



## Telecom Order CRTC 2006-223

Ottawa, 28 August 2006

### **Sogetel inc. and Téléphone Milot inc. – Support structure license agreement**

Reference: 8340-S4-200605405

#### **Application**

1. The Commission received an application by Sogetel inc. (Sogetel), on behalf of itself and Téléphone Milot inc. (Milot), dated 27 April 2006, requesting that the Commission approve, pursuant to section 29 of the *Telecommunications Act*, a proposed support structure agreement (SSA). Sogetel indicated that the SSA would be used by both Sogetel and Milot (hereafter also referred to as the Companies) when a third party would request access to their support structures. Sogetel submitted that the proposed SSA was largely the same as those approved for Société en commandite Télébec and TELUS Communications Company in its Quebec operating territory, but that it had been adapted for use by a small telecommunications company.
2. On 21 June 2006, Sogetel filed an amendment to its proposed SSA, reducing to \$2 million the amount of insurance coverage that a licensee would be required to have before it could gain access to the Companies' support structures. Sogetel indicated that this change was made to make the coverage requirement of the SSA consistent with the Commission's determination in *Rates set for access to telephone companies' support structures*, Order CRTC 2000-13, 18 January 2000 (Order 2000-13).
3. The Commission received no comments with respect to the application.

#### **Regulatory framework**

4. In *Access to telephone company support structures*, Telecom Decision CRTC 95-13, 22 June 1995 (Decision 95-13), the Commission established basic principles and rates regarding access to telephone companies' support structures.
5. In Order 2000-13, the Commission approved national rates, terms, and conditions for access to incumbent telephone companies' poles and conduits by cable companies and telecommunications carriers, and a standard support structure agreement. The Commission also ruled on issues of support structure capacity, the application of construction standards, and the access approval process.
6. In Telecom Order CRTC 2006-37, 15 February 2006, the Commission approved on a final basis support structure service tariffs for both Sogetel and Milot.

## Commission's analysis and determinations

7. The Commission considers that the proposed SSA is generally consistent with terms and conditions found in previously approved tariffs and agreements related to support structure access. However, the Commission has concerns with sections 7.5, 7.11, and 16.0 of the Companies' proposed SSA.

### Section 7.5

8. This section stipulates, among other things, that the licensee, in installing, maintaining, and removing its installations, shall do so without damaging, rearranging, or removing the installations of another user or the support structures of the Companies, and in conformity with the technical and safety requirements specified in the Construction Standards. Section 7.5 also specifies that in case of contradiction, divergence, or incompatibility between the contract and the Construction Standards, the Construction Standards shall prevail.
9. As determined in Decision 95-13, the Commission considers that owners of support structures have the right to set and enforce construction standards, provided that those standards are based on safety and technical requirements and do not unreasonably impede access by other telecommunications carriers and cable television undertakings.
10. The Commission notes that the term *Construction Standards* is defined in the Definitions section of the Companies' proposed SSA as the last edition of the Canadian electrical code standards, part III, or any other regulation governing communication or power installations, as well as specific requirements of the company, notably concerning the location of the licensee's connectors on poles and complying with good practices so as not to create any danger.
11. The Commission considers that the definition of Construction Standards in the Companies' proposed SSA, which includes specific requirements of the Companies, could be interpreted broadly, potentially in a manner that would conflict with the access principle envisioned in Decision 95-13.
12. Therefore, the Commission finds that section 7.5 of the proposed SSA should be modified as follows to reflect the equivalent provision in SSAs approved for the other incumbent telephone companies:

7.5 The Licensee shall install, maintain and remove its facilities without damaging, rearranging, relocating or removing the Support Structures and the Company's facilities or other parties' facilities, in accordance with the safety and technical standards and requirements, specified in the Construction Standards. Should there be any contradiction, conflict or variance between the provisions of the Construction Standards and the provisions of this Agreement, the provisions of this Agreement shall prevail.

### **Section 7.11**

13. This section stipulates, among other things, that whenever work is required to restore a conduit to a usable condition, the Companies will determine who will do the work. The companies will generally have 20 business days to restore the conduit and the licensee will pay all material and labour costs.
14. The Commission notes that in Order 2000-13, it specifically determined that while the licensee should bear the expense of restoration in such a case, the licensee should be able to determine who does the work.
15. Therefore, the Commission finds that section 7.11 of the proposed SSA should be modified as follows to reflect the equivalent provision in SSAs approved for the other incumbent telephone companies:

7.11 Where work is required to restore a Conduit to a usable condition, the Licensee may determine who will do the work, subject to the requirements of other terms and conditions related to support structures. The Licensee will advise the Company of work completion within 10 days. The Company will have 20 days from the date of this notice to inspect and advise the Licensee of any further work required. All work and material required to make such Conduit usable by the Licensee will be at the Licensee's expense. The Licensee is also responsible for any backfilling, repaving, restoration of landscaping, curb, gutter and sidewalk expenses.

### **Section 16.0**

16. This section stipulates, among other things, that following the initial contract period, the SSA will be subsequently renewed for successive periods of five years, unless one of the parties provides the other with a written termination notice six months before the end of the contract period.
17. The Commission considers that a licensee that relies on access to the support structures of the Companies in order to provide a service might be facing a far more difficult situation than the Companies would after receiving a termination notice. The Commission is of the view that a licensee might need more than six months to secure alternative arrangements (provided that such alternative arrangements are available).
18. Therefore, the Commission finds that section 16.0 of the proposed SSA should be modified as follows to reflect the equivalent provision in SSAs approved for the other incumbent telephone companies:

#### **16.0 Contract Duration**

Subject to the termination provisions, this Agreement shall be effective from the date it is signed and shall continue in force until (DATE). Following this period, it shall be subsequently renewed for

successive five- (5) year terms, unless a prior written termination notice is provided to the other party by either party one year before the expiration of the Agreement.

19. Accordingly, the Commission **approves** the Companies' proposed SSA with the modifications set out above to sections 7.5, 7.11, and 16.0.

Secretary General

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