



## Telecom Decision CRTC 2024-324

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References: Part 1 applications posted on 24 November 2023 and 15 January 2024

Ottawa, 11 December 2024

*Public records: 8633-G110-202306480, 8633-B2-202400050, and  
8633-G110-202402809*

### **Applications regarding long-distance calling in Ontario correctional facilities**

#### **Summary**

In this decision, the Commission is providing clarity on issues related to historical phone charges made from Ontario correctional facilities.

In October 2021, Goldblatt Partners LLP, on behalf of Ransome Capay and Vanessa Fareau (the Class Applicants), filed a proposed class action proceeding against Bell Canada and the Province of Ontario over the long-distance rates charged by Bell Canada when it operated the telephone system in Ontario correctional facilities.

Both parties have filed applications seeking clarification from the Commission on questions of telecommunications regulation that were raised in the court proceeding. That proceeding has been put on hold pending this Commission decision.

The Commission is providing the following clarifications on the issues raised in the applications:

- The rates charged by Bell Canada for inmate long-distance calls were not subject to Commission approval during the period in question, as they were forborne from rate regulation in Telecom Decision 97-19.
- The Commission does not have the legal authority to adjust the rates that were charged by Bell Canada to provide financial relief to the Class Applicants.

While the current proceeding has a narrow focus, it has highlighted broader concerns about the rates charged to inmates and their families, as well as the availability of calling options in correctional facilities. Synergy Inmate Phone Solutions Inc. has since replaced Bell Canada as the service provider in Ontario correctional facilities, and evidence on the public record shows that rates for inmate long-distance calling in Ontario have decreased significantly since then. However, no evidence was filed on the record concerning the situation in the other provinces and territories, nor in federal correctional facilities. While the evidence indicates that the situation in Ontario has improved, the Commission is

concerned about the overall provision of telecommunications services in correctional facilities across Canada.

Accordingly, the Commission will undertake additional information gathering to assess whether further action, including potential regulatory intervention, may be required.

## **Background**

1. From 2013 to 2021, Bell Canada had an exclusive contract with the Province of Ontario (Ontario) to operate the Offender Telephone Management System (OTMS).<sup>1</sup> The OTMS provides telephone services to inmates in Ontario correctional facilities. Under this system, inmates used payphones to make outgoing local or long-distance collect calls. These calls were billed to the recipient of the call.
2. In October 2021, Goldblatt Partners LLP, on behalf of Ransome Capay and Vanessa Fareau (the Class Applicants), commenced a proposed [class-action proceeding](#) against Bell Canada and Ontario over the long-distance rates charged by Bell Canada when it operated the OTMS. The Commission has been asked to clarify whether the rates for inmate long-distance calls were forborne from regulation between 2013 and 2021. The proposed class-action proceeding is on hold pending the Commission's decision.

## **Applications**

3. The Commission received separate and related applications from the Class Applicants and Bell Canada, dated 10 November 2023 and 11 January 2024, respectively. The Commission examined the two applications together as part of this proceeding.
4. The Commission received interventions from Bell Canada, the Commission for Complaints for Telecom-television Services Inc. (CCTS), Ontario, the Public Interest Advocacy Centre (PIAC), and TELUS Communications Inc. (TCI).

## **Issues**

5. The Class Applicants' and Bell Canada's applications involved several interrelated issues, including forbearance, regulatory compliance, the application of just and reasonable rates, options for relief, and appropriate jurisdiction.
6. There are two issues that require clarification in this proceeding. The first is whether the rates charged for the inmate long-distance service were forborne by the

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<sup>1</sup> The OTMS is the system through which Bell Canada provided telephone services in Ontario's correctional facilities. It was established by the Ontario Ministry of Community Safety and Correctional Services (now known as the Ministry of the Solicitor General).

Commission or remain subject to Commission approval. The second issue is, if the Commission did forbear, what options are available for relief.

7. By default, all telecommunications services offered by Canadian carriers are subject to Commission regulation. This is set out in subsection 25(1) of the Act, which requires Canadian carriers to file tariffs. All rates charged by Canadian carriers must also be just and reasonable, as set out in subsection 27(1) of the Act.
8. However, under section 34 of the Act, the Commission has the authority to forbear, conditionally or unconditionally, from regulating a telecommunications service. The Commission grants forbearance when there is sufficient competition in the market to protect the interests of users. When forbearance is granted, the service in question becomes subject to market forces, and the rates charged for the service no longer require Commission approval. The issue of forbearance is particularly important in this proceeding because it will inform what options for relief are available to the Class Applicants.

### **Did the Commission forbear from regulating the rates charged by Bell Canada for inmate long-distance calls?**

#### **Positions of parties**

9. All parties noted that Bell Canada had an inmate service tariff that applied to the service that is the subject of the proposed class action from 2013 to 2021. All parties also noted that the Commission forbore from regulating long-distance services in Telecom Decision 97-19, except in the narrow circumstances where there were no equal-access switches in an exchange.<sup>2</sup> However, the parties disagree on how the Commission's forbearance determinations in Telecom Decision 97-19 affected the inmate service tariff, and in particular whether this decision included forbearance from rates for inmate long-distance calls.
10. Bell Canada and Ontario submitted that the Commission did not forbear from regulating the rates for inmate long-distance calls, given that these rates were regulated under a Commission approved tariff. They submitted that the rates charged for collect calls through the OTMS were the same as, or lower than, the rates charged for collect calls made from public payphones, per Bell Canada's inmate service tariff. Moreover, they noted that Commission approval is required to charge rates that differ from those established in a tariff.
11. Bell Canada submitted that while its inmate service tariff does not include a specific rate for inmate long-distance calls, it does contain a Commission approved

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<sup>2</sup> The term "equal access" refers to the ability of competing long-distance service providers to connect to incumbent local exchange carriers (ILEC) switches to enable consumers to use the service provider of their choice to make long-distance calls. Areas served by ILEC switches that have connections to competing service providers are called "equal-access areas," and these switches are referred to as "equal-access switches."

rate-setting mechanism, which is all that is required to demonstrate that the rate is not forborne. Bell Canada indicated that there is a precedent for prescribing a mechanism that sets rates through a tariff rather than assigning a specific numerical value. It added that interest charges on deposits is an example of a prescribed tariff rating mechanism. In that case, rather than specifying a numerical value, the tariff states that “[t]he rate of interest on deposits is the Bank of Canada Target for the Overnight Rate plus 1.25%.”<sup>3</sup>

12. Bell Canada and Ontario submitted that the Commission retained its rate-setting authority under subsection 27(1) of the Act in non-equal-access areas when it forbore from regulating long-distance rates in Telecom Decision 97-19.<sup>4</sup> They noted that the Commission defined a non-equal-access area as an area where a consumer cannot switch to another long-distance service provider of their choice and submitted that this definition applies to Ontario correctional facilities.
13. TCI submitted that the long-distance collect call rates in question are partially and conditionally forborne. It noted that the Commission retained its section 24 authority to impose conditions on the offering and provision of long-distance services and, in part, its section 27 authority to ensure rates are just and reasonable, and not discriminatory or unduly preferential.
14. The Class Applicants and PIAC submitted that the Commission forbore from regulating the rates for inmates’ long-distance collect calls in Telecom Decision 97-19. They indicated that Bell Canada’s inmate service tariff is not a rate-related tariff under subsection 25(1) of the Act because it does not set a maximum or a minimum rate, or any rate at all, as required under subsection 25(1).
15. The Class Applicants and PIAC also submitted that Ontario correctional facilities do not qualify as non-equal-access areas. PIAC submitted that the Bell Canada central offices that provide service to Ontario correctional facilities have equal-access-capable switches, but that these are blocked by the sole-provider model of the inmate service and thus do not create a non-equal-access area.

#### **Commission’s analysis**

16. The following section addresses the three main arguments on the issue of whether Bell Canada’s inmate long-distance service is forborne from rate regulation.

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<sup>3</sup> See [Bell Canada General Tariff item 22 – Interest on Deposits](#).

<sup>4</sup> In Telecom Decision 97-19, the Commission expressed concerns about the extent of workable competition in areas of the country not served by equal-access switches and retained its authority under subsection 27(1) of the Act to ensure that long-distance rates in these areas were just and reasonable. The Commission maintained a price ceiling on basic long-distance rates.

**Argument 1: The nature of Bell Canada's inmate service tariff**

17. In Telecom Decision 97-19, the Commission forbore from regulating the rates for toll services (i.e., long-distance services). This forbearance determination included long-distance calls made from public telephones (i.e., payphones).
18. The Commission needs to examine whether a specific type of long-distance call – namely, long-distance collect calls made by inmates in Ontario correctional facilities – falls under that general forbearance determination, or whether it remains subject to rate regulation. To address this issue, the Commission has considered the nature of Bell Canada's inmate service tariff and how it relates to its public telephone tariff.
19. Bell Canada's inmate service is a regulated service subject to a Commission-approved tariff.<sup>5</sup> The tariff consists of three paragraphs. The first paragraph briefly describes the service. The second paragraph explains that inmates' calls may be subject to certain controls and restrictions. The third paragraph explains that inmates' calls are rated in the same manner as calls originating from other public telephones, but with limited payment options. It does not include a specific tariffed rate for local or long-distance calls made by inmates.
20. The rates for calls from public telephones are set out in Bell Canada's public telephone service tariff.<sup>6</sup> According to this tariff, the rate for local calls made from payphones is set at \$1.00 per call. This is a Commission-approved rate given that local calling from payphones is subject to rate regulation. Referring to Bell Canada's inmate service tariff, this means that the recipients of inmates' collect calls are also charged \$1.00 per local call. For this rate to change, Bell Canada must file a tariff notice for Commission approval.
21. Bell Canada's public telephone service tariff does not specify a rate for long-distance calls. This is because the Commission forbore from regulating long-distance rates, including those made from payphones, in Telecom Decision 97-19.
22. The Commission needs to determine whether this forbearance determination also included long-distance calls made from payphones in Ontario correctional facilities. In this regard, Bell Canada's position is that, even if the tariff does not specify a rate (i.e., a dollar amount to be charged), long-distance calling under its inmate service tariff was subject to a Commission-approved rate-setting mechanism because it explains how to determine what rate users can be charged – namely that these calls must be “rated in the same manner as calls originating from other public telephone services [...]”.

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<sup>5</sup> See [Bell Canada General Tariff item 292 – Inmate Service](#). The tariff was approved in Telecom Order 96-1386.

<sup>6</sup> See [Bell Canada General Tariff item 250 – Public Telephone Service](#).

23. However, the Commission considers that Bell Canada's inmate service is not an entirely separate service from its public telephone service. Rather, it is a subset of Bell Canada's public telephone service and must be viewed in that context.
24. In this regard, paragraph 3 of the inmate service tariff is not a rate-setting provision in the traditional sense of setting the maximum, the minimum, or the exact rate for the service. Rather, it indicates that "[i]nmate service calls are rated in the same manner as calls originating from other public telephones except that payment options may be limited based on the requirements of the institution, technological limitations, and Company collection policies."<sup>7</sup>
25. Reading paragraph 3 in its entirety, it is clear that this provision is mainly concerned with differentiating the available payment methods for inmate calls from those available to the general public under the public telephone tariff. Therefore, the Commission did not approve a specific rate-setting mechanism for inmate payphone calling; rather, it approved the use of limited payment options.

***Argument 2: The absence of Bell Canada's inmate tariff from the appendix to Telecom Decision 97-19***

26. The Commission notes that Telecom Decision 97-19 included an appendix listing the tariffs that the Stentor companies<sup>8</sup> indicated would be affected by the decision to forbear from regulating long-distance rates. Bell Canada's inmate service tariff was not included in that appendix. Bell Canada has taken this to mean that its inmate service tariff, and the associated rates for long-distance calls made by inmates, was not forborne from regulation in Telecom Decision 97-19.
27. In this regard, the Commission considers that there was no need to list Bell Canada's inmate service tariff in the appendix to Telecom Decision 97-19. First, the tariff makes no mention of a long-distance service, nor does it include any associated rates. Second, Bell Canada's inmate service, like its public telephone service, provides for local calling. Therefore, it would not have been appropriate for the Commission to approve the inmate service tariff's removal, since local calling from payphones was subject to rate regulation at that time, as it is today.

***Argument 3: Bell Canada's equal-access argument***

28. Regarding Bell Canada's equal-access argument, the reason inmates have limited choice is not technical in nature and does not relate to a switch's capability to provide equal access. Instead, it is the result of a contract between Ontario and the OTMS service provider – in this case, Bell Canada – which restricts inmates' calling options for security reasons.

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<sup>7</sup> See [Bell Canada General Tariff item 292 – Inmate Service](#).

<sup>8</sup> Stentor was an industry group representing the incumbent local exchange carriers at the time, including Bell Canada.

29. The public record confirms that correctional facilities in Ontario are all located in areas with equal-access-capable switches. A specific determination would have been required to make it clear that the Commission considers certain pockets (such as correctional facilities) within a larger equal-access area to be equivalent to non-equal-access areas. The Commission did not consider this issue and make such a determination in Telecom Decision 97-19, nor in any other decision. Therefore, the Commission considers that long-distance calls originating from payphones in Ontario correctional facilities fall under the general long-distance forbearance determination in Telecom Decision 97-19.

### **Conclusion**

30. In light of the above, the Commission finds that 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.

### **If the Commission did forbear, what options are available for relief?**

#### **Positions of parties**

31. The Class Applicants are seeking clarity on whether the Commission can grant relief by setting retroactive rates for inmate long-distance calling if it is determined that this service was forborne from rate regulation.

32. The Class Applicants questioned whether the CCTS was the more appropriate body to hear the matter and potentially issue remedies if it is determined that the long-distance rates charged by Bell Canada and Ontario were unreasonably high.

33. Bell Canada, Ontario, PIAC, and TCI submitted that the Commission does not have the statutory authority or jurisdiction to set retroactive rates unless they were previously established as interim rates. Ontario submitted that retroactively opening the approved tariff would be unfair, disrupt the settled expectations of parties who relied on it, and create uncertainty. Bell Canada added that if its inmate service rates were forborne, which it denied, such rates would still be presumed to be just and reasonable in accordance with the Commission's prior finding that forbearance was appropriate.

34. The parties added that section 62 of the Act does allow the Commission to, on application or on its own motion, review and rescind or vary any decision made by it or rehear a matter before rendering a decision. However, this stipulation only functions on a going forward basis and cannot be applied retroactively.

35. TCI submitted that the Commission retained its authority under subsection 27(2) of the Act relating to unjust discrimination and undue preference and has broad authority to provide a remedy where this subsection has been violated, even when rates are forborne.

36. Bell Canada, Ontario, and PIAC submitted that the CCTS's mandate precludes it from adjudicating the pricing of long-distance services, which are the services at issue in this proceeding. PIAC added that consumers have continuous access to the courts even after receiving a decision from the CCTS.

#### **Commission's analysis**

37. The Commission generally cannot engage in retroactive or retrospective rate setting.<sup>9</sup> Given that inmate long-distance calling was forborne from rate regulation and subject to market forces during the relevant period, the Commission cannot provide the remedy the Class Applicants are seeking.
38. Although the Commission forbore from preapproving just and reasonable rates in a tariff for long-distance calls made through the inmate service in Telecom Decision 97-19, the Commission retained its authority under section 24 of the Act to set conditions of service. It also retained its authority under subsection 27(2) of the Act regarding undue preference and unjust discrimination. However, no party in this proceeding has raised arguments concerning a violation of subsection 27(2) of the Act with respect to inmate long-distance services, nor has any party suggested what an appropriate remedy would be if such a violation has occurred.
39. The Commission has the authority to review and change previous decisions. For example, the Commission could initiate a proceeding to build a record and consider whether to reassert its rate-setting authorities for a forborne service.<sup>10</sup> However, any such determination to reassert authority with respect to rates would apply on a going-forward basis.
40. Regarding the Class Applicants' request for clarity on whether the CCTS is the appropriate body to address the matter, the Commission notes that concerns about

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<sup>9</sup> In Telecom Decision 93-12, the Commission stated:

The prospective nature of a positive approval scheme means that the Commission, which operates under such a scheme, cannot engage in retroactive or retrospective rate-making absent clear statutory authority. The rule against retrospective rate-making that has been established in the case law precludes the Commission from setting rates to take into account the past losses or obligations or the past gains of a regulated company. In other words, current customers cannot be required to pay rates intended to make up for the fact that past customers may have paid either more or less than was necessary for the company to earn a reasonable rate of return.

<sup>10</sup> In Telecom Regulatory Policy 2013-711, the Commission set out its test for reasserting its authorities for a previously forborne service. In that policy, it reconsidered its forbearance of Northwestel Inc.'s retail Internet service in Telecom Order 98-619. The Commission found that the circumstances that justified its original forbearance had changed because Northwestel Inc. had gained significant market power in the terrestrial retail Internet service market. The Commission therefore determined that the continued forbearance of the company's terrestrial retail Internet services would undermine the achievement of the policy objectives set out in section 7 of the Act. As a result, it directed Northwestel Inc. to file tariffs for its terrestrial retail Internet services.



rates are specifically excluded from the CCTS's mandate. As a result, the issues raised by the Class Applicants cannot be resolved by the CCTS.

## **Conclusion**

41. In light of all of the above, the Commission finds that 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.
42. Furthermore, the Commission finds that it does not have the authority to provide retroactive or retrospective relief to the Class Applicants under the Act.

## **Going forward**

43. The provision of telecommunications services in Ontario correctional facilities has changed. Synergy Inmate Phone Solutions Inc. has taken over the contract to administer the OTMS, replacing Bell Canada. The public record shows that rates for inmate long-distance calling in Ontario have declined significantly since then.
44. While the scope of this proceeding was narrow in focus, the evidence on the public record raises potential policy concerns regarding the rates being charged and the calling options that are available in correctional facilities across Canada. Although this proceeding has provided information on inmate long-distance calling in Ontario correctional facilities, no evidence was filed for other provinces and territories, nor federal correctional facilities.
45. Accordingly, the Commission will gather information and assess whether further action, including potential regulatory intervention, is required.

Secretary General

## **Related documents**

- *Northwestel Inc. – Regulatory Framework, Modernization Plan, and related matters*, Telecom Regulatory Policy CRTC 2013-711, 18 December 2013
- Telecom Order CRTC 98-619, 23 June 1998
- *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
- Telecom Order CRTC 96-1386, 29 November 1996
- *Bell Canada - Revenue requirements for 1993 and 1994*, Telecom Decision CRTC 93-12, 30 August 1993