Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2025-239

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Bell Canada – Application to review and vary Telecom Decisions 2021-131 and 2022-160

Summary

The Commission is taking action to help ensure that Canadians benefit from more choice of high-quality Internet services. One way it supports this is by making it easier for companies to deploy new telecommunications networks across Canada.

The Commission requires incumbent local exchange carriers (ILECs) to allow competitors to attach network equipment on support structures that the ILECs own or control. This increases competition by reducing a barrier for competitors when they build new networks.

In Telecom Decision 2021-131, the Commission found that Bell Canada did not provide access to its support structures in accordance with the Commission's framework. To deter future violations and promote compliance with regulatory requirements, the Commission imposed an administrative monetary penalty (AMP) of $7.5 million on Bell Canada through Telecom Decision 2022-160.

The Commission then received an application by Bell Canada to review and vary Telecom Decisions 2021-131 and 2022-160. Bell Canada alleged that the Commission made errors that created substantial doubt as to the correctness of those decisions.

This decision confirms that it was appropriate to impose an AMP on Bell Canada for its conduct. Bell Canada is directed to pay the AMP by **14 October 2025**.

The Commission reminds support structure owners that they must provide access to competitors in a timely manner. Timely access to support structures helps make it easier for companies to deploy new networks.

A dissenting opinion by Commissioner Bram Abramson is attached to this decision.

Background

Telecom Decision 2021-131 and Telecom Notice of Consultation 2021-132

1. In June 2020, Quebecor Media Inc., on behalf of its subsidiary Videotron Ltd. (Videotron), filed an application with the Commission alleging anti-competitive actions on the part of Bell Canada. Videotron sought orders related to Bell Canada's processing of permits that allow Videotron to attach its telecommunications equipment to Bell Canada's utility poles, also referred to as support structures.

2. In Telecom Decision 2021-131, the Commission concluded that Bell Canada, in its handling of the permit applications cited by Videotron, had given itself a competitive advantage. Specifically, the Commission determined that Bell Canada violated clause 2.8 of its Support Structure Licensing Agreement (SSLA) with Videotron by requiring Videotron to meet construction standards that Bell Canada itself did not meet.

3. The Commission also determined that by applying these same construction standards in a manner that unreasonably impeded access by other licensees to its support structures, Bell Canada had violated item 901.3(h) of its National Services Tariff and, therefore, that Bell Canada had violated section 24 and subsection 25(1) of the *Telecommunications Act* (the Act).[1] The Commission further determined that the preference that Bell Canada gave itself and the disadvantage that it imposed on Videotron were undue and unreasonable, in violation of subsection 27(2) of the Act.

4. The Commission further considered that, in light of Bell Canada's violations of the Act, it was of the preliminary view that an administrative monetary penalty (AMP) should be imposed on the company. The Commission therefore launched a proceeding to consider the appropriateness of imposing an AMP on Bell Canada and, if necessary, to determine the amount of the AMP. This proceeding was initiated in Telecom Notice of Consultation 2021-132 (the AMP proceeding).

Telecom Decision 2022-160

5. The AMP proceeding led to Telecom Decision 2022-160, in which the Commission determined that it would be appropriate to impose an AMP on Bell Canada for its violations of section 24 and subsections 25(1) and 27(2) of the Act. The Commission imposed a total AMP of $7.5 million on Bell Canada ($2.5 million for each of its three violations). The Commission was of the view that imposing an AMP in this case would serve the regulatory purpose of promoting compliance and deterring future non-compliance. The Commission also determined that imposing an AMP of

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[1] Section 24 of the Act states that "[t]he offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission." Subsection 25(1) of the Act states that "[n]o Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission that specifies the rate or the maximum or minimum rate, or both, to be charged for the service."

this amount would ensure that Bell Canada, in collaboration with other service providers, would establish additional measures to prevent future instances of non-compliance with the Act, and would continue to streamline its support structure access procedures to minimize delays.

6. In Telecom Decision 2022-160, the Commission determined that certain evidence submitted by Bell Canada disputed the Commission's factual findings in Telecom Decision 2021-131. The Commission reasoned that the evidence had been previously submitted on the record of the proceeding associated with the 2021-131 decision. This evidence included Bell Canada's submissions concerning good faith errors, technician safety, other construction standards, a standard of infallibility, and the make-ready work delays it faces. Noting that the purpose of the proceeding was not to review and vary Telecom Decision 2021-131, the Commission declined to take into account or reconsider that information. The Commission noted that Bell Canada's intent was considered when it found that the company had granted itself an undue preference and had imposed an undue and unreasonable disadvantage on Videotron.

Application

7. The Commission received an application from Bell Canada, dated 13 September 2022, requesting that the Commission review and rescind and/or vary Telecom Decisions 2021-131 and 2022-160. The company submitted that the Commission made five errors in law, ten errors in fact, and two errors in mixed law and fact in those decisions. Bell Canada submitted that these errors demonstrate that:

    - the procedure leading to the issuance of Telecom Decision 2022-160 was legally flawed;
    - the Commission incorrectly refused to consider highly relevant evidence that would have led to a different outcome;
    - the Commission applied an incorrect test when determining whether to impose an AMP; and
    - the amount of the AMP is inexplicably and egregiously large.

8. Bell Canada argued that these errors raise substantial doubt as to the correctness of both decisions, and that the decisions must be varied or rescinded such that the AMP no longer applies.

9. The Commission received interventions from the Public Interest Advocacy Centre (PIAC), TELUS Communications Inc. (TELUS), and Videotron.

Review and vary criteria

10. The Commission's framework for assessing review and vary applications is set out in Telecom Information Bulletin 2011-214. This is a well-established framework that

contributes to regulatory certainty and predictability by allowing the Commission to revisit a past decision and make corrections for any errors, oversights, or changes in circumstance.

11. Based on the record before it, the Commission assesses whether there is substantial doubt as to the correctness of the decision. If there is a substantial doubt, the Commission can consider varying a decision.

12. The Commission will typically assess whether an applicant has established substantial doubt resulting from:

- an error in law or in fact,
- a fundamental change in circumstances or facts since the decision,
- a failure to consider a basic principle which had been raised in the original proceeding, or
- a new principle that has arisen as a result of the decision.

Issues

13. The Commission has identified the following issues to be addressed in this decision:

- Should the Commission review and vary Telecom Decision 2021-131?
- Should the Commission review and vary Telecom Decision 2022-160?

Should the Commission review and vary Telecom Decision 2021-131?

Positions of parties

14. Bell Canada cited numerous errors in law, fact, and mixed law and fact, that it alleged raise substantial doubt as to the correctness of Telecom Decision 2021-131. It believed an extension to the 90-day deadline to submit a review and vary application, as set out in section 71 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, was warranted given these errors.

15. Bell Canada submitted that there would be no harm to any other stakeholder resulting from the Commission's correction of the record to the extent required, whereas there would be significant harm to Bell Canada if the Commission failed to do so.

16. The company also noted that the Commission has used its discretion to allow for review and vary applications to be filed after the deadline in the past, and with significantly less justification than Bell Canada has provided.

17. Videotron submitted that not only was Bell Canada's review and vary application extremely late, but that the company did not justify the delay. If Bell Canada wanted the Commission to vary its findings in Telecom Decision 2021-131, it should have either filed an appeal immediately with the Federal Court of Appeal or immediately requested a review pursuant to section 62 of the Act.

Commission's analysis

18. The AMP proceeding was launched concurrently with the release of Telecom Decision 2021-131, on 16 April 2021. Bell Canada could have filed an application to review and vary Telecom Decision 2021-131 within 90 days of the issuance of that decision, including a request to suspend the AMP proceeding until the Commission considered and issued a decision on the review and vary application. However, Bell Canada did not do so and submitted its application more than one year later, on 13 September 2022.

19. Bell Canada did not adequately explain why it was necessary for it to await the outcome of the AMP proceeding before requesting that Telecom Decision 2021-131 be reviewed and varied. The Commission considers that its findings in Telecom Decision 2021-131 stand apart from and do not rely upon the determinations in Telecom Decision 2022-160. Therefore, any errors associated with Telecom Decision 2021-131 as alleged by Bell Canada should have been identified by Bell Canada at the time that decision was published.

20. Moreover, as the Commission stated in Telecom Decision 2022-160, the purpose of the AMP proceeding was not to review and vary its determinations in Telecom Decision 2021-131. Rather, it was to determine whether it was appropriate to impose an AMP on Bell Canada as a consequence of the findings in Telecom Decision 2021-131 and, if so, the appropriate amount of the AMP.

21. The Commission also notes that none of the alleged errors negate the factual finding that Bell Canada contravened section 24 and subsections 25(1) and 27(2) of the Act such that they would raise substantial doubt as to the correctness of the decision. Therefore, the Commission denies Bell Canada's request to review and vary Telecom Decision 2021-131.

Should the Commission review and vary Telecom Decision 2022-160?

22. Bell Canada alleged that numerous errors in law, fact, and mixed law and fact were made in Telecom Decision 2022-160.

23. In this section, the Commission addresses the most substantive of these alleged errors, namely that it applied the wrong test when determining whether to impose an AMP and, consequently, did not consider relevant evidence.[2]

24. The Commission has examined the other alleged errors, which are listed in the appendix to this decision, and finds that for each alleged error, Bell Canada has not demonstrated that the alleged error raises substantial doubt as to the correctness of the decision.

Alleged error in law: The Commission applied the wrong test when determining whether to impose an AMP and, consequently, did not consider relevant evidence

Positions of parties

25. Bell Canada submitted that a due diligence defence was available and, as a result, the Commission was required to assess whether the company had, on a balance of probabilities, demonstrated reasonable care to avoid the violation. Bell Canada alleged that the Commission made an error in law by failing to consider the evidence that the company had taken all reasonable care to avoid deployment on poles that were not in compliance with construction standards, and to ensure the effective operation of its compliance systems.

Commission's analysis

26. In its analysis in Telecom Decision 2022-160, the Commission viewed Bell Canada's attempts to introduce evidence with regard to supposed good faith errors, technician safety, other construction standards, a standard of infallibility, and the make-ready work delays faced by Bell Canada as relitigating the findings of unjust discrimination in Telecom Decision 2021-131, where much of the same evidence was already considered. As a result, the Commission determined that such evidence should not be taken into account when considering whether to impose an AMP.

27. However, the Act requires the Commission to consider a due diligence defence and other common law defences "in a proceeding in relation to a violation."[3] This includes when the Commission considers whether there was a violation and when it considers whether to impose an AMP. Therefore, the Commission must consider a due diligence defence in both proceedings, given that those are separate determinations and instances.

28. The Commission is of the view that it did not deny Bell Canada the opportunity to present a due diligence defence, as required by the Act and the duty of procedural

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[2] For ease of analysis, two of the errors in law that Bell Canada alleged the Commission committed in Telecom Decision 2022-160 have been addressed together.

[3] See subsections 72.15(1) and (2).

fairness. However, Bell Canada did not expressly raise a due diligence defence in either proceeding. Also, while the Commission did not proactively consider the due diligence defence, the Commission stated the following in Telecom Decision 2022-160, indicating that it had put its mind to efforts to mitigate future risks of non-compliance:

> 72. Bell Canada has implemented measures to streamline access to its support structures and further minimize the potential of its fibre-to-the-home (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.

29. However, in Telecom Decision 2022-160, the Commission declined to consider evidence that was relevant to a due diligence defence and should have considered it. The Commission therefore determines in this decision that it erred in law by excluding evidence that could be relevant to the due diligence defence on the basis that the evidence had already been considered in the analysis of whether the discrimination was unjust.

Did the fact that the Commission declined to consider evidence mean there is substantial doubt as to the correctness of Telecom Decision 2022-160?

30. Having acknowledged this error, the Commission has conducted an analysis of the evidence that it excluded to determine if the evidence could have changed the outcome of Telecom Decision 2022-160, namely:

- Bell Canada's evidence regarding construction standards and good faith safety concerns;
- Bell Canada's evidence regarding significant delays it has experienced when deploying its own FTTH network due to required make-ready work on poles; and
- Bell Canada's evidence regarding standards of infallibility.

Bell Canada's evidence regarding construction standards and good faith safety concerns

Positions of parties

31. In the AMP proceeding, Bell Canada submitted that the five examples of delayed access to Bell Canada's poles cited by Videotron demonstrated that the delays were due to good faith safety concerns and factors beyond Bell Canada's control, such as obtaining authorization for make-ready work required by third parties. Additionally, Bell Canada argued that due to the confidentiality of information associated with its wholesale services customers' accounts, Bell Canada's FTTH teams could not have known whether a permit applicant was awaiting approval at a particular pole.

Commission's analysis

32. In Telecom Decision 2021-131, the Commission determined that Bell Canada violated the Act due to its inconsistent application of its construction standards, which resulted in undue discrimination toward Videotron. Specifically, Bell Canada denied Videotron the ability to attach its equipment to Bell Canada's poles, citing safety concerns and construction standards, while at the same time attaching its own FTTH equipment to those same poles. Thus, on a standalone basis, Bell Canada's arguments and evidence regarding its construction standards and safety concerns as a reason for delays in issuing attachment permits to Videotron would not have led the Commission to a different conclusion in Telecom Decision 2022-160 regarding whether to impose an AMP on Bell Canada.

33. In light of the above, Bell Canada's arguments regarding construction standards and good faith safety concerns do not warrant varying the Commission's determination in Telecom Decision 2022-160 to impose an AMP.

Bell Canada's evidence regarding significant delays it has experienced when deploying its own FTTH network due to required make-ready work on poles

Positions of parties

34. In the present proceeding, Bell Canada cited four examples of delays in deploying its facilities, due to having to await the completion of make-ready work on poles by other parties, such as Hydro-Québec, or due to protracted negotiations with private individuals for access to their properties. Bell Canada submitted that the purpose of these examples was to demonstrate that it is not immune to delays, and that its FTTH teams are also subject to the same construction standards as licensees, which can delay Bell Canada's network deployment projects.

Commission's analysis

35. While the four examples provided by Bell Canada demonstrate that it has experienced delays in deploying its own equipment, none of them support Bell Canada's argument that the company should not be liable for an AMP. Bell Canada failed to draw clear and meaningful parallels between the conduct of other parties in the examples cited and Bell Canada's own conduct toward Videotron. In particular, Bell Canada did not explain how the circumstances in the four examples demonstrate that its conduct towards Videotron – and the delays experienced by Videotron in obtaining access permits from Bell Canada – should not have resulted in an AMP, despite its violations of the Act.

36. Accordingly, the Commission's consideration of this evidence would not have led to a different decision by the Commission in Telecom Decision 2022-160 on whether to impose an AMP.

Bell Canada's evidence regarding standards of infallibility

Positions of parties

37. In the AMP proceeding, Bell Canada submitted that the Commission's focus in Telecom Decision 2021-131 on the number of permits issued rather than on the number of structures reviewed misrepresented the situation. Bell Canada submitted that in both 2019 and 2020 it received requests for access to more than 100,000 poles by licensees in the province of Quebec alone, adding that each pole in question required a physical inspection. It argued that the examples provided by Videotron and by Bell Canada in the proceeding that led to Telecom Decision 2021-131 demonstrated that each situation is unique, and that many projects require collaboration from parties that is beyond Bell Canada's control and for work that is beyond Bell Canada's competency or authorization. Bell Canada submitted that in this context, mistakes and justifiable delays can and do happen.

Commission's analysis

38. Section 72.16 of the Act specifies that a person is liable for a violation committed by its employee(s):

> A person is liable for a violation that is committed by an employee of the person acting in the course of the employee's employment, or by an agent or mandatary of the person acting within the scope of the agent's or mandatary's authority, whether or not the employee or agent or mandatary who actually committed the violation is identified or proceeded against.

39. Based on this provision, Bell Canada was vicariously liable for the actions of its FTTH network deployment teams. Moreover, Bell Canada was liable for those teams' actions, regardless of whether the actions occurred without Bell Canada's knowledge or approval, and regardless of an absence of anti-competitive intent, as claimed by Bell Canada. Consequently, Bell Canada's claim that it had no involvement in the violations and therefore should not be liable for an AMP is without merit.

40. The Commission has compared Bell Canada's submissions to the proceeding associated with Telecom Decision 2021-131 and the AMP proceeding. In its submission in the proceeding that led to Telecom Decision 2021-131, the only measure Bell Canada stated that it had implemented to make it easier for licensees to deploy their networks was the creation of a coordination table with the Government of Quebec, Hydro-Québec, and TELUS to support the deployment of high-speed Internet projects. None of the other measures described by Bell Canada in the AMP proceeding were also presented in the proceeding that led to Telecom Decision 2021-131.

41. In the AMP proceeding, the Commission took into consideration that measures had been implemented by Bell Canada since the release of Telecom Decision 2021-131 to minimize the risk of future non-compliance. However, in Telecom Decision

2022-160, the Commission concluded that it had concerns regarding the efficacy of these measures.

42. Thus, the Commission is of the view that the evidence would not have had a material impact on Telecom Decision 2022-160. It therefore does not raise substantial doubt regarding the correctness of that decision and, even if that evidence had been considered, it would not have affected the amount of the AMP imposed in Telecom Decision 2022-160.

Conclusion

43. In light of the above, the Commission finds that in Telecom Decision 2022-160, it should have considered some evidence that it excluded in the AMP proceeding and given it due weight as appropriate. Much of this evidence could have been assessed as evidence of due diligence and good faith on the part of Bell Canada and could have been a mitigating factor in the Commission's determination regarding the amount of the AMP to impose.

44. However, the Commission finds that, had it opted to consider the evidence provided by Bell Canada in the AMP proceeding regarding the self-correction measures Bell Canada had implemented, the Commission would have nonetheless reached the conclusion in Telecom Decision 2022-160 to impose an AMP on Bell Canada for its violations of the Act. Accordingly, the Commission denies Bell Canada's request to review and vary Telecom Decision 2022-160 with respect to the determination to impose an AMP on the company.

45. Regarding the amount of the AMP imposed, the Commission is of the view that it correctly determined in Telecom Decision 2022-160 that an AMP of a higher amount was appropriate, given the seriousness of the nature and scope of Bell Canada's violations combined with Bell Canada's ability to pay an AMP. Specifically, the Commission was correct when it 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. Moreover, it correctly determined that Bell Canada can afford to pay the AMP amount that was imposed in Telecom Decision 2022-160 without incurring financial hardship. Therefore, the Commission finds that there is no substantial doubt as to the correctness of the amount of the AMP imposed.

46. The Commission therefore maintains the $7.5 million AMP that it imposed in Telecom Decision 2022-160 and directs Bell Canada to pay the AMP by **14 October 2025.**

Secretary General

Related documents

- *Attachment of wireless facilities on support structures owned or controlled by incumbent local exchange carriers*, Telecom Decision CRTC 2025-96, 14 May 2025

- *Bell Canada and TELUS Communications Inc. – Interim wholesale support structure rates*, Telecom Order CRTC 2025-77, 11 March 2025

- *Bell Canada, Saskatchewan Telecommunications, and TELUS Communications Inc. – Amended support structure service tariffs*, Telecom Order CRTC 2025-21, 28 January 2025

- *Regulatory measures to make access to poles owned or controlled by Canadian carriers more efficient*, Telecom Regulatory Policy CRTC 2023-31, 15 February 2023, as amended by Telecom Regulatory Policy CRTC 2023-31-1, 22 March 2023

- *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 Decision CRTC 2022-160, 15 June 2022

- *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

- *Guidelines regarding the general administrative monetary penalties regime under the* Telecommunications Act, Compliance and Enforcement and Telecom Information Bulletin CRTC 2015-111, 27 March 2015

- *CISC Business Process Working Group – Consensus report BPRE085a* – Carrier Services Group (CSG) Related Documentation *and agreement updates*, Telecom Decision CRTC 2013-168, 2 April 2013

- *Issues related to customer/carrier services groups*, Broadcasting and Telecom Regulatory Policy CRTC 2011-512, 19 August 2011

- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011

- *Forbearance with respect to certain inter-carrier agreements filed pursuant to section 29 of the* Telecommunications Act, Telecom Decision CRTC 2007-129, 14 December 2007

- *Regulation under the* Telecommunications Act *of cable carriers' access services,* Telecom Decision CRTC 99-8, 6 July 1999

- *Co-location,* Telecom Decision CRTC 97-15, 16 June 1997

- *Unbundled rates to provide equal access,* Telecom Decision CRTC 97-6, 10 April 1997

- *Competition in the provision of public long distance voice telephone services and related resale and sharing issues,* Telecom Decision CRTC 92-12, 12 June 1992, as amended by Telecom Decision CRTC 92-12-1, 23 August 1992

Appendix to Telecom Decision CRTC 2025-239

The Commission's analysis and conclusions regarding other errors in law, fact, and mixed law and fact Bell Canada alleged the Commission committed in Telecom Decision 2022-160

Alleged errors in law

1. The Commission did not indicate that it was considering imposing multiple administrative monetary penalties (AMPs)

The Commission determined in Telecom Decision 2021-131 that Bell Canada committed three separate violations of the *Telecommunications Act* (the Act). In *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 (the AMP proceeding), the Commission notified Bell Canada that it was contemplating imposing an AMP related to these three violations. Therefore, Bell Canada was aware that (i) the Commission had determined that Bell Canada had contravened three separate provisions of the Act, (ii) each contravention of the Act constituted a violation, and (iii) the imposition of an AMP for these three violations was being considered. Although three violations of the Act were contemplated in the AMP proceeding, only one AMP was imposed in *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 Decision CRTC 2022-160, 15 June 2022 (Telecom Decision 2022-160).

2. Telecom Decision 2022-160 results in penalty stacking, which is contrary to the Act

The legal principles referred to by Bell Canada (e.g., double jeopardy and *mens rea*) do not apply with respect to preventing the finding in Telecom Decision 2022-160 of multiple violations for the same underlying conduct by Bell Canada. Moreover, the Act is clear that every contravention of a provision of the Act is a violation. The Act is constructed such that the same conduct can trigger multiple, simultaneous contraventions.

3. Telecom Decision 2022-160 improperly seeks to punish Bell Canada rather than promote compliance with the Act, contrary to subsection 72.002(2)

The Commission considered all six of the factors detailed in subsection 72.001(1) which it was required to incorporate into its analysis regarding the amount of AMP to impose on Bell Canada. The Commission determined that given Bell Canada's significant ability to pay, a higher AMP amount would be unlikely to negatively impact either the financial stability of Bell Canada's telecommunications operations, or its ability to invest in its telecommunications system. The Commission determined that it was necessary for the AMP amount to sufficiently reduce Bell Canada's incentive to delay or deny access by its competitors to Bell Canada's support

structures, which is not punitive but rather explicitly focused on ensuring future compliance.

Alleged errors in fact

1. Telecom Decision 2022-160 did not address the fact that for two applications, Bell Canada could not conduct the necessary make-ready work itself, nor did the Commission have the power to compel Hydro-Québec to conduct the necessary make-ready work

In *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 (Telecom Decision 2021-131), the issue in question was not whether Bell Canada had the ability to conduct the necessary make-ready work but rather, whether Bell Canada applied different construction standards to its own installations from those it imposed on Quebecor Media Inc., on behalf of its subsidiary Videotron Ltd. (Videotron). In Telecom Decision 2021-131, the Commission determined that Bell Canada could not rely on its arguments relating to the complexity of its own network to explain the long delays and denials associated with the applications by, while benefitting from more efficient and timely access when deploying its own fibre-to-the-home (FTTH) equipment on the same support structures.

In Telecom Decision 2022-160, the Commission noted that among Bell Canada's submissions in the AMP proceeding were its arguments relating to technician safety and construction standards, which Bell Canada cited as reasons for delaying and denying Videotron's access requests.

2. The Commission failed to consider the evidence that Bell Canada's deployment on the poles did not have the same safety concerns as Videotron's deployment on the same poles, due to the location of Bell Canada's facilities

The Commission did consider the evidence about different safety concerns. However, Bell Canada has not adequately explained why it did not perform the corrective work – and as set out in its tariff, charge Videotron for doing so – which would have rectified the safety issues and in turn, would have enabled Bell Canada to issue permits to Videotron on the poles in a timely manner.

3. Telecom Decision 2022-160 did not consider that Bell Canada's Support Structure Tariff has a $100 unauthorized attachment fee that applies to third-party access seekers to Bell Canada's poles for the exact same type of error

An unauthorized attachment fee included in a tariff is not comparable to the consideration of the imposition of an AMP for the same reasons as those detailed in the Commission's analysis in Bell Canada's alleged error of law #3, above. The Commission considered Bell Canada's argument associated with this alleged error of fact during the AMP proceeding, but determined in Telecom Decision 2022-160 that it was irrelevant.

4. Based on an incorrect reading of Bell Canada's submissions, the Commission concluded that measures that the company has implemented to facilitate access to its

poles would result in improved access to approximately 20% of its poles, when in fact the improvements are much broader

The Commission's decision in Telecom Decision 2022-160 to impose an AMP on Bell Canada was based on its assessment of the expected efficacy of Bell Canada's measure to reduce not only delays, but more importantly, the likelihood of the occurrence of similar non-compliance in the future. In Telecom Decision 2022-160, the Commission determined that Bell Canada's new measures did not directly address Bell Canada's non-compliance related to Bell Canada requiring Videotron to comply with construction standards that Bell Canada itself did not meet. Moreover, the Commission considers that even if a higher proportion of poles would be impacted by Bell Canada's improvement measures, it does not alter the Commission's view that the measures do not directly address Bell Canada's non-compliance.

5. Telecom Decision 2022-160 gave significant weight to Videotron's claimed losses despite Videotron not providing any evidence to support its estimates

In Telecom Decision 2022-160, the Commission's analysis focuses mainly on its conclusion that Bell Canada's actions were contrary to its regulatory obligations under the Act and were likely to have had a negative impact on competition. Specifically, Bell Canada's actions unreasonably delayed and impeded Videotron's access to Bell Canada's support structures, for a considerable period of time.

6. The Commission erred in determining that Videotron experienced several hundred thousand dollars of losses with respect to the support structure applications for which an AMP was assessed

The Commission's characterization of Videotron's losses as being "several hundred thousand dollars" was an error; however, it was not a material one and would not have had any bearing on the quantum of AMP imposed on Bell Canada. Moreover, there is no requirement under the AMP regime for the Commission to limit the quantum of an AMP imposed to the quantum of financial losses claimed by an aggrieved party to an AMP proceeding.

7. The Commission appears to have misconstrued Bell Canada's new auditing program as the only auditing program applicable to its FTTH deployment teams

Although in Telecom Decision 2021-131 the Commission did not reference Bell Canada's pre-existing auditing programs, its determinations nonetheless implied that Bell Canada's pre-existing auditing programs were not sufficient to ensure its FTTH teams' compliance with Bell Canada's own construction standards. Consequently, in Telecom Decision 2022-160, the Commission rightfully referenced only the new auditing measures that Bell Canada claimed to have implemented after the release of Telecom Decision 2021-131.

8. In Telecom Decision 2022-160, the Commission erred in determining that it had already considered in the proceeding that led to Telecom Decision 2021-131 Bell Canada's evidence that any errors related to applications 1 and 4 were committed in good faith

The Commission's analysis and determinations regarding this alleged error, which it considers to be better characterized as an error of law, has been addressed at paragraph 29 of this decision.

Alleged errors in mixed law and fact

1. Before the close of the proceeding that led to Telecom Decision 2022-160, the Commission ascribed an anti-competitive intent to violations by Bell Canada's FTTH network deployment teams

Bell Canada did not have to intend to act in an anti-competitive manner for the Commission to find the company to be in violation of its tariff and the Act. Moreover, in reaching its determinations in Telecom Decision 2022-160, the Commission did not have to re-determine whether the company had acted in an anti-competitive manner or whether Bell Canada's conduct violated section 24 and subsections 25(1) and 27(2) of the Act.

2. The Commission conflated deployment by Bell Canada's FTTH team members on four poles in non-compliance with construction standards with the appropriateness of the construction standards that may have delayed Videotron's access

The Commission did not conflate the two issues in question in its original decision, nor did this contribute to confusion that led to a predetermined outcome in Telecom Decision 2022-160. Rather, the Commission determined that Bell Canada violated its Support Structure Licensing Agreement because of the manner in which it applied its own construction standards through the actions of its FTTH deployment teams, while at the same time denying or delaying the issuance of permits to Videotron.

Dissenting opinion of Commissioner Bram Abramson

1. I agree in many respects with my colleagues' decision, rendered by a meeting of the full Commission. However, to determine quantum we should have focussed more tightly on developing a prescriptive, calibrated framework that promotes consistency and predictability in exercising our discretion. Likewise, in disposing of Bell Canada's due diligence defence, offered as a mitigating factor in respect of the monetary penalty we did settle on, we should have seated our evaluation in a broader review of the customer/carrier services group (CSG) framework currently in place.

Consistency and predictability

2. With respect to the administrative monetary penalty (AMP) amounts imposed, I dissent not because the multiple quanta charged are necessarily unreasonable or beyond what the *Telecommunications Act* permits. Rather, I do because, with respect, neither Telecom Decision 2022-160 nor the majority decision here go far enough in articulating principles that clearly explain how the amounts were arrived at. Doing so would strengthen the consistency and predictability of our general telecommunications AMP authority and dispel any whiff of arbitrariness.

3. It is, of course, the essence of the regulatory craft to pursue "the promise of simplicity and predictability": "those affected by administrative decisions are entitled to expect that like cases will generally be treated alike."[1] Doubly so for AMP frameworks, whose deterrent purpose must incorporate certainty, one of "the three elements of effective deterrence" "must be designed to ensure that persons can know the consequences of their actions in advance."[2]

4. Sometimes statutory AMP regimes arrive on the regulator's plate with sufficient predictability already built in, requiring little seasoning. The *Telecommunications Act* is not such a dish. Its general AMP framework consists of four prescriptive criteria, a regulation-making power, and a basket clause. Yet those four criteria are largely convenient recitations of what the common law already prescribed, leaving the decision-maker's discretion scarcely more structured for their presence:

    a) "[T]he nature and scope of the violation" aligns with the requirement that an AMP "reflect the objective of deterring non-compliance with the administrative or regulatory scheme." An AMP, to qualify as such, is to be "in keeping with the

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[1] *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019] 4 SCR 653 at para 7 and 129.

[2] *Sahaluk v Alberta (Transportation Safety Board)*, 2017 ABCA 153 at para 102 (referring to a provincial anti-impaired-driving strategy relying on, among other factors, "Certainty of Consequence… The more certain the consequence, the greater the power it exerts": para 20).

nature of the misconduct and the penalty necessary to serve regulatory purposes," so as to match the behaviour's "gravity and impact."[3]

b) "[T]he history of compliance … by the person who committed the violation" reflects the long-standing approach that prior non-compliance aggravates, and a clean record mitigates, the penalty.[4]

c) "[A]ny benefit that the person obtained from the commission of the violation" translates the goal of removing profit from non-compliance, so that an AMP is not "simply … a 'cost of doing business'." [5]

d) "[T]he person's ability to pay the penalty" follows from the deterrence principle and foundational true-penal-consequences test. If a penalty is to deter economically, its quantum must relate to the size of the wallet against which it is levied. If its magnitude is too great for that wallet, its purpose may be to redress wrongs to society at large, so that it becomes penal rather than qualifying as administrative.[6]

While sound, these four criteria therefore add little structure to the Commission's discretion beyond what case law already provides.

5. When the statutory criteria provide only the rawest form of predictability, it falls to the next in line to finish the recipe to standard. The Governor-in-Council may, by regulation, establish further factors: it has not.[7] The Commission may apply "any other relevant factor"[8] or, more broadly, "issue guidelines and statements with respect to any matter within" our jurisdiction.[9] We have not: Compliance and Enforcement and Telecom Information Bulletin (CETIB) 2015-111 offers procedural guidance but little that would help regulated parties predict how amounts will be determined. Compare

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[3] *Telecommunications Act*, paragraph 72.002(1)(a); *Guindon v Canada*, [2015] 3 SCR 3 at para 77 and 79; *Rowan v Ontario Securities Commission*, 2012 ONCA 208 at para 49.

[4] *Telecommunications Act*, paragraph 72.002(1)(b); *Rowan*, note 3 (above), generally; see also *Guindon*, note 3 (above) at para 57-62, discussing the statutory "culpability" criterion's consistency with an AMP regime's administrative nature.

[5] *Telecommunications Act*, paragraph 72.002(1)(c); *Guindon*, note 3 (above) at para 84 ("magnitude of the tax that could potentially be avoided and the violator's personal gain"); *Rowan*, note 3 (above) at para 49 (citing a *Five Year Review Committee Final Report* on Ontario's *Securities Act*, published in 2003).

[6] *Telecommunications Act*, paragraph 72.002(1)(d); *Guindon*, note 3 (above) at para 85; *Rowan*, note 3 (above) at para 49 ("the capital markets where enormous sums of money are involved and where substantial penalties are necessary to remove economic incentives"); *R. v. Wigglesworth*, [1987] 2 SCR 541, page 361 (relative magnitude of the fine), cited in *Martineau v. M.N.R.*, [2004] 3 SCR 737 at para 57.

[7] *Telecommunications Act*, paragraphs 72.001(1)(e) and 72.0093(b).

[8] *Telecommunications Act*, paragraph 72.001(1)(f).

[9] *Telecommunications Act*, section 58.

this to detailed, factor-weighted penalty calculation frameworks from administrative agencies such as the Bank of Canada, Canadian Border Services Agency, Canada Energy Regulator (then the National Energy Board), and Canadian Nuclear Safety Commission.[10]

6. That is where I part company with the majority. The *Telecommunications Act*'s general AMP power has been in place since 2014. Our initial bulletin dates from 2015. This matter has been before us in various forms for over five years. Yet the principles underpinning the quantum of the penalties imposed remain difficult to extract or apply predictability to future cases.

7. To be clear, I do not view the AMPs that the majority settled and, now, re-settles on, as outside what we are tasked with or unreasonable on their face. The statute supplied a bare-bones framework that meets common-law requirements. We have applied it, having provided notice, the opportunity to make reasoned arguments, written reasons addressing those arguments, a crystallized opportunity to bring errors to light, and written reasons responding to that opportunity.

8. My dissent is not, in other words, on legal or jurisdictional grounds. It is on practical ones to do with how we exercise our discretion. Matters such as this are opportunities to clarify and tighten the guidelines by which we apply the general AMP framework, voluntarily fettering our discretion in favour of more predictable outcomes for regulated parties. We have not made good use of that opportunity.

9. It is not too late. With a similar AMP framework now in the *Broadcasting Act*,[11] we should proceed to re-issue CETIB 2015-111 to encompass both broadcasting and the unsolicited communications frameworks and, in doing so, set out a prescriptive, calibrated framework: fixed weighted factors, clear definitions, a calculation matrix, and anonymized case examples. The reasons given for the amounts confirmed by the majority do not, however, move us in that direction.

Wholesale safeguards

10. Since Videotron Ltd.'s June 2020 Part 1 application, much has changed for third-party access to telecommunications poles under the Commission's jurisdiction. The Quebec coordination table established shortly before that filing has delivered tangible improvements. An Ontario working group was reportedly established in parallel.[12]

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[10] *Administrative monetary penalties*, Bank of Canada, 17 June 2024 ("Determining the amount of an AMP"); *Master penalty document*, Canadian Border Services Agency, October 2024; *Administrative monetary penalty guidelines*, National Energy Board, February 2016, section 4.1 ("Calculating the penalty"); *Compliance and enforcement: administrative monetary penalties, version 2*, Canadian Nuclear Safety Commission REGDOC-3.5.2, 27 June 2022, section 3.1 ("How the penalty amount is determined").

[11] *Broadcasting Act*, S.C. 1991, c. 11, sections 34.2 to 34.995.

[12] Telecom Decision 2022-160, paragraphs 16 ("a working group, composed of electric utility companies, municipalities, carriers, and the Government of Ontario, to accelerate broadband deployment in Ontario")

Two Commission decisions formalized a number of those improvements as regulatory measures.[13] This work continues.[14]

11. As the Public Interest Advocacy Centre's (PIAC) submissions highlighted, however, the central role of CSGs bears further review.

12. Bell Canada with "PIAC's request for clarity with respect to wholesale confidentiality obligations in the context of pole access."[15] TELUS Communications Inc., in turn, addressed Bell Canada's submissions on the "confidentiality of wholesale client information" as a due diligence factor.[16] In my view, we ought to have addressed wholesale client information confidentiality in the context of CSG operations in particular.

13. Large ILECs and large cable carriers were required to establish CSGs in 1992 and in 1999,[17] respectively, to protect against anticompetitive conduct in providing wholesale services to competitors while operating retail arms in the same markets. These functionally-separate units, governed by operational protocols and agreements filed with the Commission,[18] isolate competitor-provided, competitively-sensitive information from a carrier's own retail operations—where required.[19]

14. CSGs have remained a key competitive safeguard, expanding to a range of functions beyond public switched telephone network (PSTN) competition to include collocation, wholesale high-speed access, and more.[20] Yet the Commission has rarely reviewed CSG operations in the broader context of how they have been implemented and evolved across carriers. Such a review could identify where rote adherence to long-standing procedures diverges from best market practice, as appears to have happened

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and 23 ("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"). In the event such a working group continues to operate in Ontario, it might be helpful that the Commission be invited to the table.

[13] See Telecom Regulatory Policy 2023-31 and Telecom Decision 2025-96.

[14] See Telecom Orders 2025-21 and 2025-77.

[15] Bell Canada, Reply, 3 November 2022, paragraphs 95-98.

[16] TELUS Communications Inc., Intervention, 24 October 2022, paragraph 13.

[17] See Telecom Decision 92-12, Parts V.A.4. and VI.A.6 (large ILECs); Telecom Decision 99-8, paragraph 34 (large cable carriers).

[18] See Telecom Decision 2007-129, paragraph 41.

[19] See Broadcasting and Telecom Regulatory Policy 2011-512.

[20] See, for instance, Telecom Decisions 97-6 and 2013-168 (PSTN); Telecom Decision 97-15 (collocation); and Telecom Decision 99-8 (wholesale high-speed access).

here. Given their importance, and like the AMPs framework, the time is ripe for a thorough assessment.

Conclusion

15. My dissent has raised two issues: AMP quantum-setting, and CSG operations. They are linked by this common thread: each involves safeguards that work best when guided by clear, consistently-applied rules, and are not left to *ad hoc* elaboration. Yet, in each, our as-elaborated frameworks offer only starting points. Sound regulation demands that we develop these starting points into more complete recipes—structured, transparent, and repeatable. We need not go so far as to overspecify every element, or to purport to overly bind our successors. But nor, in my respectful view, have we yet struck the appropriate balance.