



Telecom Decision CRTC 2022-160

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Imposition of an administrative monetary penalty on Bell Canada in relation to the processing and granting of access permit applications for support structures in accordance with its National Services Tariff

The Commission imposes an administrative monetary penalty of \$2.5 million on Bell Canada for each of its three violations of section 24 and subsections 25(1) and 27(2) of the *Telecommunications Act*, for a total amount of \$7.5 million.

Background

1. On 16 June 2020, Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron), filed an application requesting that the Commission issue orders related to Bell Canada's processing of access permit applications and granting of access permits to its support structures in accordance with Bell Canada's National Services Tariff (the Tariff).
2. In Telecom Decision 2021-131 (the Decision), the Commission found that Bell Canada had breached clause 2.8 of its Support Structure Licence Agreement (SSLA), included in the Tariff, as well as item 901.3(h) of that tariff. The Commission found that Bell Canada had therefore breached section 24 and subsection 25(1) of the *Telecommunications Act* (the Act) by requiring Videotron to comply with construction standards that Bell Canada itself had not complied with.
3. In the Decision, the Commission also found that through the denial of access, even temporary, and unreasonable delays in processing Videotron's permit applications, managing the required make-ready work, and deploying its own fibre-to-the-home (FTTH) network on structures with irregularities, all of which caused Videotron's permit applications to be denied, Bell Canada granted itself a preference and imposed an undue and unreasonable disadvantage on Videotron, contrary to subsection 27(2) of the Act.
4. As a result of its determination that Bell Canada had breached section 24 and subsections 25(1) and 27(2) of the Act, and as a result of the impact of Bell Canada's actions on end-users, the Commission stated in the Decision its preliminary view that an administrative monetary penalty (AMP) should be imposed on Bell Canada, and

indicated that it would initiate a follow-up proceeding through a notice of consultation to determine whether it would be appropriate to impose an AMP, and, if so, the amount of the AMP.

Proceeding

5. On 16 April 2021, the Commission initiated Telecom Notice of Consultation 2021-132 (the Notice), in which it reiterated its preliminary view that it would be appropriate to impose an AMP on Bell Canada and invited interested persons to comment on this preliminary view and on what the AMP should be, if an AMP was deemed appropriate. As part of the Notice, the Commission also requested that parties provide supporting rationale and all evidence on which they relied to formulate their position by addressing, among other things, the criteria for a penalty set out in subsections 72.002(1) and 72.002(2) of the Act.
6. The Commission received interventions from the Canadian Communication Systems Alliance (CCSA), the Community Fibre Company (CFC), the Independent Telecommunications Providers Association (ITPA), Rogers Communications Canada Inc. (RCCI), TekSavvy Solutions Inc. (TekSavvy),¹ and Videotron. Bell Canada provided comments and replied to the interventions.

Background on the general AMP regime

7. Since 2014, the Act has included a general AMP regime. Pursuant to section 72.001 of the Act, the Commission may impose an AMP for contraventions of the Act and contraventions of a regulation or decision made by the Commission under the Act. However, subsection 72.002(2) of the Act qualifies this authority by prescribing that the purpose of the general AMP regime is to promote compliance and not to punish. As a result, in determining whether or not to impose an AMP in a given case, the Commission must consider whether the imposition of an AMP would ensure the regulatory purpose of promoting compliance and deterring future non-compliance, and not seek to punish a person for its violations.

Issues

8. The Commission has identified the following issues to be addressed in this decision:
 - Is it appropriate to impose an AMP on Bell Canada?
 - If it is appropriate to impose an AMP on Bell Canada, what should the amount of the AMP be?

¹ TekSavvy filed an intervention to become a party to the proceeding but did not provide comments.

Is it appropriate to impose an AMP on Bell Canada?

Positions of parties

9. Bell Canada submitted that it disagrees with the Commission's preliminary view that it would be appropriate to impose an AMP for several reasons.
10. Bell Canada argued that the additional information it provided as part of the Notice proceeding for each of Videotron's five access permit applications provides further context regarding Videotron's applications, and that this further context demonstrates that an AMP is unwarranted and inappropriate in this case. Specifically, Bell Canada made submissions including good faith errors in the deployment of FTTH on poles where access was previously delayed or denied to Videotron; technician safety and other construction standards as reasons for delaying or denying Videotron's permit requests; and the fact that infallibility cannot be the standard for pole owners that face thousands of construction projects on a yearly basis, each with unique considerations and challenges. Bell Canada added that it too faces delays due to make-ready work and that the delays condemned by Videotron or other telecommunications service providers (TSPs) are the same as those faced by Bell Canada.
11. Bell Canada submitted that due to the confidentiality of wholesale client information, its FTTH teams did not, and could not, know whether an applicant was currently awaiting approval at a particular pole. It argued that, therefore, its FTTH deployment on support structures where Videotron was denied access was not intentional or borne out of an intent to give itself an advantage.
12. Bell Canada further submitted that an AMP would be inappropriate in light of both a series of self-correcting measures it took to achieve compliance and the new measures and process updates it put in place to streamline access to its poles.
13. Bell Canada argued that, in response to concerns that access to poles was a significant barrier to broadband deployment, it has created a coordination table with Hydro-Québec, the Quebec government, and Telus Communications Inc. (TCI) to support the deployment of projects that bring high-speed Internet to businesses and citizens in rural areas of Quebec.² Bell Canada added that this initiative has streamlined its pole access procedures to improve the efficiency of access to its support structures and has reduced delays, which should weigh against the imposition of an AMP by the Commission. For example, Bell Canada submitted that it has
 - revised applicable construction standards and its process for make-ready work to accelerate projects and pole access (for example, Bell Canada implemented a process to allow permit applicants to propose, as part of make-ready work, the use

² On 21 May 2020, the Quebec government and pole owners initiated a coordination table to help in the deployment of broadband projects.

of temporary installations to circumvent a problematic pole if the work is anticipated to incur lengthy delays);

- implemented a new technical assistance centre in an effort to better answer access permit applicants' questions;
- assigned dedicated technical managers to answer questions and help with progress reports, and implemented an accelerated access process in Quebec, which allows for access permit applicants to perform technical pre-inspections themselves, under certain conditions;
- launched a new trial process for access permit applicants to perform some make-ready work themselves; and
- requested the Commission's approval of tariff amendments that would allow Bell Canada to move third party equipment (facilities) attached to its support structures, or have it moved, in specific circumstances.³

14. Bell Canada added that across the base of licensees the measures could relieve delays for approximately 20% of the poles subject to access requests that had been held up by make-ready work and the same amount for requests going forward.

15. Bell Canada also submitted that in response to Videotron's application and the Decision, it has implemented measures to further minimize the potential of its FTTH deployment being completed in non-compliance with applicable construction standards. Bell Canada argued that it has

- sent its FTTH deployment teams reminders of the need to comply with applicable construction standards;
- mandated that its vendors and technicians participate in refresher training on the importance of compliance with applicable construction standards, to be completed annually; and
- implemented an additional layer of inspections through an auditing program of its FTTH deployments, which is carried out by the same engineering contractor that conducts inspections for wholesale licensees, to ensure that poles reviewed by Bell Canada's FTTH network deployment teams meet the same criteria that apply to wholesale licensees (Bell Canada added that where instances of non-compliance are observed by the audit, it takes steps to increase training for employees who are not upholding its standards and/or takes disciplinary action where warranted).

³ As seen in the Decision, access permit delays can occur when a third party's non-compliant equipment is attached to Bell Canada's support structure and the third party in question does not remedy the situation promptly. Bell Canada's proposed tariff change would allow the company to intervene and resolve the issue without having to wait for the third party to act.

16. Bell Canada indicated that it has started participating in a working group, composed of electric utility companies, municipalities, carriers, and the Government of Ontario, to accelerate broadband deployment in Ontario. Bell Canada added that it has been actively engaged to find ways to accelerate broadband deployment in that province and has recommended that several of the initiatives adopted in Quebec be adopted by the Ontario government.
17. Bell Canada argued that in light of the above measures, which are meant to promote compliance with the Act, an AMP would be contrary to subsection 72.002(2) of the Act, which states that the purpose of the penalty is to promote compliance and not to punish. Moreover, Bell Canada stated that the improvements to the support structure access process have been well received by stakeholders.
18. Other than Bell Canada, all parties supported the Commission's preliminary view that it would be appropriate in the current situation to impose an AMP on Bell Canada given the violations described in the Decision. Some parties submitted that they have also experienced and identified instances of undue delays, as well as other access issues, directly caused by action and inaction on Bell Canada's part in the processing of other access requests to Bell Canada's support structures. Other parties argued that the measures put in place by Bell Canada were ineffective in reducing delays, were not applied nationally, or were nothing more than window dressing.
19. Videotron submitted that in the Decision, the Commission concluded that Bell Canada's violations impede the development of the enhanced telecommunications network promised to Canadians, are clearly contrary to the public interest, and should be met with significant enforcement measures to deter future violations. Videotron also stated that Bell Canada's anticompetitive actions go against the government's objectives and are contrary to the public interest.
20. Videotron further submitted that the new measures announced by Bell Canada in October 2020 (and listed in paragraph 13 of this decision) were nothing more than window dressing. It noted that
 - out of the seven measures that revised applicable construction standards, five already applied and the two new ones will have little impact on the undue delays imposed on Videotron and others;
 - the new technical assistance centre is welcome, but it cannot in itself ensure a real (and necessary) operational dialogue between Bell Canada and service providers; and
 - although Bell Canada has put in place a process to allow a licensee to attach its equipment on support structures prior to the finalization of the make-ready work, this does not stop Bell Canada from refusing access to licensees based on security issues, even when an engineering report confirms that no such security issues exist.

21. RCCI submitted that several factors collectively support the imposition of an AMP in the current case, such as Bell Canada's intentional non-compliant behaviour in relation to access to its support structures in order to enhance its competitive position and disadvantage other TSPs. RCCI also submitted that Bell Canada's support structures are public good services⁴ and that timely access to these structures is essential to the efficient deployment of broadband facilities and the provision of affordable broadband services to Canadians, which makes Bell Canada's actions in this case even more reprehensible. RCCI added that the Quebec government, in response to issues with access to Bell Canada, Hydro-Québec, and TCI poles, had to intervene and create the coordination table to try to streamline provincial initiatives to bring broadband to all rural areas.
22. The CCSA and the ITPA also supported the Commission's preliminary view that an AMP should be imposed in this case. The CCSA argued that its members face, on an ongoing basis, precisely the same types of barriers, delays, and financial impediments to support structure attachments that Videotron has complained about. The ITPA submitted that, since this would be the first AMP to be imposed relating to support structure violations, the Commission should send a clear message of deterrence stating that such behaviour will no longer be tolerated.
23. The CFC submitted that improvements to the process for accessing Bell Canada's support structures put forward by the Quebec coordination table were denied to service providers operating in the province of Ontario.

Commission's analysis and determinations

24. The Commission notes that the purpose of this proceeding is not to review and vary the Decision, but to consider the appropriateness of imposing an AMP and, if so, the amount of that AMP. As such, neither the Commission's factual findings with respect to Videotron's five access permit applications, nor its determinations in the Decision regarding Bell Canada's violations of section 24 and subsections 25(1) and 27(2) of the Act, will be reconsidered within this proceeding.
25. For this reason, the Commission considers that much of the additional information Bell Canada provided as part of this proceeding, notably its submissions concerning good faith errors, technician safety, other construction standards, a standard of infallibility, and the make-ready work delays that it also faces, disputes the Commission's factual findings with respect to Videotron's five access permit applications and its determinations in the Decision that Bell Canada committed three violations. In addition, the Commission considers that much of that information was previously submitted as part of the public record leading to the Decision. Accordingly, the Commission is of the view that Bell Canada's additional information should not be taken into account, or reconsidered, in determining

⁴ In Telecom Decision 2008-17, the Commission determined that support structures are classified as public good services, not private assets.

whether it is appropriate to impose an AMP on Bell Canada in light of the Commission's findings that Bell Canada violated section 24 and subsections 25(1) and 27(2) of the Act.

26. Similarly, the Commission considers that Bell Canada's argument that an AMP would not be appropriate because the violations in the Decision were not the result of intentional conduct on its part should not be reconsidered in this proceeding. The Commission notes that Bell Canada's intent was considered in finding that it had granted itself a preference and imposed an undue and unreasonable disadvantage on Videotron, in violation of subsection 27(2) of the Act. Accordingly, the Commission is of the view that the Commission's finding of a subsection 27(2) violation should not be reconsidered in this proceeding.
27. The Commission further notes that, since the purpose of this proceeding is to consider the appropriateness of imposing an AMP in light of Bell Canada's violations of section 24 and subsections 25(1) and 27(2) of the Act, it will not make any new findings of non-compliance as part of the Notice with respect to the parties' submissions that they have also experienced and identified instances of possible non-compliance by Bell Canada in the course of other requests for access to its support structures.
28. While it acknowledges the steps taken by Bell Canada to implement measures to streamline access to the company's support structures, the Commission has concerns as to the efficacy of some of these measures.
29. In the Decision, the Commission noted that it had concerns regarding competitors' access to Bell Canada's support structures and was of the view that Bell Canada's actions were indicative of a systemic issue, or at least of a pattern of inefficient practices on its part. Therefore, while the Commission is supportive of the measures designed to reduce delays for make-ready work, these measures will only result in reduced delays for 20% of the poles subject to access requests held up by make-ready work. In light of the Commission's concerns regarding competitors' access to Bell Canada's support structures, the Commission would have expected Bell Canada, as an owner of support structures, to have demonstrated that it is developing, or plans to develop, measures to reduce delays and streamline access to a larger proportion of its poles.
30. Moreover, Videotron's arguments with regard to Bell Canada's new measures help inform the Commission's concerns about the efficacy of some of the measures implemented by Bell Canada to promote compliance and deter future non-compliance. Of particular concern is Videotron's submission that, of the seven measures to improve access to Bell Canada's poles, five already apply and the two new ones will have little impact on the undue delays imposed on Videotron and other competitors. Therefore, the imposition of an AMP could ensure that Bell Canada, in collaboration with other service providers, continues to streamline its pole access procedures to improve efficiency and reduce delays.

31. The Commission also considers that the measures presented above by Bell Canada do not directly address its non-compliance (i.e., that Bell Canada required Videotron to comply with construction standards that Bell Canada itself had not complied with).
32. With respect to the measures Bell Canada implemented to attempt to address its violations of the Act (i.e., that Bell Canada required Videotron to comply with construction standards that Bell Canada itself had not complied with), the Commission also has concerns as to the efficacy of some of these measures. More specifically, these measures do not directly address the Commission's concerns in the Decision.
33. While Bell Canada noted that it has implemented a program to audit its FTTH deployments, it provided few details on how the auditing program would be implemented, which the Commission believes raises several questions.
34. In particular, while the auditing program is likely the best measure implemented by Bell Canada to reduce the non-compliance at issue in the Decision, it is a measure that identifies non-compliance only after it has occurred and will only be as effective as the remedial solutions put in place once non-compliance is identified. It is therefore difficult to assess its efficacy until non-compliance is observed and remedial solutions are put in place. In addition, if non-compliance is observed, Bell Canada has only identified employee training and disciplinary actions as remedial solutions, rather than changes to the process or system in place. Additionally, the service provider requesting access to Bell Canada's support structures will still be at a disadvantage by having to wait for the irregularities to be corrected, which may delay the service provider's access to Bell Canada's support structures.
35. Furthermore, in addition to the increased training for employees when the audit reveals non-compliance, Bell Canada proposes to reinforce compliance through annual mandatory training. However, as Bell Canada's intervention indicates, its deployment teams received training to comply with construction standards and have received reminders of the need to comply both before and after Videotron's application. It therefore appears that this is not a new measure and may have little impact on compliance.
36. Therefore, the Commission is of the view that Bell Canada's remedial measures may not successfully or sufficiently reduce the type of non-compliance at issue in the Decision.
37. With respect to Bell Canada's argument that its internal guidelines governing the confidential treatment of wholesale client information preclude its FTTH deployment teams from being aware of competitors' plans for deployment, the Commission notes that there must be ways to ensure that current and future work on a pole is halted for all teams if an issue is found with that pole, without divulging confidential information held by the wholesale team. The Commission also notes that, regardless

of the confidential treatment of wholesale client information, all Bell Canada teams must comply with the same applicable construction standards.

38. In light of the above, the Commission considers that it is appropriate to impose an AMP on Bell Canada. Although Bell Canada has implemented measures to streamline access to its support structures and further minimize the potential of its FTTH deployment being completed in non-compliance with applicable construction standards, the Commission has concerns as to the efficacy of these measures. Further, the Commission notes that these measures were announced only after the non-compliance was denounced publicly. Accordingly, the Commission finds that imposing an AMP in this case would serve the regulatory purpose of promoting compliance and deterring future non-compliance on the part of Bell Canada.

If it is appropriate to impose an AMP on Bell Canada, what should the amount of the AMP be?

39. Subsection 72.001 of the Act provides that a contravention of a provision of the Act, a regulation, or a decision made by the Commission under the Act constitutes a violation for which a person may be liable, in the case of a corporation, to an AMP not exceeding \$10 million for a first violation or \$15 million for any subsequent violation.
40. In determining the amount of the AMP, the Commission must take into account the following factors set out in subsection 72.002(1) of the Act:
- a. the nature and scope of the violation;
 - b. the history of compliance with this Act, the regulations or the decisions made by the Commission under this Act, by the person who committed the violation;
 - c. any benefit that the person obtained from the commission of the violation;
 - d. the person's ability to pay the penalty;
 - e. any factors established by any regulations; and
 - f. any other relevant factor.

Positions of parties

41. Bell Canada submitted that no AMPs are justified but that if the Commission were to decide to impose such a penalty, all extenuating circumstances, such as the unintentional nature of the violations, Bell Canada's good faith, and the recent compliance measures put in place by Bell Canada, should mitigate or reduce the amount imposed.

42. Bell Canada further submitted that based on subsection 72.002(2) of the Act, it is clear that no AMP is appropriate in this case since Bell Canada is already compliant with both the Act and its tariff, and since it has already taken measures to significantly streamline access to its poles.
43. Bell Canada argued that there is no history of non-compliance on its part and that it has a long history of compliance with its regulatory obligations regarding access to support structures.
44. The CCSA, the CFC, the ITPA, and Videotron suggested that the Commission should impose a significant AMP on Bell Canada in order to deter future violations. The CFC and Videotron specifically suggested that the maximum amount of \$10 million for a first violation should be imposed on Bell Canada.
45. Videotron argued that several Commission decisions (2006-17, 2019-423, and 2020-106) and a Notice of Violation demonstrate that Bell Canada has repeatedly contravened the Act and Commission decisions.
46. Videotron submitted that Bell Canada benefited from the violations because, by blocking or delaying competitor access to its support structures, it could expand and upgrade its own network, and could therefore take advantage of the opportunity to retain customers who would have benefited from alternatives if not for Bell Canada's conduct. Videotron added that Bell Canada's violations affected at least 1,400 doors (residential or business) and that one of the examples provided in Videotron's application, and which the Commission later identified as a violation in the Decision, resulted in losses estimated at \$181,135. Videotron added that in the provision of telecommunications services, even a short lead in serving a market confers a lucrative long-term advantage, since a customer who is served first by Bell Canada due to the lack of competitors will tend to remain a Bell Canada customer for many years, allowing the company to benefit from its violations.
47. Videotron also argued that Bell Canada's violations are significant in that they directly affect some of the objectives of the Act, such as the competitiveness of the telecommunications market and the public access to a first-class telecommunications system.
48. The CFC submitted that Bell Canada's non-compliance with regard to access to its support structures is not only systemic but ongoing. RCCI and Videotron also submitted that Bell Canada must be deterred from continued non-compliance since its actions still cause issues for TSPs in accessing support structures.
49. The CCSA and the ITPA did not propose a specific AMP amount, but suggested that Bell Canada's ability to pay is unconstrained and that it could easily absorb the maximum amount per violation allowed by the Act without it being a punitive measure. The CCSA also states that the nature of the violations is very serious in that it frustrates an important government objective (i.e., the timely connection of

Canadians to broadband networks) and that it gives the incumbent support structure owner a highly valuable anticompetitive advantage over competitive TSPs.

50. Many parties submitted that Bell Canada has a significant ability to pay. Specifically, Videotron referred to BCE Inc.'s 2020 Annual Report to argue that the most severe AMP would have no significant impact on Bell Canada's profitability, given its reported revenues and net income in the billions. The CFC referred to BCE Inc.'s 2021 First Quarter Shareholder Report to argue that Bell Canada has the ability to pay the maximum \$10 million AMP with negligible impact on its financial capacity, given that Bell Canada's wireline operations generated \$3.081 million in revenues. Therefore, CFC argued, if a \$10 million AMP were imposed, it would represent less than 0.33% of Bell Canada's first-quarter revenues.

Commission's analysis and determinations

51. Pursuant to section 72.001 of the Act, every contravention of the Act constitutes a violation and the person who commits the violation may be liable to an AMP. In the Decision, the Commission found that Bell Canada violated section 24 and subsections 25(1) and 27(2) of the Act by requiring Videotron to meet construction standards that Bell Canada itself did not meet. Therefore, the same set of facts, and more specifically the same non-compliance, led the Commission to find that Bell Canada committed all three violations. Instead of undertaking a separate analysis to determine the amount of the AMP for each violation, the Commission will undertake a single analysis to determine the amount of the AMP, and apply that amount to each of the three violations.

Nature and scope of the violations

52. In the Decision, the Commission found that Bell Canada had deployed its own FTTH network on structures with irregularities that caused Videotron's permit applications to be denied, and therefore required Videotron to meet construction standards that Bell Canada itself did not meet. In so doing, the Commission also found that Bell Canada had applied these construction standards in a manner that unreasonably delayed and impeded Videotron's access to Bell Canada's support structures, while benefiting from more efficient and timely access when deploying FTTH on the same support structures. As a result, the Commission determined that Bell Canada's violations impeded the development of the Canadian telecommunications system, had a negative impact on competition and consumers, and were contrary to the public interest. The nature of the violations is therefore serious.
53. Bell Canada's actions were contrary to its regulatory obligations under the Act and are likely to have had an impact on competition. Such competitive advantage can in turn have a lasting effect and thus create significant repercussions for Videotron, Bell Canada's main competitor in Quebec.

54. The scope of the violations is also serious since Bell Canada's violations resulted in Videotron not being able to access Bell Canada's support structures for an extended period of time. As submitted by Videotron, these delays represented losses of several hundred thousand dollars, amounts that were not disputed by Bell Canada. Therefore, although the Commission is mindful that the delays might not be entirely attributable to Bell Canada's actions, the Commission considers that these delays would likely have been reduced if Bell Canada had corrected the irregularities on the support structures before deploying its FTTH equipment.
55. With respect to Bell Canada's argument regarding its intent in committing the violations, the Commission considers that although it could be a factor that reduces the proposed AMP amount, it cannot be fully appreciated by the Commission based on the current public record and should therefore not be a mitigating factor in determining a lower AMP amount in this instance. In addition, the Commission is of the view that that it already considered Bell Canada's intent and argument that the non-compliance was committed in good faith when it concluded in the Decision that Bell Canada had granted itself a competitive advantage.
56. Accordingly, the nature and scope of the violations, which were serious and had a significant impact, suggests that a higher AMP amount would be appropriate.

History of compliance

57. To assess Bell Canada's compliance history, the Commission will address the decisions (2006-17, 2019-423, and 2020-106) and Notice of Violation cited by Videotron in support of its position that Bell Canada has repeatedly contravened the Act and Commission decisions.
58. The Commission notes that in Telecom Decision 2019-423, its determinations were directed at Cablevision du Nord de Québec inc. (Cablevision) and not Bell Canada. Although Cablevision is a wholly owned subsidiary of Bell Canada, the Commission considers that Cablevision's conduct in that decision should not be characterized as non-compliance by Bell Canada and, therefore, should not be considered in determining Bell Canada's history of compliance.
59. With respect to Telecom Decisions 2006-17 and 2020-106, the Commission considers that these decisions demonstrate that Bell Canada has a history of non-compliance with Commission decisions. In Telecom Decision 2006-17, the Commission found that Bell Canada was in violation of the local exchange service winback restrictions initially established in a letter issued on 16 April 1998, *Commission Decision Regarding CRTC Interconnection Steering Committee Dispute on Competitive Winback Guidelines*. In Telecom Decision 2020-106, the Commission found that Bell Canada's refusal to sign the proposed Special Master Agreement for Local Interconnection was contrary to the Commission's competitive local exchange carrier framework, which had been in place since the establishment of local competition in Telecom Decision 97-8.

60. Similarly, the Commission considers that the Notice of Violation demonstrates that Bell Canada has a history of non-compliance with the Act. The Notice of Violation found that Bell Canada had committed violations of the Commission's Unsolicited Telecommunications Rules made under section 41 of the Act. More specifically, between the dates of 1 January 2010 and 31 October 2010, telemarketing telecommunications were made on behalf of Bell Canada by independent telemarketers retained by the company. Consequently, in a [Notice of Violation](#), Bell Canada was required to pay an AMP of \$1.3 million.
61. However, the instances of non-compliance indicated above do not relate to access to Bell Canada's support structures and to applicable construction standards specifically. Therefore, although Bell Canada has a limited history of non-compliance with the Act and Commission decisions, these instances of non-compliance are not repeated violations and do not concern construction standards.
62. Accordingly, Bell Canada's history of compliance suggests that a lower AMP amount would be appropriate.

Benefit obtained from the violations

63. The Commission considers that, while no detailed submission was made on the record of the proceeding to quantify how much Bell Canada may have benefited from its violations, any action that provides a competitive advantage should be taken seriously given the potential for broad harm in the telecommunications marketplace.
64. The Commission considers that it is reasonable to conclude that Bell Canada, as the owner of the pole and FTTH network, derived a benefit from its violations given that these violations may have had a direct impact on Videotron's ability to offer its services at a higher quality to end-customers and/or on the timeliness of Videotron's service offerings. The Commission further considers that Bell Canada benefited from delaying Videotron's access applications to its support structures since it took advantage of a more efficient and timely access to deploy FTTH on the same support structures.
65. The Commission also agrees with Videotron's argument that a short lead in serving a market could confer a lucrative long-term advantage, since a customer who is served first by Bell Canada, because the company has furthered its FTTH network at its competitors' expense, will tend to remain a customer of Bell Canada for many years, allowing the company to benefit from its violations.
66. The Commission therefore considers that Bell Canada likely obtained a competitive benefit from its violations, even though the public record of this process does not allow it to quantify this benefit. Accordingly, the benefit obtained by Bell Canada from the violations suggests that a higher AMP amount would be appropriate.

Ability to pay the penalty

67. Based on Bell Canada's telecommunications operating revenues filed with the Commission,⁵ which include Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services, as well as publicly available financial reporting for its telecommunications operations, the Commission considers that Bell Canada has the ability to pay any AMP amount within the range prescribed by the Act for each of the three violations.
68. The Commission further considers that, given Bell Canada's significant ability to pay, the imposition of a higher AMP amount is unlikely to have a negative impact on the Canadian telecommunications system. In particular, the Commission is of the view that the imposition of a higher AMP amount on Bell Canada would not be contrary to the policy objectives outlined in paragraphs 7(b) and (c) of the Act,⁶ subparagraph 1(a)(ii) of the 2006 Policy Direction,⁷ and paragraph 1(a) of the 2019 Policy Direction⁸ (collectively, the Policy Directions), since the AMP is unlikely to impede on Bell Canada's ability to invest in the Canadian telecommunications system or to impact the financial stability of Bell Canada's telecommunications operations.
69. The Commission also considers that, given Bell Canada's significant ability to pay, the AMP amount should be sufficiently high to achieve the regulatory purpose of promoting compliance and deterring future non-compliance with the Act going forward.
70. Accordingly, Bell Canada's significant ability to pay an AMP suggests that a higher AMP amount would be appropriate to ensure that Bell Canada will comply with the Act going forward.

⁵ The Commission notes that while some parties commented on BCE Inc.'s revenues, Bell Canada, and not BCE Inc., is the corporate entity that committed the violations.

⁶ The cited policy objectives of the Act are the following: 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; and 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications.

⁷ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006. The cited subparagraph is the following: 1(a)(ii) the Commission should, when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.

⁸ *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. The cited paragraph is the following: 1(a) the Commission should consider how its decisions can promote competition, affordability, consumer interests and innovation, in particular the extent to which they encourage all forms of competition and investment.

Factors established by any regulations

71. At this time, no such factors have been established.

Other relevant factors

72. Bell Canada has implemented measures to streamline access to its support structures and further minimize the potential of its FTTH deployment being completed in non-compliance with applicable construction standards. Despite having some concerns as to the efficacy of these measures, the Commission considers that they should, at least in some cases, reduce delays in accessing poles and reduce, to some extent, the likelihood of future non-compliance.
73. Accordingly, the measures implemented by Bell Canada suggest that a lower AMP amount would be appropriate.
74. The Commission considers that it should arrive at an AMP amount that would be sufficient to promote compliance and deter future non-compliance. Therefore, in light of the above factors, the Commission considers that an AMP of \$2.5 million for each of Bell Canada's three violations would be appropriate, for a total AMP amount of \$7.5 million.

Conclusion

75. The Commission determines that it is appropriate to impose an AMP on Bell Canada for its violations of section 24 and subsections 25(1) and 27(2) of the Act, and imposes a total AMP amount of \$7.5 million on Bell Canada (\$2.5 million for each of its three violations).
76. This AMP amount will ensure that Bell Canada, in collaboration with other service providers, establishes further measures to prevent future instances of non-compliance and continues to streamline its pole access procedures to reduce delays to a minimum.
77. While the Commission expects that the imposition of an AMP on Bell Canada will promote compliance and deter future non-compliance in the granting of access permits to Bell Canada's support structures, in accordance with applicable construction standards, the Commission will continue to monitor the situation and, if necessary, take appropriate action in the event of any future non-compliance.

Policy Directions

78. 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 Policy Directions. The Commission considers that its determinations in this decision are consistent with the Policy Directions for the reasons stated below.
79. The Commission considers that its determinations in this decision advance the Canadian telecommunications policy objectives set out in paragraphs 7(a), (b), (c),

(f), and (h) of the Act.⁹ The Commission considers that its determinations particularly advance paragraphs 7(a) and (c), since deterring any future violation on Bell Canada's part, whereby it would require Videotron to comply with construction standards that Bell Canada itself has not complied with, is likely to facilitate the orderly development of the Canadian telecommunications system and enhance its efficiency and competitiveness.

80. 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.
81. The Commission considers that its determinations in this proceeding, namely the appropriateness of a lower AMP amount to ensure future compliance without impacting the financial stability of Bell Canada's telecommunications operations, are consistent with the 2016 Policy Direction, in particular the statement that where there is a need to use regulation, the Commission should do so in a manner that is efficient and proportionate to the purpose of the regulations.
82. 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.
83. 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), (iii), (iv), (v) and (vi). For example, the Commission's determinations outlined above are aimed at ensuring compliance with the Act, with the Tariff, and with any agreements between the parties. The determinations are also aimed at fostering 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, and high-quality services. The Commission considers that its determinations in this proceeding will promote compliance, by all Canadian pole owners, with their regulatory obligations and the Act, as well as more timely access to support structures for licensees.

Secretary General

⁹ 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.

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 for support structures in accordance with its National Services Tariff*, Telecom Notice of Consultation CRTC 2021-132, 16 April 2021
- *Videotron Ltd. – Application concerning the issuance of orders related to the processing and granting by Bell Canada of access permit applications for support structures*, Telecom Decision CRTC 2021-131, 16 April 2021
- *Cloudwifi Inc. – Application for an order completing the company’s registration as a competitive local exchange carrier or requiring Bell Canada to sign a Special Master Agreement for Local Interconnection*, Telecom Decision CRTC 2020-106, 26 March 2020
- *Videotron Ltd. – Applications regarding (i) Cablevision du Nord de Québec inc.’s (Cablevision) refusal to sign a third-party Internet access (TPIA) service agreement, and (ii) access to Cablevision’s TPIA service at just and reasonable rates, and under just and reasonable terms*, Telecom Decision CRTC 2019-423, 16 December 2019
- *Regulatory policy – Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008
- *Quebecor Media Inc. Part VII application – Alleged violations of winback rule by Bell Canada*, Telecom Decision CRTC 2006-17, 6 April 2006
- *Local Competition*, Telecom Decision CRTC 97-8, 1 May 1997