



June 2, 2022

File No.: 1011-NOC2022-0032

FILED VIA: GCKEY

Claude Doucet
Secretary General
Canadian Radio–television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Doucet:

Re: Telecom Notice of Consultation CRTC 2022-32 – *Call for comments – Proposed amendments to the Telecommunications Fees Regulations, 2010*

1. Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), provides herein its comments in relation to the above noted proceeding.
2. In Telecom Notice of Consultation CRTC 2022-32, *Proposed amendments to the Telecommunications Fees Regulations, 2010* (the “Notice”), the Commission initiates a call for comments on proposed amendments to change the definition of “contribution-eligible revenue” to align the telecommunications fees calculation with the calculation used for the telecommunications contribution regime, as well as amendments to update the definition of “related” to align with recognized accounting standards. The Notice requested interventions by 19 April 2022, with replies to interventions due 4 May 2022. In a Procedural Letter dated 18 May 2022 the Commission established an additional opportunity to make submissions to all interested parties. In a subsequent Procedural Letter dated 20 May 2022, the Commission established new due dates for the additional interventions and replies: 2 June 2022 and 9 June 2022, respectively. Eastlink has reviewed the interventions and reply comments from the initial stage and provide herein our comments.
3. Eastlink disagrees with Bell Canada’s (“Bell”) argument in their 19 April 2022 intervention that the proposed definition of “contribution-eligible revenue”, if approved, should be effective

retroactive to 1 January 2020. Eastlink supports the arguments of Rogers Communications Canada Inc. (“Rogers”) and Quebecor Media Inc., on behalf of Videotron (“Videotron”) in their reply comments dated 4 May 2022 that Bell’s argument proposing a retroactive effective date of 1 January 2022 should be dismissed.

4. As outlined by both Rogers and Videotron, there is no basis in the legislative framework and no precedent for the proposed amendments to be applied retroactively. Videotron argues a regulator must give notice to affected parties of a possible retroactive application of a regulation, which the Commission has not done in this case despite multiple opportunities to do so.¹ Further, Rogers explains there is a legal presumption that laws cannot be applied retroactively absent express language to the contrary, for which there is none in this case.² Eastlink submits that regulatory certainty, particularly with respect to costs, is essential for business and investment planning. It is unreasonable to retroactively adjust fees for years passed without any notice or warning to affected parties without any legislative basis to do so.
5. Eastlink submits that Bell inappropriately conflates the concept of adjustments to fees with retroactivity. They argue that the regulations are already “retroactive” because the fees are based on revenue shares from the prior fiscal year, and the fees are often not finalized until after the fiscal year in question due to the adjustment mechanism provided in the regulations.³ As noted by Videotron, the adjustment mechanism is to account for the difference between the Commission’s estimated regulatory costs and their final true costs and has nothing to do with retroactively changing the basis for the fee, it is simply a true-up of the final costs.⁴ The existence of the adjustment mechanism cannot reasonably be interpreted as allowing or justifying a retroactive amendment to the regulations to change the definition of contribution-eligible revenue. While the fees may not be finalized until they are adjusted, TSPs are able to project rough estimates based on the Commission’s costs and fees from previous years. This is not comparable to a retroactive amendment to change to the base revenue for calculating fees.
6. Bell suggests that the fact that the Commission did not initiate this consultation sooner constitutes an administrative oversight which, in their view, justifies a retroactive amendment.⁵

¹ Videotron Reply, 4 May 2022, paragraphs 5-9.

² Rogers Reply, 4 May 2022, paragraphs 16-20.

³ Bell Intervention, 19 April 2022, paragraphs 33-34.

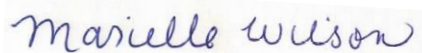
⁴ Videotron Reply, 4 May 2022, paragraph 22.

⁵ Bell Intervention, 19 April 2022, Paragraphs 27-30.

This argument must be rejected. While the Commission noted their intention in Telecom Decision CRTC 2020-395 to initiate a process to consider whether an amendment was needed⁶, there are a number of factors that might impact when and why the Commission initiates a proceeding. The Commission could have initiated a proceeding at that time, but based on the information they had available at that time they did not. There is nothing in Bell's argument that suggest any administrative error occurred, therefore a retroactive amendment is not justified.

7. Eastlink respectfully submits that Bell's arguments in favor of a retroactive amendment to the definition of contribution-eligible revenue must be rejected. There is absolutely no basis for such an approach in the regulatory framework, the Commission has made no error that needs to be addressed, and applying the change retroactively would negatively impact regulatory certainty for TSPs.

Respectfully submitted,

A handwritten signature in blue ink that reads "Marielle Wilson". The signature is written in a cursive style and is placed on a light-colored rectangular background.

Marielle Wilson

Vice President, Regulatory

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⁶ Telecom Decision CRTC 202-395, Paragraph 40.