



## Telecom Order CRTC 2005-376

Ottawa, 18 November 2005

### TELUS Communications Inc.

Reference: TELUS Communications (Québec) Inc. Tariff Notices 379 and 379A

#### Special facilities tariff for the sale of a customer-specific telecommunication network

1. The Commission received an application by TELUS Communications (Québec) Inc. (TCI),<sup>1</sup> dated 29 April 2004 and amended on 14 June 2004, under Special Facilities Tariff (SFT) item 4.06, related to the sale of a customer-specific telecommunication network. Specifically, the company requested approval of the sale and installation of switching equipment, terminal equipment, network management and security equipment, power equipment and optical-electric transmission equipment that would cover two primary sites and 28 intermediary sites over 422 kilometres.
2. TCI indicated that the client had been using the network in question since 1998. TCI also indicated that the network was the exclusive property of the customer, that the customer was responsible for the maintenance and the management of the network, and that the customer also supplied its own support structures.
3. TCI proposed a one-time charge of \$6,936,350 for the customer-specific network, at a rate of \$16,436.85 per kilometre.
4. In support of its application, TCI provided an economic study to demonstrate that the proposed rate was compensatory. The economic study, as well as a copy of the contract with the customer, were filed in confidence, with abridged versions for the public record.

#### Process

5. The Commission received comments from Xit télécom inc., on behalf of itself and Télécommunications Xittel inc. (Xit télécom), dated 5 July 2004. TCI filed reply comments on 14 July 2004. On 14 July 2004, Xit télécom filed a further pleading in response to TCI's reply. TCI filed final comments on 15 July 2004. On 29 November 2004, TCI filed with the Commission for the public record an abridged version of its agreement with the customer.

#### Positions of parties

6. Xit télécom opposed TCI's application, submitting that TCI had failed to provide sufficient details to demonstrate that the arrangement passed the imputation test. Xit télécom indicated that TCI's rates failed to include a provision for the recovery of the costs of TCI's support structures. Xit télécom requested that TCI be required to provide the number of fibre optic cables subject to the arrangement.

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<sup>1</sup> Effective 1 July 2004, TELUS Communications Inc. (TCI) assumed all rights, entitlements, liabilities, and obligations relating to the provision of telecommunications services in the territories previously served by TELUS Communications (Québec) Inc.

7. In its reply comments, TCI indicated, among other things, that the proposed tariff stipulated that the customer had supplied its own support structures. TCI submitted that the costing information provided to the Commission in confidence demonstrated that the proposed rate was compensatory. In regard to Xit télécom's request that the number of fibre optic cables be provided, TCI indicated that it had filed this information in confidence and argued that disclosure of the information on the public record would negatively impact the company's competitive position.
8. In its further pleading, Xit télécom requested that TCI disclose on the public record the section of the contract that stipulated that the customer was to supply its own support structures. Xit télécom also requested that TCI be required to clarify whether it considered that cable sheaths and fuse boxes were part of support structures. Xit télécom argued that such information was important to assist in determining whether the customer had complied with the *Cities and Towns Act*. In addition, Xit télécom reiterated its request that TCI be required to disclose on the public record the number of fibre optic cables associated with the proposed SFT.
9. In its final reply, TCI argued that Xit télécom's further pleading was filed out of process and should be disregarded.

#### **Commission's analysis and determination**

10. In *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994 (Decision 94-19), the Commission considered that greater flexibility in pricing and packaging of services by means of customer-specific tariffs would be appropriate and considered two types of customer-specific tariffs:
  - those providing service, via a special facilities or special assembly tariff, that involves service features or technologies that differ from those covered by the general tariff (the Commission has referred to these as Type 1 customer-specific arrangements (CSAs)); and
  - those providing a bundle of services tailored to a particular customer's needs, primarily involving elements available from the general tariff, where the purpose is to customize the offering in terms of rate structure or levels (the Commission has referred to these as Type 2 CSAs).
11. In Decision 94-19, the Commission stated that Type 1 CSAs would continue to be permitted, subject to certain conditions, including the demonstration in the application that there is not sufficient demand to offer the service through the general tariff and the provision of a study demonstrating that the imputation test is met. The Commission also stated that Type 2 CSAs would be permitted, subject to certain competitive safeguards, which included more stringent imputation of costs than for Type 1 CSAs.
12. The Commission considers that the services identified in the proposed SFT differ from services available under TCI's general tariff. Further, the Commission notes that the arrangement does not involve the use of TCI's support structures but rather the customer's own support structures. In these circumstances, the Commission considers that it is appropriate to treat the proposed SFT as a Type 1 CSA.

13. The imputation test applicable to Type 1 CSAs is based on causal costs. In this regard, the Commission notes that TCI's economic study demonstrates that the proposed rate for the sale of the CSA exceeds the causal costs associated with providing this customer-specific telecommunication network. Based on the costing support provided by TCI, the Commission is satisfied that TCI has demonstrated that the proposed rate is compensatory and, hence, satisfies the applicable imputation test.
14. With respect to Xit télécom's request that TCI be required to disclose that part of the contract that stipulated that the customer was to supply its own support structures, the Commission notes that the proposed tariff clearly provides that the customer is to supply such structures. Given this, the Commission is not persuaded that it would be appropriate, or necessary, that TCI be required to disclose the provisions of the contract in question. Accordingly, the Commission **denies** Xit télécom's request that parts of the contract be put on the public record.
15. With respect to Xit télécom's request that TCI be required to disclose on the public record the number of fibre optic cables associated with the proposed SFT, the Commission considers that the public interest in the disclosure of such information outweighs the specific direct harm to the company that may result from disclosure. Further, the Commission considers that such information should be identified in the tariff pages themselves, in order to make the tariff pages meaningful.
16. With respect to Xit télécom's request that TCI indicate whether it considers cable sheaths and fuse boxes to be part of support structures, the Commission notes that Xit télécom stated that such information was needed to determine whether the customer had complied with the *Cities and Towns Act*. Given that compliance with the *Cities and Towns Act* is not a matter in respect of which the Commission has jurisdiction, Xit télécom's request is **denied**.
17. In light of the above, the Commission **approves on a final basis**, TCI's application, with the tariff pages amended to indicate the number of fibre optic cables associated with the customer-specific telecommunication network.
18. TCI is to issue tariff pages forthwith.

Secretary General

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