



## Telecom Decision CRTC 2022-150

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### **Bell Canada – Application to review and vary and stay Telecom Order 2021-182 regarding the routing of competitive local exchange carrier 800/888 calls**

#### **Summary**

Bell Canada requested that the Commission review and vary and stay Telecom Order 2021-182. The Commission finds that there is no substantial doubt as to the correctness of Telecom Order 2021-182 due to any errors in law or in fact and in law and **denies** Bell Canada's application.

In light of the Commission's determinations on the review and vary application, the request to stay the implementation of Telecom Order 2021-182 is moot.

#### **Background**

1. On 2 December 2019, the Commission issued Telecom Decision 2019-390, which was the result of an application by Rogers Communications Canada Inc. (RCCI) concerning the routing of toll-free traffic from RCCI's network destined to Bell Canada's toll-free telephone number customers. This traffic had previously been sent to Bell Canada over bill-and-keep trunks between the two companies, and Bell Canada used its database to identify the terminating toll-free carrier on behalf of RCCI, then routed the toll traffic to its intended destination. However, RCCI had developed its own database to identify the destination toll carrier to whom the toll-free traffic is to be delivered. This traffic can be delivered directly to terminating toll-free service providers over one-way toll-free trunks deployed by the toll-free service provider to RCCI's networks. RCCI had completed these types of arrangements with other competitive local exchange carriers (CLECs) and inter-exchange carriers (IXCs) with the exception of Bell Canada.
2. In the decision, the Commission required Bell Canada to deploy one-way toll trunks connected to RCCI switches located in Bell Canada's operating territory in which RCCI also provides service. These trunks were to be used for the routing of toll-free traffic originating on RCCI's network and destined to Bell Canada's toll-free telephone number customers. This arrangement allows RCCI to take advantage of its new database and destination carrier identification ability to reduce local interconnection costs and make a return on its investment in toll-free call-dipping

services.<sup>1</sup> These trunks were to be in place within 150 days from the date of Telecom Decision 2019-390. The Commission also directed Bell Canada to file proposed tariff pages indicating that Bell Canada would receive RCCI-originating toll-free traffic over the toll trunks.

3. On 20 December 2019, Bell Canada filed an application to review and vary and stay Telecom Decision 2019-390. In its application, Bell Canada argued that the Commission made an error in fact and in law by failing to properly apply the 2006 Policy Direction.<sup>2</sup> In Telecom Decision 2020-226, the Commission denied both the stay and the review and vary requests. Bell Canada was instructed to complete the installation of the toll-free trunks by 17 August 2020 and to file revised tariff pages by 20 July 2020.
4. On 20 July 2020, Bell Canada filed revised tariff pages (Tariff Notice [TN] 7616 and 7616A)<sup>3</sup> with proposed wording for the acceptance of RCCI's toll-free traffic destined for Bell Canada's toll-free telephone number customers.<sup>4</sup> The tariff notice received Commission interim approval in Telecom Order 2020-244.
5. The Commission approved TN 7616 and TN 7616A, with changes, on a final basis in Telecom Order 2021-182. Specifically, the Commission modified the tariff wording by (i) removing the reference that limited the arrangement to RCCI's retail customers and (ii) replacing it with a reference that made the arrangement applicable to any CLEC that develops a competitive toll-free call-dipping service.<sup>5</sup>

## Application

6. On 23 July 2021, Bell Canada filed an application to review and vary and stay Telecom Order 2021-182 pursuant to sections 52 and 62 of the *Telecommunications Act* (the Act). Bell Canada submitted that there is substantial doubt as to the correctness of Telecom Order 2021-182 because the Commission made both errors in fact and in law in the order. Therefore, Bell Canada requested that the Commission rescind the requirement for Bell Canada to deploy new toll trunks to any local exchange carrier (LEC) other than RCCI.

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<sup>1</sup> A call-dipping service is a query to a database to determine the carrier to whom toll-free calls should be routed for call completion to toll-free number customers.

<sup>2</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

<sup>3</sup> Bell Canada filed a tariff amendment, TN 7616A, on 31 July 2021 to amend the tariff effective date to 17 August 2020 per Telecom Decision 2020-226.

<sup>4</sup> The proposed wording was as follows: 4(a)(2)b The Company will receive Rogers Communications Canada Inc.'s (RCCI) originating toll-free traffic from RCCI's retail end-users destined for the Company's toll-free telephone number customers over one-way toll trunks deployed to RCCI's switches.

<sup>5</sup> The tariff wording approved on a final basis, with changes, was as follows: 4(a)(2)b The Company will receive toll-free traffic regardless of its origin destined for the Company's toll-free telephone number customers over one-way toll trunks deployed to a CLEC's network(s).

7. Bell Canada also requested that the Commission issue a stay of Telecom Order 2021-182 in respect of toll-free trunks with LECs other than RCCI until the Commission has ruled on the application.
8. Bell Canada submitted that Telecom Order 2021-182 modified Bell Canada's proposed tariff language in two ways. First, the wording that received interim approval restricted the eligible traffic to traffic from RCCI's own retail end-users, and the Commission removed this reference in the final tariff wording on the basis that this restriction was not included in Telecom Decision 2019-390. Bell Canada disagreed with this deletion but acknowledged that it was within the Commission's discretion to effect such change because that change represents the Commission's interpretation of its own determinations in Telecom Decision 2019-390. Therefore, this change did not form part of its application for review and vary.
9. Second, the Commission expanded the determination in Telecom Decision 2019-390 to Bell Canada's (and only Bell Canada's) relationship to any LEC that developed a competitive toll-free call-dipping service through a simple tariff implementation process.
10. Bell Canada argued that the Commission made both errors in law and in fact and in law. In particular, Bell Canada argued that the Commission erred in law by
  - failing to provide Bell Canada with proper notice of the Commission's intent to expand the scope of the proceeding;
  - using a tariff implementation proceeding to revise its previous policy determinations;
  - finding that Bell Canada's opportunity to reply to out-of-scope comments afforded it sufficient procedural fairness; and
  - failing to regulate in a competitively neutral manner by applying the requirement to receive toll-free traffic from all LECs on Bell Canada alone, contrary to both the 2006 Policy Direction and 2019 Policy Direction<sup>6</sup> (collectively, the Policy Directions).
11. Bell Canada added that the Commission erred in fact and in law by
  - relying on the breadth of RCCI's application that was served on interested parties, which led to Telecom Decision 2019-390,;
  - expanding the determinations in Telecom Decision 2019-390 to apply beyond RCCI; and
  - relying on interveners' out-of-scope comments.
12. Bell Canada suggested that if the Commission still wishes to expand Telecom Decision 2019-390, the correct approach would be to initiate a show cause or other

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<sup>6</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

broad proceeding. This proceeding would cover whether a toll-free arrangement similar to that with RCCI should be available to all LECs or whether all LECs that have a toll-free call-dipping service should be required to deploy on request one-way toll-free trunks to other LECs with toll-free call-dipping services.

13. In its application, Bell Canada also noted that while there were no pending requests from other LECs at the time for it to implement one-way toll-free trunks, it was concerned that it would be requested to enter into such interconnection arrangements with LECs other than RCCI in the future.
14. The Commission received interventions from Distributel Communications Limited (Distributel); Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); and TELUS Communications Inc. (TCI).

### **Review and vary criteria**

15. 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 in order for it to exercise its discretion pursuant to section 62, 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.

### **Issue**

16. The Commission has identified the following issue to be addressed in this decision:
  - Did the Commission err in law or in fact and in law in Telecom Order 2021-182?

### **Did the Commission err in law or in fact and in law in Telecom Order 2021-182?**

### **Positions of parties**

#### **Bell Canada**

17. Bell Canada submitted that the Commission never gave the company proper notice that the tariff implementation of Telecom Decision 2019-390 would be expanded to require Bell Canada to receive toll-free traffic over toll-free trunks from any LEC (other than RCCI) that has the ability to query a toll-free call-dipping service. Bell Canada submitted that this went beyond the determinations made by the Commission in Telecom Decision 2019-390, altering its scope and that of its associated tariff implementation process. Bell Canada noted the Commission's findings that applying the provision more broadly to all LECs would provide clarity and reduce the risk of further disputes and similar applications in the future, as well as reduce the regulatory burden for both the Commission and the industry. However, Bell Canada disputed the Commission's justification for this expansion of Telecom Decision 2019-390, noting

that such practicalities cannot trump Bell Canada's right to natural justice and procedural fairness.

18. Bell Canada submitted that the Commission mischaracterized the tariff process by taking the position that the tariff notice to implement directions in Telecom Decision 2019-390 initiated a proceeding that permitted interveners to comment on whether the proposed wording should be broadened beyond RCCI. Bell Canada argued that TN 7616 only exists because the Commission directed Bell Canada in Telecom Decision 2019-390 to file proposed tariff language indicating that it would receive RCCI's toll-free traffic from RCCI switches over toll-free trunks.
19. Bell Canada noted that the Commission did not initiate a show cause or notice of consultation to explore whether its determinations in Telecom Decision 2019-390 should be expanded. In this regard, Bell Canada argued that the Commission committed an error in law by transforming a tariff notice into a review and vary proceeding. Bell Canada submitted that while the Commission has the jurisdiction to do this, it must be done transparently, in accordance with the Act, the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, and the principles of fundamental justice.
20. Bell Canada disagreed with the Commission's comment in Telecom Order 2021-182 that Bell Canada had received all the interventions and had the opportunity to respond on the record to the issue surrounding its tariff language, and that the procedural fairness associated with the proceeding had been fulfilled. Bell Canada argued that the Commission's reasoning was flawed, adding that in its original reply comments, Bell Canada had stated that the calls for an expanded application were out of scope. In its second reply comments,<sup>7</sup> Bell Canada again dismissed certain intervener comments on the basis that they were out of scope. Bell Canada argued that the Commission erred by determining that this second reply remedied the procedural fairness deficiency.
21. Further, Bell Canada submitted that the scope of the proceeding is defined by the original filing, but it can be subsequently amended with the Commission's clear direction to change the scope of a proceeding, for example, through an amendment to a notice of consultation. Intervenors, however, do not change the scope of the proceeding, unless and until the Commission indicates so. Bell Canada argued that nowhere in the proceedings leading to Telecom Decision 2019-390 or Telecom Order 2021-182 did the Commission indicate that the case was anything other than a dispute between Bell Canada and RCCI.
22. Moreover, Bell Canada argued that its tariff notice in which the company proposed language specific to RCCI had received interim approval, and that in the interim approval order, the Commission made no reference to the possible expansion of the

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<sup>7</sup> Bell Canada submitted that its second reply comments were allowed by the Commission for Bell Canada to respond to TCI's comments, which had been sent to the wrong Bell Canada email address. These second reply comments did not provide Bell Canada with the opportunity to address new matters being brought into scope.

requirement to connect to additional LECs beyond RCCI. At no time in the tariff implementation proceeding did the Commission indicate to Bell Canada that the proceeding was anything more than the development of tariff language to reflect the determination regarding Bell Canada and RCCI from Telecom Decision 2019-390.

23. Bell Canada argued that if Telecom Order 2021-182 was meant to establish new industry policy, competitive neutrality would require it to apply to all providers that offer a toll-free call-dipping service and not just to Bell Canada, in accordance with the Policy Directions. Therefore, Bell Canada argued that the Commission committed an error in law by failing to regulate in a competitively neutral matter.
24. According to Bell Canada, Telecom Order 2021-182 does not apply symmetrically to all similarly situated providers. Bell Canada submitted that if the Commission wished to pursue an expansion of Telecom Decision 2019-390, the correct way to do so is via a show cause or other broad procedure. Bell Canada argued that this is the only way the Commission can obtain information that is lacking in Telecom Order 2021-182 to make an informed decision on whether to extend its determinations in Telecom Decision 2019-390 to all LECs.
25. Bell Canada submitted that the type of information that could be obtained in such a proceeding and that would be useful includes the practical details of LECs' toll-free routing service, especially the robustness, accuracy, and reliability of these services. Bell Canada submitted that a LEC's toll-free call-dipping service should be subject to scrutiny before it is mandated. Bell Canada submitted that it, as an IXC, would be blamed by its toll-free service customers for service delivery problems or service interruptions.
26. Bell Canada argued that some of the current industry processes and the template LEC-IXC agreement would need changes to accommodate mandated access because the IXC relationship is changed from an IXC freely accepting interconnection arrangements to mandated arrangements. Bell Canada suggested this has impacts on rates and some of the requirements in the LEC-IXC agreements. Bell Canada raised further concerns on interconnection costs: they could be higher to Bell Canada due to a requirement to enter into interconnection arrangements in CLEC premises where those premises are rented, thus subjecting Bell Canada to landlord requirements and costs.
27. Bell Canada argued that the Commission made an error in fact and in law by considering the service of other industry players as a justification for expanding the scope of the proceeding. Bell Canada submitted that RCCI's application that led to Telecom Decision 2019-390 was a specific request for relief limited to Bell Canada. Bell Canada added that the fact that other parties were copied on RCCI's application had no bearing on the scope of the application, Telecom Decision 2019-390, or the subsequent Telecom Order 2021-182.
28. Bell Canada submitted that the Commission inappropriately used a Commission order to make a policy decision about whether the tariff should apply more broadly to toll-free traffic from other LECs.

## **Intervenors**

### ***Distributel***

29. Distributel submitted that Bell Canada's application should be dismissed. Distributel argued that Telecom Order 2021-182 provided sufficient justification that the requirements for procedural fairness had been met. This justification included the following: (i) the ability to directly query a toll-free telephone number database represented a material change in the circumstances; (ii) the tariff notice filing represented the initiation of a new proceeding; (iii) all intervenors raised objections to Bell Canada's tariff wording and provided alternative wording that would apply to the tariff provision more broadly; and (iv) Bell Canada had an opportunity to respond to all intervenors' comments, including those that the tariff provision should apply to more broadly.
30. Distributel argued that Bell Canada's statement that the issues raised by intervenors are out of scope does not make them so. Bell Canada's decision, and its alone, not to address certain comments cannot be used to claim there was a breach of procedural fairness that violated Bell Canada's right to fundamental justice.
31. Distributel did not agree with Bell Canada's proposal that the tariff provisions should not apply to other LECs due to Bell Canada's claim that this was outside of the scope of the proceeding. According to Distributel, Bell Canada's view is not consistent with the broad and general Commission determinations in Telecom Decisions 2019-390 and 2020-226. Distributel submitted that in those decisions, the Commission noted that it contemplated in Telecom Decision 97-8 that there could be alternative arrangements for the routing of toll-free calls. Distributel also submitted that the Commission noted in Telecom Decision 2020-226 how its determinations in Telecom Decision 2019-390 were aligned with the regulatory framework for interconnection arrangements between all LECs and IXCs. With these general determinations, Distributel added that it was logical for intervenors to question whether Bell Canada's proposed wording was too restrictive, given the general nature of the Commission's previous determinations.
32. Distributel disputed Bell Canada's argument that the Commission erred in fact and in law by making broad policy determinations that only applied to Bell Canada. Distributel submitted that this argument had been considered by the Commission in Telecom Decision 2020-226, wherein the Commission considered and rejected similar arguments, and noted that RCCI had been able to make similar arrangements with other ILECs. Distributel added that because the manner in which the routing of toll-free traffic from RCCI's network to Bell Canada follows industry practices for LECs to route toll-free traffic to IXCs, there are no unique requirements imposed on Bell Canada. Distributel submitted that for the same reasons outlined above, there is no need for a show cause proceeding to determine whether the Commission should apply its determinations to all applicable industry participants.
33. Distributel submitted that because the Commission found that Bell Canada was the only LEC that refused to enter into an agreement with RCCI, despite RCCI's request being in accordance with well-established industry rules, practices, and requirements,

it was reasonable for the Commission to expect that there would be further disputes and applications from other CLECs with similar capabilities to those of RCCI. Distributel added that those expectations are not hypothetical given Bell Canada's comments in its application. In this regard, the Commission's determinations in Telecom Order 2021-182 provide clarity and reduce the potential for future disputes and applications. Thus, the Commission's determinations can be expected to reduce the regulatory burden for both the Commission and the industry.

#### ***Videotron***

34. Videotron considers that the Commission's decision to order a broader application of the tariff provisions in Telecom Order 2021-182 was appropriate. It noted that a number of CLECs intervened in the series of proceedings leading up to Telecom Order 2021-182, which in Videotron's view, emphasizes the need to stimulate market innovation and competitiveness. According to Videotron, this will occur by encouraging other LECs to consider implementing their own toll-free call-dipping services. For those that do not, Videotron submitted that they potentially would have increased options by which to route toll-free traffic generated on their networks. Such an outcome could be beneficial to consumers who would benefit from more equitable competition among LECs for toll-free call routing.
35. Videotron noted two other benefits, which are reducing congestion on Bell Canada's network and making Bell Canada more receptive to ideas for improving the quality of its services.
36. Videotron submitted that if the Commission is favourable to Bell Canada's application, the question as to whether the provisions in the tariff notice should apply more broadly should be the subject of a show cause proceeding, which should be issued at the same time as the decision on the review and vary application.

#### ***TCI***

37. TCI submitted that it opposes Bell Canada's review and vary application. While TCI agreed with Bell Canada's assertions on how the scope of a proceeding can be expanded, TCI contended that those considerations do not apply in this case. TCI added that Telecom Order 2021-182 was not issued in response to Telecom Decision 2019-390 nor RCCI's application that led to that decision.
38. TCI submitted that there were two separate directives in Telecom Decision 2019-390. The first was a directive for the connection of toll-free trunks between Bell Canada and RCCI. The second was for the filing of a tariff notice indicating that Bell Canada would receive RCCI-originating toll-free traffic destined for Bell Canada's toll-free telephone number customers over the toll trunks. TCI submitted that Telecom Order 2021-182 was issued pursuant to Bell Canada's tariff notice, and that the interpretation of language included in that tariff notice is well within the scope of a tariff proceeding.
39. TCI submitted that all the arguments in Bell Canada's application are focused on the premise that by changing the language of the tariff, the Commission has expanded the scope of Telecom Decision 2019-390 to include all CLECs. TCI argued that this

premise is incorrect, and therefore, Bell Canada's determination that there is substantial doubt as to the correctness of Telecom Order 2021-182 is also incorrect.

40. According to TCI, Bell Canada's assumption that the Commission directed Bell Canada to interconnect with other LECs without any knowledge of networks or traffic levels is unwarranted. TCI submitted that the Commission is fully aware that an order to interconnect can only be given with consideration of the particulars of the parties' networks and the traffic between them.
41. Further, TCI submitted that Bell Canada's proposed exclusive language could cause uncertainty with other CLECs that might conclude that the arrangement was only available to RCCI, or Bell Canada might conclude that it had no obligations to reasonably negotiate similar arrangements with other LECs. TCI submitted that there is nothing in Telecom Order 2021-182 that requires Bell Canada to interconnect in advance of these negotiations. TCI added that the Commission was aware of at least one other CLEC (TCI) that is interested in such an arrangement with Bell Canada.
42. TCI submitted that the Commission recognized that if it accepted the language proposed by Bell Canada, which limited the tariff application to only RCCI, further tariff amendments would be required every time Bell Canada implemented an interconnection. This would result in an unnecessary burden that would delay interconnections and the associated benefits to LECs.
43. TCI has an approved tariff for the routing of 800/888 calls that sets out the rates for toll-free carrier determination, and for all intents and purposes, the language in the TCI tariff is identical to that for the tariff wording in Telecom Order 2021-182. TCI submitted that the Commission is revising the restrictive text so that it applies more generally to ensure that Bell Canada's tariff does not conflict with TCI's approved tariff.
44. TCI acknowledged Bell Canada's claim that it was not given proper notice that the scope of the tariff proceeding had changed. TCI agreed that proper notice would have been required if the scope of the proceeding had been expanded, and that the scope cannot be changed solely by interveners' submissions. TCI agreed with Bell Canada that basic procedural fairness requires that the Commission expressly communicate with parties that it intends to consider making a decision on a newly raised topic or issue.
45. However, TCI submitted that in this case, the Commission did not expand the scope of the proceeding but instead considered suitable language in light of TCI's approved tariff, the interests of other LECs, and the efficiency of the regulatory process, all of which are within the scope of a tariff proceeding. Further, TCI argued that Telecom Order 2021-182 did not require any new arrangements between Bell Canada and other parties.
46. TCI did not accept Bell Canada's argument that it was being discriminated against with the expansion of the Commission's determination for the bilateral agreement between Bell Canada and RCCI to one between all LECs and Bell Canada. TCI acknowledged RCCI's comment that Bell Canada is the only LEC that has refused to negotiate a toll-free arrangement with RCCI. As a respondent to the proceeding

leading to Telecom Decision 2019-390, Bell Canada was the only target of the corrective action.

***Bell Canada's reply comments***

47. Bell Canada submitted that the tariff notice only exists due to the Commission's order in Telecom Decision 2019-390. Bell Canada stated that it did not initiate a proceeding to explore whether it should do anything beyond what it was ordered to do in Telecom Decision 2019-390. Similarly, the Commission did not initiate a proceeding to explore whether its determinations in Telecom Decision 2019-390 should be expanded.
48. Bell Canada disagreed with Distributel's argument that because RCCI's request for Bell Canada to deploy one-way toll trunks reflects well-established industry rules, practices, and requirements, Bell Canada should comply with such requests from any LEC. Bell Canada argued that no IXC is required to deploy one-way toll trunks to any LEC, and that these types of arrangements should be at an IXC's choice. Bell Canada submitted that if Telecom Order 2021-182 stands, it mandates on Bell Canada, and Bell Canada alone, a positive obligation to interconnect on request as a customer of a LEC.

**Commission's analysis**

49. In TN 7616 and TN7616A, which received interim approval in Telecom Order 2020-244, Bell Canada proposed the following wording for receiving toll-free traffic over its one-way toll-free trunks connected to RCCI switches:

The Company will receive Rogers Communications Canada Inc. (RCCI's) originating toll-free traffic from RCCI retail end users destined for the Company's toll-free telephone number customers over one-way toll trunks deployed to RCCI's switches.

50. In Telecom Order 2021-182, the Commission revised this wording to

The Company will receive ~~Rogers Communications Canada Inc. (RCCI's)~~ originating toll-free traffic from ~~RCCI's retail end users~~ **regardless of its origin** destined for the Company's toll-free telephone number customers over one-way toll trunks deployed to ~~RCCI's switches~~ **a CLEC's network(s)**.<sup>8</sup>

51. The Commission considers that the issues Bell Canada has raised in its application can be largely grouped into two main concerns:

- whether the Commission respected principles of natural justice and afforded Bell Canada procedural fairness in the proceeding that led to Telecom Order 2021-182

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<sup>8</sup> ~~Strike through text~~ is wording deleted in the order and **bolded text** is wording added in the order.

- whether the tariff implementation process was the appropriate proceeding for the Commission to make its determinations with respect to expanding the tariff language

### **Procedural fairness**

52. Bell Canada submitted that it was not given proper notice that the tariff proceeding would be expanded to require the company to receive toll-free traffic from any CLEC (other than RCCI) over one-way toll-free trunks. The Commission acknowledges the importance of respecting principles of fundamental justice and procedural fairness in providing notice to applicants where it determines it would be appropriate to expand the scope of a proceeding.
53. Bell Canada submitted that the Commission inappropriately used a Commission order to make a policy decision about whether the tariff should apply more broadly to toll-free traffic from other CLECs. The Commission does not accept Bell Canada's argument that the Commission's changes to the tariff wording had the effect of expanding the scope of the proceeding without due process. As a result, the Commission considers that Bell Canada has mischaracterized the effect of Telecom Order 2021-182. While the Commission did expand the tariff language more broadly, this did not expand the directions of Telecom Decision 2019-390 as they relate to the dispute between RCCI and Bell Canada, which remain in effect.
54. The Commission considers that the tariff wording did not have the effect of introducing any new requirements on Bell Canada. Bell Canada still maintains its ability to negotiate suitable interconnection arrangements with other CLECs, and parties may still engage the Commission to resolve bilateral disputes, should they arise. The wording permits Bell Canada to maintain its current routing arrangements with other CLECs, per Telecom Decision 97-8. If Bell Canada could successfully negotiate an arrangement with a CLEC, there would be no need to file a new, revised tariff.
55. With respect to Bell Canada's argument that its two reply opportunities did not remedy the procedural fairness deficiency of being able to respond to out of scope comments on the record, the Commission does not consider the assessment of tariff wording within the context of a tariff notice proceeding to be out of scope. Again, the Commission considers that it did not make any policy changes to Telecom Decision 2019-390, and that the consideration of the tariff's specific wording was within the scope of that proceeding, in which Bell Canada was afforded the opportunity to respond. The Commission notes that Bell Canada received all of the interveners' submissions and was able to reply to them as it deemed appropriate.
56. Therefore, the Commission considers there are no errors in law or in fact and in law given that the approved wording (i) does not introduce a new regulatory policy, (ii) does not place any new requirements or impose any directions on Bell Canada, (iii) is consistent with current regulatory practices, and (iv) provides for regulatory efficiency. Current regulatory policies and rules allow for toll-free traffic generated on CLEC networks to be directly routed to IXCs over one-way toll trunks to IXC

networks, as noted in Telecom Decision 2020-226. The approved wording in the tariff reflects this evolution in the industry.

57. The final tariff wording provides regulatory efficiency and reduces regulatory burden and uncertainty by eliminating the need for a separate tariff notice every time Bell Canada enters into additional interconnection arrangements with a CLEC. Further, the Commission did not direct Bell Canada in Telecom Order 2021-182 to deploy toll-free trunks or enter into these agreements with all LECs.

#### **Use of a tariff proceeding**

58. Bell Canada submitted that the Commission mischaracterized the tariff process. Specifically, Bell Canada argued that the Commission erred in law by transforming a tariff notice proceeding into a review and vary proceeding. As previously noted, the Commission considers that the tariff notice proceeding was a new and separate proceeding from Telecom Decision 2019-390, and the Commission was therefore not expanding the scope of the tariff proceeding to make policy changes to that decision when considering Bell Canada's tariff wording. The interveners' comments related to the wording in the tariff provision and how that wording is in accordance with existing Commission policies, rules, and regulations. This view was supported by Distributel, which submitted that the tariff proceeding represented a new proceeding. TCI also submitted that within a tariff notice proceeding, the wording of the tariff is within the scope of such a proceeding.
59. The Commission considered the appropriate tariff wording for Bell Canada's tariff in light of TCI's approved tariff, which includes toll-free interconnection arrangements with all CLECs.<sup>9</sup> The Commission reiterates the findings and determinations that it made in Telecom Decision 2020-226, in which it considered that there are alternative toll-free interconnection arrangements beyond the use of bill-and-keep trunks that were established in Telecom Decision 97-8 to facilitate the development of local exchange competition.
60. In this regard, Bell Canada can no longer solely rely on the Commission's determination in Telecom Decision 97-8 for the routing of toll-free traffic generated on CLEC networks. In that decision, the Commission's determinations were made to facilitate the development of local exchange service. Since then, the Commission has made a number of determinations to allow for alternate routing arrangements as the CLEC market has grown and matured.
61. Bell Canada submitted that by mandating a solution that applies only to Bell Canada, the Commission has committed an error in law by failing to regulate in a competitively neutral manner. Further, the final tariff wording places an obligation on Bell Canada alone, as an IXC, to deploy one-way toll trunks to CLECs.
62. The Commission considers that with the revised wording to include "a CLEC's network," rather than simply a reference to RCCI, it did not revise any previous

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<sup>9</sup> TCI's TN 548 was approved in Telecom Order 2020-8.

determinations. The requirement for IXCs to receive their toll-free traffic from CLECs over one-way toll-free trunks is a policy that was established over 20 years ago.<sup>10</sup> RCCI argued this fact in the proceeding leading up to Telecom Decision 2019-390, wherein RCCI submitted that it has been able to complete similar arrangements with IXCs for the delivery of their toll-free traffic to their toll-free telephone number customers over one-way toll-free trunks.

63. These are not new industry policies, as Bell Canada contends. Thus, the tariff wording changes reflect current industry practices that are being used by the telecommunications industry. As the Commission already mentioned in Telecom Order 2021-182, the general reference to CLECs was made in the interests of regulatory efficiency so that future tariff notices would not be required every time Bell Canada entered into a new toll-free interconnection arrangement with a CLEC.
64. Given that RCCI has been able to enter into toll-free interconnection arrangements with other incumbent carriers, and that TCI has an approved tariff for receiving toll-free traffic, the Commission considers that Bell Canada is incorrect in stating that the requirements in the tariff wording are applicable only to Bell Canada. Those requirements are already being followed by other telecommunications carriers consistent with the Commission's current regulatory framework.
65. The Commission notes that its wording changes to the tariff are a reflection of current Commission rules and regulations and do not introduce any new policies, nor do they require Bell Canada to take any action. As noted, the Commission did not expand the application of Telecom Decision 2019-390 to effect a larger policy determination on Bell Canada despite Bell Canada's mischaracterization of the effect of the tariff on Bell Canada. The Commission finds that the principle of competitive neutrality has been recognized in that Bell Canada's IXC toll-free interconnection requirements with CLECs in the tariff wording are the same as those required for other IXCs. Therefore, the Commission considers that there has not been an error in fact or in law.
66. The Commission finds that there is no substantial doubt as to the correctness of Telecom Order 2021-182 due to any errors in law or in fact and in law and **denies** Bell Canada's application to review and vary Telecom Order 2021-182.

## **Conclusion**

67. The Commission finds that there is no substantial doubt as to the correctness of Telecom Order 2021-182 due to any errors in law or in fact and in law and **denies** Bell Canada's application to review and vary Telecom Order 2021-182.
68. In light of the Commission's determinations on the review and vary application, the request to stay the implementation of Telecom Order 2021-182 is moot.

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<sup>10</sup> The policy for the routing of toll-free traffic from CLECs was established in a number of Commission determinations, including Telecom Decision 97-8, a [letter decision](#) dated 6 April 1998, Telecom Order 98-1190, Telecom Order 2001-500, and Telecom Decision 2010-787.

## Policy Directions

69. Pursuant to section 8 of the Act, the Governor in Council issued the 2019 Policy Direction, which provides that when the Commission exercises its powers and performs its duties under the Act, it should consider how its decision can promote competition, affordability, consumer interests, and innovation. Moreover, the Commission should, in its decisions, demonstrate its compliance with the 2019 Policy Direction and specify how those decisions can, as applicable, promote competition, affordability, consumer interests, and innovation.
70. The determination to deny Bell Canada's application is consistent with subparagraphs 1(a)(i), (ii), and (vi) of the 2019 Policy Direction, which state that the Commission should consider the extent to which its decisions, (i) encourage all forms of competition and investment; (ii) foster affordability and lower prices, particularly when telecommunications service providers exercise market power; and (vi) enable innovation in telecommunications services, including new technologies and differentiated service offerings.
71. The Commission's determinations also address the policy objectives set out in paragraphs 7(a) and 7(c) of the Act.<sup>11</sup>
72. Bell Canada's application deals with an interpretation of tariff wording. The tariff wording in question relates to interconnection arrangements between carriers functioning as long distance carriers and local exchange carriers, and the wording is reflective of previously developed industry practices approved by the Commission. The tariff wording will encourage CLECs to invest in the development of their own innovative toll-free call-dipping services, such as the ones RCCI has implemented. In so doing, competition will be created in toll-free call-dipping services, which should result in lower costs for toll-free call-dipping services. At the same time, IXCs will be provided with more choice on how they receive toll-free calls destined to their customers because they will be able to negotiate interconnection arrangements with different carriers.
73. Additionally, the Governor in Council issued a direction to the Commission, the 2006 Policy Direction, which requires that the Commission rely on market forces to the maximum extent possible as the means to achieving the telecommunications policy objectives when implementing the policy objectives set out in section 7 of the Act. Further, when relying on regulation, the Commission should use measures that are efficient and proportionate to their purpose and interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.
74. The Commission's determination to deny Bell Canada's request is consistent with the 2006 Policy Direction, as it maintains the requirement for Bell Canada to deploy toll-

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<sup>11</sup> 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; and 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications.

free trunks in a manner that is consistent with current industry practices developed by the industry for the delivery of toll traffic between LECs and IXC's and does not introduce any new regulatory measures.

Secretary General

### **Related documents**

- *Bell Canada – Amendment to Local Network Interconnection and Component Unbundling – Routing of CLEC 800/888 calls*, Telecom Order CRTC 2021-182, 27 May 2021
- Telecom Order CRTC 2020-244, 6 August 2020
- *Bell Canada – Application to review and vary and stay Telecom Decision 2019-390 regarding the routing of toll-free traffic destined for the company's toll-free telephone number customers*, Telecom Decision CRTC 2020-226, 15 July 2020
- Telecom Order CRTC 2020-8, 20 January 2020
- *Rogers Communications Canada Inc. – Application regarding routing of the company's toll-free traffic destined for Bell Canada's toll-free telephone number customers*, Telecom Decision CRTC 2019-390, 2 December 2019
- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Proposed revision to the treatment of imbalance traffic compensation*, Telecom Decision CRTC 2010-787, 25 October 2010; as amended by Telecom Decision CRTC 2010-787-1, 16 August 2011
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *CRTC approves application to reduce toll-free look-up service charge*, Order CRTC 2001-500, 29 June 2001
- Telecom Order CRTC 98-1190, 30 November 1998
- *Local Competition*, Telecom Decision CRTC 97-8, 1 May 1997