

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260728

Docket: A-368-24

Citation: 2026 FCA 132

**CORAM: DE MONTIGNY C.J.
WEBB J.A.
PAMEL J.A.**

BETWEEN:

TERRESTAR SOLUTIONS INC.

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on October 29, 2025.

Judgment delivered at Ottawa, Ontario, on July 28, 2026.

REASONS FOR JUDGMENT BY:

PAMEL J.A.

CONCURRED IN BY:

**DE MONTIGNY C.J.
WEBB J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260728

Docket: A-368-24

Citation: 2026 FCA 132

**CORAM: DE MONTIGNY C.J.
WEBB J.A.
PAMEL J.A.**

BETWEEN:

TERRESTAR SOLUTIONS INC.

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

PAMEL J.A.

I. Overview

[1] The principal issue raised in this appeal concerns whether the monetization of spectrum licenses by telecommunications service providers—either through sale or subordination—constitutes a “telecommunications service” within the meaning of section 23 of the

Telecommunications Act for the purpose of determining their contribution to the National Contribution Fund. The appellant, TerreStar Solutions Inc. (TerreStar or the company), contends that it does not, while the Attorney General, on behalf of the Canadian Radio-television and Telecommunications Commission (Commission), argues that it does.

[2] Although TerreStar characterizes this principal issue as one of statutory interpretation, the true dispute centers not on the interpretation of section 23 but on how that section was applied by the Commission to TerreStar’s particular situation. Consequently, and despite TerreStar’s efforts to frame the issue as a question of law or jurisdiction as required under section 64 of the *Telecommunications Act*, it is not. TerreStar also raises subsidiary issues regarding the adequacy of the reasons provided by the Commission and the prospect of retroactive decision-making on its part. However, I find neither of these subsidiary issues to have any merit. I would accordingly dismiss the present appeal.

II. Background

[3] In November 2000, pursuant to subsection 46.5(1) of Part III of the *Telecommunications Act*, S.C. 1993, c. 38 (*Act*), the Commission established a contribution regime under which telecommunications service providers (TSPs) with annual revenues from Canadian telecommunications services (operating revenues) of at least \$10 million are required to contribute to the National Contribution Fund (Fund)—created to support initiatives crucial for maintaining Canadians’ access to basic telecommunications services. Contributions are calculated based on a TSP’s “contribution-eligible revenues”, which are determined by

subtracting approved deductions—such as revenues from Canadian non-telecommunications services (NTSR)—from its total operating revenues.

[4] TerreStar is one such TSP, providing mobile-satellite services to consumers and businesses. The company holds several spectrum licences issued by Innovation, Science and Economic Development Canada (ISED) pursuant to the *Radiocommunication Act*, R.S.C., 1985, c. R-2. In 2021, TerreStar derived part of its operating revenues from the sale and subordination of spectrum licenses it was not using (spectrum sale and subordination revenues). In March 2022, in line with its reporting obligations under the contribution regime, TerreStar sought to deduct such revenues, as NTSR, from its total operating revenues when calculating its contribution to the Fund; approximately 98% of claimed revenue deductions pertained to the subordination (often referred to as sublicensing, subleasing or assignment of unused spectrum) of ancillary terrestrial component (ATC) spectrum to other TSPs, while around 2% related to the sale of 10 MHz of spectrum in the ATC bands in Manitoba. It would seem that until then, no other TSP had attempted to deduct spectrum sale and subordination revenues in this manner, despite such activities being common industry services.

[5] The definitions of “telecommunications service” and “telecommunications facilities” are found in subsection 2(1) of the *Act*. Section 23 (which is in Part III) of the *Act* expands the definition of “telecommunications service” for the purposes of the contribution regime under subsection 46.5(1). The relevant provisions are as follows:

2(1) In this Act,

telecommunications service means a service provided by means of telecommunications facilities and includes the provision in whole or in part of telecommunications facilities and any related equipment, whether by sale, lease or otherwise;

telecommunications facility means any facility, apparatus or other thing that is used or is capable of being used for telecommunications or for any operation directly connected with telecommunications, and includes a transmission facility;

(emphasis added)

Meaning of *telecommunications service*

23 For the purposes of this Part and Part IV, **telecommunications service** has the same meaning as in section 2 and includes any service that is incidental to the business of providing telecommunications services.

(emphasis added)

2 (1) Les définitions qui suivent s'appliquent à la présente loi.

service de télécommunication :

Service fourni au moyen d'installations de télécommunication, y compris la fourniture — notamment par vente ou location —, même partielle, de celles-ci ou de matériel connexe.

installations de télécommunication :

Installation, appareils ou toute autre chose servant ou pouvant servir à la télécommunication ou à toute opération qui y est directement liée, y compris les installations de transmission.

(Je souligne)

Définition de *service de télécommunication*

23 Pour l'application de la présente partie et de la partie IV, **service de télécommunication** s'entend du service de télécommunication défini à l'article 2, ainsi que de tout service accessoire à la fourniture de services de télécommunication.

(Je souligne)

[6] The definition of NTSR for the purpose of the contribution regime was determined by the Commission in Order CRTC 2001-288 to:

...include all Canadian revenues that are derived from services **other than** telecommunications service as defined in section 23 of the [Act], i.e., “telecommunications service” has the same meaning as in section 2 [of the Act] and includes any service that is incidental to the business of providing telecommunications services.

For the purposes of calculating contribution eligible revenues pursuant to Decision 2000-745, services that are incidental to the business of providing telecommunications services are services that the Commission has treated as or determined to be telecommunications services, in accordance with section 23 of the Act.

(emphasis added)

This definition is consistent with Telecom Circular CRTC 2007-15 which consolidated and summarized information with respect to the contribution regime.

[7] In June 2022, Commission staff sent a letter to TerreStar indicating that it viewed the generation of revenue from a spectrum licence, whether by way of lease, sale or subordination, as a “telecommunications service” within the meaning of the *Act*. As such, any revenue derived therefrom would not be eligible for deduction as NTSR within the contribution regime (staff decision).

[8] In November 2022, TerreStar applied to the Commission for a declaration that the subordination of a spectrum license is not a “telecommunications service” and that revenues generated therefrom are not operating revenues for purposes of the contribution regime. TerreStar’s application did not deal with the sale of spectrum, but only with subordination. In

short, TerreStar argued that spectrum would need to be considered a “telecommunications facility” as defined in subsection 2(1) of the *Act* for subordination to meet the definition of “telecommunication service” for the purpose of the contribution regime, and that, applying the interpretive principle of *ejusdem generis*, spectrum cannot be classified as an “other thing” within the definition of “telecommunications facility”.

[9] In June 2023, the Commission denied TerreStar’s application and confirmed its staff’s non-binding ruling that spectrum sale and subordination is a “telecommunications service” as defined by the *Act* (initial decision). The Commission pointed to its Order 2001-288 where it stated that for the purposes of calculating contribution-eligible revenues, services that are “incidental” to the business of providing telecommunications services are services that the Commission has treated as or determined to be telecommunications services, in accordance with section 23 of the *Act*. The Commission determined that TerreStar too narrowly interpreted the notion of “telecommunications service” by relying solely on the definition set out in subsection 2(1) of the *Act*—to the exclusion of any consideration for the wider definition of the term under section 23—in a manner inconsistent with a broad and purposive analysis that considers the contribution regime in its proper and full context.

[10] In the end, the Commission stated that:

The interpretation of revenues from the sale and subordination of spectrum used for telecommunications services is consistent with past Commission decisions as to what may constitute a telecommunications service as per section 23 of the Act on the basis that it is incidental to a telecommunications service as per subsection 2(1) of the Act. Spectrum is a scarce resource, diligently allocated for specific purposes. Revenues derived from spectrum allocated for the purpose of providing telecommunications services must at least be incidental to the business of providing telecommunications services.

(emphasis added)

[11] On June 12, 2024, the Commission denied TerreStar's application to review and vary the initial decision pursuant to section 62 of the Act (review application), finding that TerreStar failed to demonstrate that there was substantial doubt as to the correctness of the initial decision, consistent with the criteria the Commission uses to assess, review and vary applications as set out in Telecom Information Bulletin CRTC 2011-214 (review decision).

[12] In its review application, TerreStar raised several issues, including questions of procedural fairness, the Commission's jurisdiction and whether the Commission had engaged in retroactive decision-making, all of which were addressed by the Commission. TerreStar also argued that although the initial decision stated that its determination was consistent with previous Commission rulings on what constitutes "incidental" to the business of providing telecommunications service, in reality it was not because the sale and subordination of spectrum do not qualify as incidental services to the company's core business of providing mobile satellite service in Canada.

[13] Based on the revenue information provided by TerreStar, the Commission, contrary to TerreStar's assertion, did not consider TerreStar's characterization as being solely a provider of mobile satellite service to be reasonable. Instead, the Commission determined that revenue generation from spectrum sale and subordination was a "key element" of the company's business. Ultimately, the Commission reaffirmed its initial decision, concluding that, given the critical nature of spectrum in providing telecommunications services, its initial decision is consistent with the policy objective set out in paragraph 7(b) of the *Act* as well as with the *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, SOR/2023-23.

III. Determination on appeal

[14] TerreStar now appeals the review decision pursuant to section 64 of the *Act* on what it claims to be a question of law or jurisdiction and focuses its principal submissions on section 23 of the *Act*.

A. *The Commission's determination in relation to section 23 of the Act does not raise an extricable question of law.*

[15] TerreStar asserts that the extricable question of law in this appeal concerns the statutory interpretation of the word "incidental" under section 23 of the *Act*. However, during the hearing, it became evident that the dispute between the parties was not about the legal standard governing what is meant by "incidental" in section 23, but rather about how the Commission applied that legal standard to its assessment of what constitutes TerreStar's telecommunications service.

[16] The question of whether there is a properly formulated question of law or jurisdiction before the Court is one that requires vigilance, for “the mere say-so” of a “skillful pleader...armed with sophisticated wordsmithing tools” is insufficient to ground a legitimate issue: *Teksavvy Solutions Inc. v. Bell Canada*, 2024 FCA 121 at para. 18 (*Teksavvy*). While interpreting a statutory provision may constitute an extricable legal question, that is not the case here. Both parties agree that the legal standard for what constitutes an incidental service under section 23 of the *Act* was most recently articulated in Telecom Decision CRTC 2006-3, where the Commission confirmed that when assessing whether a service is “incidental to the business of providing telecommunications services”, it was appropriate to apply the same approach previously applied in Telecom Decision CRTC 90-12 which determined whether a service was “incidental to a telephone business” under section 2 of the *Railway Act*, R.S.C. 1970, c. R-2 (the predecessor legislation to the *Act* which governed telecommunication prior to 1993), and:

“...to consider the extent to which the service in question engages fundamental elements of the telephone system or the relationship that the service in question bears to the essential nature of the telephone business.”

(emphasis added)

[17] First, TerreStar contends that the subordination of spectrum is not a service that the company undertakes as part of its business of providing mobile satellite service to its customers. Consequently, argues TerreStar, the Commission erred in determining that the sale and subordination of spectrum were “incidental” to its business of providing “telecommunications service” for the purposes of the contribution regime under section 23 of the *Act*. The thrust of TerreStar’s assertion is that its subordination of spectrum is merely a bare assignment of a contractual right—essentially a way to monetize unused assets—and does not, in accordance

with Telecom Decision CRTC 90-12, engage the fundamental elements of, or relate to the essential nature of the company's mobile-satellite service operations. TerreStar emphasizes that such arrangements do not involve access to any integral facility that is vital to the efficient administration and delivery of that service to its customers.

[18] However, the point that the Commission is making was that, although TerreStar provided mobile-satellite service to its customers, it is in the “business of providing telecommunications service” through the utilization of spectrum allocated for that purpose—a finding TerreStar does not dispute. Consequently, the Commission concluded that the company's use of the spectrum by way of sale and subordination was incidental to that business in accordance with section 23 of the *Act*. As stated earlier, in the review decision, the Commission did not accept TerreStar's narrow characterization of its telecommunications business as solely a provider of mobile satellite service and determined, as a question of fact, that the generation of revenue from spectrum sale and subordination was a key element of the company's business. TerreStar accepts that had it chosen to use the spectrum itself, rather than assigning it for a fee to a third party, the resulting revenues would necessarily be contribution-eligible revenues for its contribution to the Fund.

[19] It is important to keep in mind what exactly the Commission was addressing: the scope of contribution to the Fund within the framework established by section 23 of the *Act*. In Decision CRTC 2000-745, the Commission indicated that the contribution regime was intended to encompass the broadest possible range of telecommunications services. As the Commission stated at paragraph 87:

...applying contribution against the broadest possible range of telecommunications services would spread the contribution burden across various sectors of the marketplace. This approach would be competitively equitable, result in a lower revenue-percentage charge being applied to each service, and be more administratively efficient by eliminating the need for a detailed review and classification of all telecommunications services.

(emphasis added)

[20] Consistent with this intention, in Order CRTC 2001-221, the Commission determined that it was in the public interest and consistent with the policy objectives in section 7 of the Act that TSPs contribute to the Fund based on their operating revenues as defined in section 23 of the Act; the Commission clarified that:

For the purpose of this calculation, services “incidental to the business of providing telecommunications services” are those services that the Commission has to date treated as telecommunications services as well as any other service that the Commission may determine to fall within the scope of section 23 of the Act.

(emphasis added)

[21] In its review decision, the Commission specifically referenced Telecom Decision CRTC 2006-3 and the legal standard for determining whether a service is incidental to the business of providing telecommunications service. The Commission concluded that TerreStar was in the business of exploiting spectrum allocated for such purposes, and that the monetization of the spectrum through sale and subordination was incidental to that business, in line with the broad wording of section 23 of the *Act*. In my view, such a finding by the Commission involves a factually suffused and discretionary question of mixed law and fact, lacking an extricable legal principle for resolution. Consequently, it is not a matter that this Court can consider in the

context of a section 64 appeal: *Teksavvy* at para. 14; *Canadian National Railway Company v. Emerson Milling Inc.*, 2017 FCA 79 at paras. 20–28 (*Emerson*).

[22] TerreStar also argues that the approach adopted by the Commission in determining that the sale and subordination of spectrum was incidental to its business of providing telecommunications service was inconsistent with the approach the Commission had previously taken on the same issue. The company cites previous Commission decisions concerning the notion of “incidental” services under section 23 of the *Act*—such as providing office space for the company, maintenance and engineering services related to company facilities, financing plans for customers, billing and collection services, or the set-up of customer service information for telecommunication service—in arguing that, for a service to be deemed “incidental”, the Commission must assess whether there is a meaningful connection or factual nexus that is essential to the efficient administration of the telecommunications service that would render the proposed incidental service critical to the operational sustainability of, and thus fundamental to, the provision of that telecommunications service. However, argues TerreStar, this approach was not followed in this case, as the Commission failed to address or consider whether such a connection or factual nexus existed between the monetization of its unused spectrum and the company’s business of providing mobile satellite service to its customers with the spectrum it was using.

[23] The Commission, for its part, determined that TerreStar’s “inconsistency” argument fails to recognize that spectrum is a direct input specifically designated for providing wireless telecommunications services, and given the critical nature of spectrum in providing such

services, the initial decision—that revenues from the sale and subordination of spectrum must at least be considered incidental to the business of providing telecommunications services under section 23 of the *Act*—is consistent with previous Commission determinations.

[24] I have not been persuaded of any inconsistency in the approach taken by the Commission in applying the test for whether a service is “incidental” under section 23 of the *Act*. It comes down to how one defines TerreStar’s “business of providing telecommunications service”. As previously noted, the Commission rejected the company’s narrow assertion that it was solely engaged in the business of providing mobile satellite service in Canada, favoring the broader interpretation that includes revenue generated from the sale and subordination of spectrum. The Commission addressed the connection issue by concluding that spectrum is allocated specifically to provide telecommunications services, and that, in this context, the monetization of spectrum was a key element to that business. The assessment of any connection or nexus falls within the Commission’s regulatory wheelhouse, with no extricable legal principle to resolve in this case, and thus is not something which this Court has the power to consider under the circumstances. The fact that the Commission had not previously considered the notion of “incidental” in relation to the sale and subordination of spectrum does not render its decision inconsistent with past rulings on the issue.

[25] Finally, I note that TerreStar’s argument—that, for the purposes of the contribution regime, spectrum sale and subordination would need to be offered through a tariff unless the Commission granted forbearance—is of no moment to the issues at hand. This argument was expressly rejected by the Commission.

[26] Accordingly, this ground of appeal must fail.

B. *The Commission provided adequate reasons for its decision.*

[27] In its written submissions, TerreStar raises what it characterized as a procedural fairness issue: it argues that the insufficiency of the reasons given by the Commission in both the initial decision and review decision constitutes a reviewable error of jurisdiction under subsection 64(1) of the *Act*, even if those issues are factually suffused: *Teksavvy* at para. 15; *Emerson* at para. 19. TerreStar also claims that the Commission made several bald assertions and conclusions of law with respect to the classification of the subordination of spectrum under the *Act*.

[28] In its oral submissions, TerreStar argued that the Commission's failure to provide adequate reasons amounts to an error of law, citing this Court's decision in *Best Buy Canada Ltd. v. Canada (Border Services Agency)*, 2025 FCA 45 at para. 11, which references *Halton (Regional Municipality) v. Canada (Transportation Agency)*, 2024 FCA 122 at paras. 21–33. TerreStar contends that the Commission did not sufficiently explain why it concluded that the sale and subordination of spectrum were incidental to the company's telecommunications business, nor why it did not accept the company's position that its approach was inconsistent with previous decisions on the same issue. TerreStar further argues that, for the reasons to be considered adequate, the Commission would have needed to find that the sale and subordination of spectrum are a key element of TerreStar's "business of providing telecommunications services," rather than merely a key element of the "company's business."

[29] In *Manitoba Métis Federation Inc. v. Canada (Energy Regulator)*, 2023 FCA 24 (*Manitoba Métis*), this Court applied the test of the adequacy of reasons from *R. v. Sheppard*, 2002 SCC 26 (*Sheppard*): reasons are inadequate when they prevent meaningful appellate review: *Sheppard* at paras. 25, 28. The duty to give adequate reasons does not require perfection, and an appellate court need only be able to see “why” the trial judge decided in a particular way: *Manitoba Métis* at para. 198.

[30] I am not persuaded by TerreStar’s argument that the Commission’s reasons are inadequate in this case. Aside from the fact that the staff decision, the initial decision, and the review decision addressed the issues in the manner in which TerreStar raised them at the time—rather than how the company now argues its case before this Court—I believe that paragraphs 25 and 26 of the initial decision, as well as paragraphs 38 and 39 of the review decision, more than sufficiently enable meaningful appellate review and provide the parties and the Court with a clear understanding of why the Commission reached its conclusions. Furthermore, when considering the entirety of the review decision in a fair and contextual manner, it is evident that, when the Commission referred to the “company’s business” in paragraph 38, it was referring to the company’s business of providing telecommunications services as contemplated by section 23 of the *Act*. Any other interpretation would be inconsistent with the rest of the decision.

[31] Accordingly, this ground of appeal must fail.

C. *The Commission did not engage in retroactive decision-making.*

[32] TerreStar argues that, prior to the review decision, there was no Commission decision, guidance document, or instruction that indicated that spectrum sale and subordination were considered incidental to the business of providing telecommunications services, and that with the review decision, the Commission engaged in retroactive decision-making by imposing what amounts to a new contribution requirement on the company for activities and revenues that occurred prior to the review decision. I disagree. A retroactive law operates backward, affecting circumstances as they existed before the law was enacted—altering the legal landscape from what it was at that time: *Bell Canada v. Amtelecom Limited Partnership*, 2015 FCA 126 at para. 18, citing *Épiciers Unis Métro-Richelieu Inc., division “Éconogros” v. Collin*, 2004 SCC 59 at para. 46. The review decision did not change the legal landscape. Rather, the Commission applied the existing legal standard in section 23 of the *Act* to TerreStar’s actual circumstances.

D. *The Commission did not err in finding that spectrum sale and subordination revenues were operating revenues.*

[33] TerreStar relied on its written submissions to argue that, even if the sale or subordination of a spectrum license is properly considered a telecommunications service, the Commission erred in concluding that the revenues generated from such transactions are properly classified as operating revenues in accordance with generally accepted accounting principles (GAAP) for the purposes of the contribution regime formula.

[34] Having considered the matter, I find that TerreStar is mischaracterizing the Commission's findings. In the review decision, the Commission did not make a legal ruling regarding the interpretation of operating revenues; it merely observed that revenues from spectrum sales were included in TerreStar's reported operating revenues. Accordingly, the Commission concluded that, in preparing its filings in accordance with GAAP, TerreStar itself recognized these revenues as arising from its ongoing, normal daily operations and included them within its operating revenues.

IV. Disposition

[35] I would dismiss the appeal with costs. The parties have agreed that costs in the amount of \$5,000 are to be awarded to the successful party, and I see no reason for not proceeding in this way.

"Peter G. Pamel"
J.A.

"I agree.
Yves de Montigny J.A."

"I agree.
Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-368-24
STYLE OF CAUSE:	TERRESTAR SOLUTIONS INC. v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 29, 2025
REASONS FOR JUDGMENT BY:	PAMEL J.A.
CONCURRED IN BY:	DE MONTIGNY C.J. WEBB J.A.
DATED:	JULY 28, 2026

APPEARANCES:

Samaneh Hosseini
David Elder
Sara A. Wright

FOR THE APPELLANT

Charles Maher
Dylan Smith

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stikeman Elliott LLP
Toronto, Ontario

FOR THE APPELLANT

Marie-Josée Hogue
Deputy Attorney General of Canada

FOR THE RESPONDENT