



## Telecom Decision CRTC 2025-251

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Reference: Part 1 applications posted on 28 February 2025

Gatineau, 26 September 2025

*Public records: 8662-G116-202500933 and 8662-B2-202500925*

### **Bell Canada and the Province of Ontario – Applications to review and vary Telecom Decision 2024-324**

#### **Summary**

In Telecom Decision 2024-324, the Commission provided clarity on issues related to historical charges for long-distance telephone calls made from Ontario correctional facilities from 2013 to 2021. It did so to assist the court in understanding what Commission rules applied to these charges during that time in the context of a potential class action against Bell Canada and the Province of Ontario.

In February 2025, Bell Canada and the Province of Ontario requested that the Commission review and vary Telecom Decision 2024-324. They alleged that the Commission failed to address other points of clarification in the original proceeding and erred in its characterization of its authority to forbear from regulating a telecommunications service.

In this decision, the Commission finds that Bell Canada and the Province of Ontario have not established substantial doubt as to the correctness of Telecom Decision 2024-324 and accordingly, denies their applications.

#### **Background**

1. In October 2021, Goldblatt Partners LLP, on behalf of Ransome Capay and Vanessa Fareau (the Class Applicants), commenced a proposed class-action proceeding. The proceeding was against Bell Canada and the Province of Ontario (Ontario) over the long-distance rates charged by Bell Canada when it provided telephone services to inmates in Ontario correctional facilities from 2013 to 2021.
2. On 11 December 2024, the Commission issued Telecom Decision 2024-324. That decision addressed applications received from the Class Applicants and Bell Canada seeking clarification on matters related to the class-action proceeding. In particular, the Commission concluded that:
  - the rates for long-distance calling in Ontario correctional facilities were forborne from regulation in Telecom Decision 97-19 and have not been subject to Commission approval since that time; and

- under the *Telecommunications Act* (the Act), the Commission does not have the authority to retroactively or retrospectively adjust the rates that were charged by Bell Canada to the Class Applicants.

## **Applications**

3. On 21 February 2025, the Commission received separate applications from Bell Canada and Ontario requesting that the Commission review and vary Telecom Decision 2024-324.
4. In their applications, Bell Canada and Ontario submitted that there was substantial doubt as to the correctness of Telecom Decision 2024-324 because the Commission did not address questions related to its jurisdiction and mischaracterized the nature of its authority to forbear from regulating a telecommunications service. Given the similar nature of the two applications, the Commission examined them together as part of this proceeding.
5. The Commission received interventions from the Class Applicants, the Public Interest Advocacy Centre (PIAC), and TELUS Communications Inc. (TELUS). Ontario also filed an intervention in response to Bell Canada's application and noted that it supported the Commission examining the two applications together.

## **Review and vary criteria**

6. 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 circumstances.
7. 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.
8. The Commission typically assesses 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.

## **Issue**

9. The Commission has identified the following issue to be addressed in this decision:

- Have Bell Canada and Ontario demonstrated that there is substantial doubt as to the correctness of Telecom Decision 2024-324 with respect to (i) the issues addressed by the Commission in that decision or (ii) the way the Commission described its forbearance authority?

## **Positions of parties**

### **Bell Canada**

10. The central argument in Bell Canada's review and vary application was that the Commission committed an error in law by failing to address a fundamental issue raised in the applications before it: whether forbearance, as a form of regulation, preserves the Commission's jurisdiction over the forborne telecommunications service.
11. Bell Canada submitted that unless the Commission affirms that forbearing from regulating a telecommunications service precludes courts from assuming jurisdiction over that service, the effectiveness of forbearance as a regulatory tool is undermined. This is because market forces would not be able to operate freely. Bell Canada highlighted that its original application had raised this question directly.
12. Bell Canada also submitted that the Commission failed to address the related issue of whether forborne rates are, by their nature, reasonable. The company cited a statement by the Supreme Court of Canada that rates are presumed to be just and reasonable if they are in compliance with a final decision of the Commission. Bell Canada also referred to past statements by the Commission that it will only forbear where it is satisfied that rates will remain just and reasonable.
13. In addition, Bell Canada made various arguments regarding the appropriateness of courts intervening in matters relating to the Act. It indicated (i) that courts lack institutional knowledge, (ii) that allowing them to intervene in these matters undermines the objectives of Parliament in creating the Commission to implement Canadian telecommunications policy, and (iii) that having courts second-guess the Commission's decisions invites regulatory uncertainty that is detrimental to the industry.
14. Bell Canada requested that the Commission vary Telecom Decision 2024-324 to clarify that (i) forbearance is not an abdication of regulatory responsibilities, but a specific form of regulation, and that (ii) by issuing and maintaining Telecom Decision 97-19, the Commission determined that the rates charged during the period at issue were just and reasonable.

## **Ontario**

15. Ontario submitted that the Commission erred in law by not providing assurance to the parties that their submissions were considered. It added that the Commission did not provide clarity on whether it exercised jurisdiction over the rates in question when it forbore from regulating the rates for long-distance calls in Telecom Decision 97-19. Ontario also argued that the Commission should have confirmed not only that it maintained jurisdiction after it forbore from regulating those rates, but also that it considers its jurisdiction to be exclusive.
16. Ontario submitted that the Commission also erred in the way it characterized its forbearance authority under section 34 of the Act. Ontario objected to the Commission's use, in Telecom Decision 2024-324, of the phrase "forbear from regulating," which is not found in the Act. Ontario alleged that this reflects an error in law, which is compounded by the Commission declining to clarify the nature and purpose of forbearance as requested by Bell Canada in its original application. Ontario added that the Commission erred in law by failing to specify which of the authorities listed under section 34 of the Act it forbore from exercising and on what policy basis.
17. Ontario requested that the Commission vary Telecom Decision 2024-324 to (i) confirm that the Commission exercised jurisdiction, under section 34 of the Act, over the rates in question in Telecom Decision 97-19, (ii) affirm that Telecom Decision 97-19 is not an abdication of the Commission's jurisdiction, and (iii) correct the Commission's alleged misinterpretation of section 34 of the Act.

## **Interveners**

18. The Class Applicants opposed the review and vary applications. They argued that the Commission did not err in its determinations, and that Telecom Decision 2024-324 directly answered the questions posed by the Court of Appeal for Ontario (the Court of Appeal). The Class Applicants also submitted that the question relating to the "exclusivity" of the Commission's jurisdiction was not a central issue in this case, nor one the Court of Appeal identified as needing clarification.
19. TELUS supported the review and vary applications and affirmed the need for the Commission to confirm that forbearance is a form of regulation, and that forborne rates are still subject to Commission regulation, limiting the jurisdiction of civil courts.
20. PIAC supported Telecom Decision 2024-324 and indicated that insofar as the Commission is not regulating the rates at issue, inmates should have recourse to the courts. It argued that the jurisdiction of the courts in this matter is concurrent with the Commission's, and that the Court of Appeal has already made determinations on some of the issues raised by Bell Canada and Ontario.

## Commission's analysis

### Commission forbearance and jurisdiction

21. The Commission takes note of the relevant case law raised by the parties, which emphasizes that “administrative tribunals do not have to consider and comment upon every issue raised by the parties”<sup>1</sup> but that decisions should nevertheless meaningfully account for the central issues.<sup>2</sup> Therefore, the underlying dispute is not whether the Commission needed to acknowledge every argument made, but whether the arguments raised in Bell Canada’s original application were “central issues” that the Commission was obliged to address.
22. The context of the original proceeding is key to understanding what the central issues were. In many cases, a “central issue” is easily identified because parties are asking the Commission to directly exercise its authority by, for example, approving a tariff or imposing a penalty. This was not the case in the proceeding that led to Telecom Decision 2024-324. In that proceeding, Bell Canada and Ontario asked the Commission to provide what was effectively declaratory relief by clarifying previous decisions and addressing jurisdictional questions. Declaratory relief is inherently discretionary; therefore, the Commission had broad scope to define the central issue it considered appropriate to address in Telecom Decision 2024-324.
23. In Telecom Decision 2024-324, the Commission considered there were two issues requiring clarification in the proceeding: (i) whether the rates at issue were forborne from regulation or remained subject to Commission approval and (ii) if they were forborne, what options were available for relief. Telecom Decision 2024-324 centred around these two issues.
24. At the core of Bell Canada’s and Ontario’s arguments in the present review and vary applications is the proposition that the Commission was required to definitively state that its jurisdiction to set just and reasonable rates is exclusive, and that a decision to forbear from regulating those rates is an exercise of this exclusive jurisdiction, thus precluding the courts from applying laws of general application to rates charged by a telecommunications company. However, the Commission did not consider this as a central issue it needed to address in Telecom Decision 2024-324.
25. The Court of Appeal defined the “central issue” on which it required clarity to be “...whether the CRTC assumed jurisdiction over the setting of these rates.”<sup>3</sup> The Court of Appeal also stated that “[...] a central issue in this case is whether the CRTC forbore from exercising its jurisdiction [...]”<sup>4</sup> The Commission considers that it addressed these questions in Telecom Decision 2024-324 by affirming that the rates

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<sup>1</sup> *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, paragraph 3.

<sup>2</sup> *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, paragraph 127.

<sup>3</sup> *Fareau v. Bell Canada*, 2023 ONCA 303, paragraph 76.

<sup>4</sup> *Ibid.*, paragraph 92.

at issue were included in those it forbore from regulating in Telecom Decision 97-19. The Court of Appeal itself does not appear to have highlighted either the exclusivity of the Commission's jurisdiction or whether forbearance is a "form of regulation" as points on which it expected to receive clarity from the Commission.

26. Contrary to Bell Canada's and Ontario's position, the Act does not frame the Commission's authorities in exclusive terms. While the majority of provisions under the Act pertain to the Commission's objectives, powers, and responsibilities, they also address the roles of other entities in administering the Act, including those of the Governor in Council, the Minister of Industry, the provinces, and the courts.<sup>5</sup> The Commission considers that, with regard to the original proceeding, its role was to explain Telecom Decision 97-19 and what remedies are available under the Act. In light of these clarifications and the applicable laws, it is ultimately a matter for the courts to determine whether they have the jurisdiction to grant the remedies requested by the Class Applicants.
27. Although Telecom Decision 2024-324 did not identify the jurisdictional question raised by Bell Canada as a central issue to be addressed, it did provide views related to jurisdictional issues raised by the parties where they were relevant to address the central issues. In particular, the Commission acknowledged that the Commission for Complaints for Telecom-television Services Inc.'s mandate precludes it from adjudicating long-distance pricing and confirmed that it has the authority to review and change previous decisions, including decisions related to forbearance. Moreover, the Commission confirmed that it can reassert its authority for a previously forborne service. However, it has not done so to date with respect to the rates at issue, and were it to do so, it would be unable to provide the retroactive relief sought by the Class Applicants.
28. With respect to Bell Canada's submission that forbearance is indicative of an ongoing determination that rates are just and reasonable, Bell Canada did not ask the Commission to decide or provide clarity on this point in its original application. Therefore, the Commission did not err by failing to address this issue in Telecom Decision 2024-324. Similarly, and with respect to Ontario's submission that the Commission should have provided insight into the scope and rationale of its decision to forbear, those elements can be found in Telecom Decision 97-19.
29. In light of the above, there is no substantial doubt as to the correctness of Telecom Decision 2024-324 because the Commission did not fail to consider a central issue in the proceeding that led to that decision.

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<sup>5</sup> The Act states, for example, that debts arising from rates are enforceable before the courts (section 30), it contemplates situations in which the same facts or issues may be at issue in proceedings before both the Commission and the courts (subsections 52(2) and 52(3)), and it permits actions for damage in matters relating to the Act (section 72). While the Act contains language that limits the availability of actions "in relation to a rate" (subsection 72(3)), that limitation is a matter for the courts to contend with, as the Commission notes they already have in this instance.

### **Characterization of the Commission’s forbearance authority**

30. While not explicitly found in the Act, “forbearance from regulation” is standard shorthand for the exercise of section 34 of the Act, used for decades by both the industry and the Commission. Similar references can also be found in Bell Canada’s original application and in other jurisprudence relating to the exercise of authorities under the Act.<sup>6</sup> Therefore, this wording is not a literal interpretation of the scope of section 34 of the Act.
31. In light of the above, there is no substantial doubt as to the correctness of Telecom Decision 2024-324 with respect to the Commission’s characterization of section 34 of the Act.

### **Conclusion**

32. In light of all of the above, the Commission finds that there is no substantial doubt as to the correctness of Telecom Decision 2024-324. Accordingly, the Commission denies Bell Canada’s and Ontario’s applications to review and vary Telecom Decision 2024-324.

Secretary General

### **Related documents**

- *Applications regarding long-distance calling in Ontario correctional facilities*, Telecom Decision CRTC 2024-324, 11 December 2024
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *Forbearance - Regulation of toll services provided by incumbent telephone companies*, Telecom Decision CRTC 97-19, 18 December 1997, as amended by Telecom Decision CRTC 97-19-1, 9 March 1998

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<sup>6</sup> See, for example, *Telus Communications Inc. v. Federation of Canadian Municipalities*, 2023 FCA 79, paragraph 7.