² *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

¹³ The cited policy objectives of the Act are: 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; 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; 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; 7(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 7(h) to respond to the economic and social requirements of users of telecommunications services.

Secretary General

Related documents

- *Call for comments – Imposition of an administrative monetary penalty on Bell Canada in relation to the processing and granting of access permit applications to support structures in accordance with its National Services Tariff*, Telecom Notice of Consultation CRTC 2021-132, 16 April 2021
- *Call for comments regarding potential regulatory measures to make access to poles owned by Canadian carriers more efficient*, Telecom Notice of Consultation CRTC 2020-366, 30 October 2020
- *Call for comments regarding potential barriers to the deployment of broadband-capable networks in underserved areas in Canada*, Telecom Notice of Consultation CRTC 2019-406, 10 December 2019; as amended by Telecom Notices of Consultation CRTC 2019-406-1, 20 December 2019; and 2019-406-2, 21 April 2020
- *Guidelines regarding the general administrative monetary penalties regime under the Telecommunications Act*, Compliance and Enforcement and Telecom Information Bulletin CRTC 2015-111, 27 March 2015
- *Rates set for access to telephone companies' support structures*, Order CRTC 2000-13, 18 January 2000
- *Access to telephone company support structures*, Telecom Decision CRTC 95-13, 22 June 1995

Appendix to Telecom Decision CRTC 2021-131

The national rates for access to telephone company support structures and the SSLA model are described below in relation to this proceeding:

- [National Services Tariff \(English\) – 7400, Section 9, Miscellaneous Services, Item 901 – Support Structure Service:](#)
 - Under items 901.3(b) and 901.4(g) of the Tariff, Bell Canada must allow the use of its support structures by companies that apply if the necessary spare capacity is available.
 - Item 901.4(a) of the Tariff sets out the time periods within which Bell Canada must approve or deny a permit application. The time periods are 15 calendar days for an application for 20 poles or less, and 30 calendar days for an application for 21 to 49 poles. A date must be negotiated for an application for 50 poles or more.
 - Under items 901.3(h) and 901.3(i) of the Tariff, Bell Canada must set and enforce construction standards for facilities installed on support structures.
 - Under item 901.3(a) of the Tariff, Bell Canada and Videotron must enter into an SSLA, in the form approved by the Commission, governing the parties' rights and obligations regarding access to support structures.
- The SSLA between Bell Canada and Videotron signed on or about 7 April 2000
 - Clause 2.8: Videotron is not required to comply with any construction standard that Bell Canada itself does not meet.
- Construction standards¹⁴ from the SSLA between Bell Canada and Telebec included in the SSLA and Tariff
 - These construction standards include by reference the *Norme commune pour la conception, l'installation et la vérification des structures aériennes* [Common Standard for the Design, Installation, and Inspection of Aerial Structures] (available in French only) and Canadian Standards Association Standard C22.3 No. 1–15.

¹⁴ The construction standards include documents detailing the company's safety and technical requirements, along with industry standards to which the licensee must adhere when performing work on facilities installed on, in, or near the company's support structures.