



Telecom Order CRTC 2024-269

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Ottawa, 4 November 2024

Public record: Tariff Notice 7697

Bell Canada – Tariff Notice 7697 – Withdrawal of PhoneCare service

Application

1. On 24 June 2024, the Commission received an application from Bell Canada in which the company proposed changes to item 2221, Flex Bundles, and item 2234, Home Phone Complete Package, of its General Tariff. Specifically, Bell Canada proposed to withdraw the optional PhoneCare maintenance plan from those bundles. Current subscribers to the plan would be able to replace it with another plan or feature available in their bundle.
2. PhoneCare is a maintenance plan that covers the cost to repair phones that are compatible with the company's analogue service and are registered under the plan, such as phones with a built-in answering machine, cordless sets, and rotary phones.
3. Bell Canada submitted that it is proposing the withdrawal because the supplier of the PhoneCare maintenance service will no longer offer it after 30 September 2024, as the platform has reached the end of life and will no longer be supported.
4. Bell Canada noted that the impacted bundles were destandardized in October 2016 and, as such, are no longer available to new customers. The company stated the number of subscriptions for the PhoneCare option, as well as the number of claims under the plan, has been declining.
5. Bell Canada noted that, for customers whose phones cease functioning, replacement telephones and parts are readily available from various retail outlets and online, which will ensure that customers have options to either repair or replace phone sets when needed.
6. Bell Canada requested an effective date of 27 September 2024.

Positions of parties

7. The Commission received two interventions regarding the application. Bell Canada also received a third intervention, which was not submitted to the Commission but was addressed in Bell Canada's reply to interveners.¹
8. In its response, Bell Canada indicated that two of the interventions were from customers who thought they would lose their landline service because of the proposed change. Bell Canada clarified that this was not the case. The other intervention was from a customer who was dissatisfied with the loss of the optional service. Bell Canada submitted that it had spoken to the customer and made changes to the account that the customer found satisfactory.

Commission's analysis

9. In compliance with the procedure set out in Telecom Information Bulletin 2010-455-1 for withdrawal of a tariffed service, Bell Canada provided the Commission with (i) a description of the service proposed to be withdrawn; (ii) the proposed date for the withdrawal; (iii) rationale for the withdrawal; (iv) the number of customers affected; (v) a copy of the notice to affected customers; and (vi) other information it considered relevant.
10. In Telecom Order 2016-406, the Commission approved Bell Canada's application to destandardize certain residential home phone service bundles, which included the PhoneCare maintenance plan. Since that time, other options have become available and there has been a steady decline in the number of subscriptions.
11. The Commission notes that, as indicated by Bell Canada, the supplier for the maintenance service available under the PhoneCare plan will no longer be able to provide the service, because the platform has reached the end of life and will no longer be supported. The Commission therefore considers that Bell Canada's proposal to withdraw the PhoneCare option is reasonable and complies with regulatory policies.
12. The Commission also notes that Bell Canada responded to all interveners and was able to fully address the concerns they raised.
13. The Commission considers that approval of this application would advance the policy objective set out in paragraph 7(f) of the *Telecommunications Act*.²

¹ Commission staff contacted the third intervener to request their consent to include their comment on the public record; however, they did not reply within the prescribed one-week time frame.

² The cited policy objective is: 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.

Conclusion

14. In light of all of the above, the Commission approves, by majority decision, Bell Canada's application.
15. Revised tariff pages are to be issued within 10 calendar days of the date of this order. Revised tariff pages can be submitted to the Commission without a description page or a request for approval; a tariff application is not required.
16. The dissenting opinion of Commissioner Bram Abramson is attached.

Secretary General

Related documents

- *Bell Canada – Destandardization of certain residential home phone services*, Telecom Order CRTC 2016-406, 13 October 2016
- *Approval processes for tariff applications and intercarrier agreements*, Telecom Information Bulletin CRTC 2010-455-1, 19 February 2016
- *Mandatory customer contract renewal notification and requirements for service destandardization/withdrawal*, Telecom Decision CRTC 2008-22, 6 March 2008
- *Action plan for the review of Commission regulatory measures in light of Order in Council P.C. 2006-1534*, Telecom Decision CRTC 2007-51, 11 July 2007
- *Reconsideration of Regulatory framework for voice communication services using Internet Protocol*, Telecom Decision CRTC 2006-53, 1 September 2006
- *VoIP 9-1-1 call routing*, Telecom Decision CRTC 2006-5, 30 January 2006
- *Regulatory framework for voice communication services using Internet Protocol*, Telecom Decision CRTC 2005-28, 12 May 2005; as amended by Telecom Decision CRTC 2005-28-1, 30 June 2005
- *Basic international telecommunications services (BITS) licensing regime – Amendments*, Telecom Circular CRTC 2005-8, 23 June 2005
- *New procedures for disposition of applications dealing with the destandardization and/or withdrawal of services*, Telecom Circular CRTC 2005-7, 30 May 2005
- *Forbearance – Services provided by non-dominant Canadian carriers*, Telecom Decision CRTC 95-19, 8 September 1995

Dissenting opinion of Commissioner Bram Abramson

1. The majority decision on this tariff application, made by the Telecommunications Committee on behalf of the Commission,³ disposes of a minor matter and gets to the right result. Why, then, dissent? Because of how we get there. This decision trips, in my view, over an ambiguity in how we review tariff withdrawals. That ambiguity leads, in turn, to a form of decision-making we must take care to avoid.

Statutory interpretation

2. Each year the Commission issues hundreds of decisions that vary in length, complexity, and novelty. That is a significant enterprise. It demands economy and efficiency. How to balance this efficiency with fairness and accountability lies near the heart of the regulatory craft. Indeed, this tension is knitted into the fabric of administrative law.
3. In marshalling creativity to design domain-specific institutions and procedures for resolving this tension, administrative agencies' discretion is nonetheless structured by an obligation to hold certain ground rules dear, including the following. When a statute provides an explicit, specific mechanism for achieving something, we cannot substitute the statute's grant elsewhere of implied, broad powers to plot an alternate, more expedient, or less procedure-bound route to the same destination.⁴
4. Call it administrative law's version of the well-known keys-and-streetlight joke. A Good Samaritan happens at night across a drunk hunting for their keys under the streetlight. The Good Samaritan pitches in, to no avail: "Are you sure you lost them here?" "No, it was down there—but the light is better over here."
5. The *Telecommunications Act* (the Act) grants the Commission broad regulatory powers to govern the offering and provision of any telecommunications service by a Canadian carrier.⁵ The Act also sets out specific rules around forbearance:

³ Telecommunications Committee, *By-Law No. 10*, paragraph (e) ("[a]ny act or thing done by the Telecommunications Committee shall be deemed to be an act or thing done by the members"), pursuant to paragraph 11(1)(b) and subsection 12(3) of the *Canadian Radio-television and Telecommunications Act*, provides for duties to be delegated to standing committees by by-law. The delegation to standing committees whose remit is made explicit through by-law is distinguished from other forms of delegation, like the assignment of particular cases, and of members to those cases, by way of panel: subsection 6(2); *Shoan v. Canada (Attorney General)*, 2016 FCA 261 (CanLII), paragraph 6.

⁴ This is an application of the broader *expressio unius est exclusio alterius* principle of statutory interpretation, as helpfully discussed in *Reference re: Section 101 of the Public Utilities Act*, 2017 NLCA 34 (CanLII), paragraph 17.

⁵ Sections 24, 25, and 32

- The Commission may forbear from exercising powers and duties under sections 24, 25, 26, 29, and 31 when doing so would be consistent with the Canadian telecommunications policy objectives set out in section 7 of the Act.
- The Commission must forbear from exercising these powers and duties, even if conditionally, in the presence of enough competition to protect the interests of users.⁶

When our disposition of a tariff matter strays into the forbearance part of the street, we must dispose of it as a forbearance matter. Below I review the relevant regulatory frameworks, then discuss how they have intersected in the current application.

Modernization and market forces

6. The Commission’s framework for reviewing applications to destandardize (or grandparent) and to withdraw tariffs was carved out, and then whittled down, in two decisions. Each reflected broader concerns.
7. The first, published in Telecom Circular 2005-7, was developed as the Commission unfurled a regulatory framework for voice-over-Internet-Protocol telephony,⁷ then new wine for telecom regulation’s most cherished bottles. This was a heady time of fundamental technology changes wrought by convergence to the Internet Protocol. Legacy data networks were giving way to more cost-efficient and more versatile networks, a shift then known as the move from “POTS” (for “plain old telephone services”) to “PANS” (for “pretty advanced new services”). Without a framework for destandardizations and withdrawals, the anticipated wave of new tariffs needed to launch dominant carriers’⁸ POTS-to-PANS upgrades would be administratively cumbersome.
8. Telecom Circular 2005-7 addressed that problem by establishing a consistent framework for tariff destandardizations and withdrawals. The framework would review destandardizations and withdrawals against three key criteria, namely whether
 - (a) there is a reasonable substitute for the affected service;
 - (b) there is a clear transition plan to the affected service, including time for affected customers to switch; and

⁶ Section 34

⁷ See, e.g., Telecom Decisions 2005-28 and 2005-28-1; Telecom Decision 2006-5; Telecom Decision 2006-53.

⁸ As distinguished from non-incumbent local exchange carriers not subject to broad tariffing requirements in Telecom Decision 95-19.

(c) affected customers have adequate notice to participate meaningfully in the Commission's review.

9. The framework would assist dominant carriers in modernizing the services they provided, a process made

all the more important in light of fundamental change being faced and being made by telephone companies throughout the country. For regulated carriers, the cost of building next generation networks is expensive, and can only be justified ultimately by the savings derived from closing down legacy networks. As a result, this transition to an Internet protocol (IP) based network will inevitably require destandardizing and withdrawing legacy services.⁹

This included eliminating versions of services that, as the Commission later described it, “rely on technology no longer supported by the manufacturer, or [that] may be subject to increased costs that make the service uneconomic.”¹⁰

10. Three years later, the context had shifted. The 2006 Policy Direction to the Commission,¹¹ and a responsive Commission action plan in Telecom Decision 2007-51, had each focused on eliminating regulatory measures whose objectives could in any case be achieved by relying on market forces. Telecom Decision 2008-22 considered that, of the three criteria discussed above, the first two—identifying a substitute, and establishing a transition plan—were either unnecessary or superfluous. They would be unnecessary for tariffed services for which very little customer demand remained, given newer and more modern alternatives. They would be superfluous because service providers have commercial incentives to identify service alternatives and manage customer transitions anyway:

...[t]he Commission finds that the requirements to include an analysis of available substitutes and a transition plan as part of every application for service destandardization and/or withdrawal are not consistent with the Policy Direction. Accordingly, these requirements are eliminated.¹²

11. Only a notice requirement remained. Did this mean that dominant carriers could now destandardize or withdraw any tariff without meaningful review? Not quite. An application was still required. The Commission would continue to “initiate further process in the event that an application involves significant public interest.”¹³ And

⁹ Bell Canada, Part VII Application, CRTC File No. 8657-B2-200500068, 5 January 2005

¹⁰ Telecom Decision 2008-22, paragraph 52

¹¹ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

¹² Telecom Decision 2008-22, paragraph 55

¹³ Telecom Decision 2008-22, paragraph 57

these changes did “not alter previous Commission rulings regarding the [incumbent local exchange carriers’] obligations in the provision of PES [primary exchange service] and the [basic service objective].”¹⁴

12. Since 2008, the regulatory framework for destandardizations and withdrawals has been restated, but has been little changed. Except for the explicit continuing PES obligation and notice requirement, that framework today is much as it stood prior to 2005. That applications are reviewed against what is a very broad “significant public interest” criterion means relatively little guidance on how the Commission will decide. But, more importantly, without a reasonable-substitute requirement there is little to point to when a tariff withdrawal application is simply a forbearance request in more comfortable clothing—as modelled, in my view, by the application on this decision.

Moving forward

13. Bell Canada’s application identifies two reasons for its proposed PhoneCare withdrawal. On one hand, the particular supplier that Bell Canada uses to fulfil the service is getting out of the business: the platform has reached the end of life and will no longer be supported. On the other hand, “[r]eplacement telephones and parts are readily available from retail outlets, including discount retailers and online [...], which will ensure customers have options to either repair or replace telephone sets when needed.” Hence, “customers have a wide range of replacement or repair options available to them”.

Distinguishing modernization from class-of-service withdrawals

14. If PhoneCare is a service to keep phones repaired or, where necessary, replace them, then the availability of a wide range of options make it unclear why Bell Canada’s current supplier’s market exit need torpedo PhoneCare. There are, Bell Canada has submitted, many alternatives: those alternatives are equally available to Bell Canada. The more relevant reason, it seems to me, is Bell Canada’s submission that the wide range of options available to the rural and remote customers located in non-forborne exchanges means that they no longer need Bell Canada for that. In other words, that PhoneCare-style services are subject to competition sufficient to protect the interests of users.
15. Seeking authority to withdraw a tariff on the basis that competition is sufficient to protect the interests of users is a forbearance application. It is different than withdrawing the tariff because some other, more modern tariffed or untariffed service stands in the wings. It is likewise different than withdrawing the tariff on the basis that the service is no longer needed in today’s changed world.
16. By treating the application as a general tariff withdrawal, rather than under the heading of forbearance, it therefore seems to me that the majority has declared it has found under the streetlight what was never left there in the first place. PhoneCare, already

¹⁴ Telecom Decision 2008-22, paragraph 58

destandardized eight years ago and therefore impervious to new sign-ups since then, likely ought to be withdrawn. But the withdrawal should result from finding that, for instance, few barriers to entry and many competing suppliers serving those living in non-forborne exchanges, justify forbearance on the basis of competition that protects the interests of users.

17. The source of this confusion is, in my view, the ambiguity that returned to our framework for destandardizations and withdrawals following Telecom Decision 2008-22. A simple distinction might help alleviate this ambiguity:
 - (a) Applications to withdraw because a service has been replaced by other, more modern services, or because on the balance of significant public interest the service need not be available at all, ought to remain simply withdrawal applications.
 - (b) Applications to withdraw because a class of service has become competitive, or because withdrawal in respect of that class of service would otherwise be consistent with the Canadian telecommunications policy objectives, should be filed as forbearance applications.

Reviewing notice requirements

18. Finally, it is helpful to recall the notice requirements that have been in place since Telecom Decision 2008-22, as restated in paragraph 39 of Telecom Information Bulletin 2010-455-1. The notices sent to users of the service to be destandardized or withdrawn must include not only a description of the service and proposed date of change, but also the rationale for the change.
19. That rationale was provided to the Commission, as also required. But it does not appear to have been included in the notice sent to the rural and remote subscribers residing in non-forborne exchanges. Likewise, the notice did not identify or allude to substitute services: although they are no longer required to, the Commission nonetheless encourages applicants to identify substitute services in their notice.
20. Based on the interventions filed and Bell Canada's reply to them, the notice received by subscribers was met by confusion to which these omissions may have contributed. Particularly with retail destandardizations and withdrawals, we should be vigilant to verify the completeness of the subscriber notices we place on the public record. Applicants would be well-placed to do the same in order to reduce subscriber confusion and, in so doing, hopefully reap the efficiencies of having only to explain something once.

Expediency and accountability

21. The Commission is bound to work both efficiently and carefully. Expediency in the face of high volume requires trade-offs. Great care, close attention to administrative law obligations, and a continuing and overarching focus on accountability are essential tools in considering which trade-offs we make.

22. Ambiguities that may have us down the wrong path are worth rooting out for their own sake. But they are also part of a continuing process that helps ensure we keep our statutory fidelity high, our tools sharp, and our hunt for the keys to our objectives exactly where it ought to be.