



Telecom Order CRTC 2006-60

Ottawa, 22 March 2006

TELUS Communications Inc.

Reference: Tariff Notice 412

Radio Tower Access Service

Background

1. In *Radio Tower Access Service*, Telecom Order CRTC 2004-352, 22 October 2004 (Order 2004-352), the Commission approved the introduction of item 4.01, Radio Tower Access Service, to the Access Services Tariff of the former TELUS Communications (Québec) Inc. (TCQ).
2. In Telecom Order CRTC 2005-337, 27 September 2005, amended by Telecom Order CRTC 2005-337-1, 30 September 2005 (Order 2005-337), the Commission approved on an interim basis the application by TELUS Communications Inc. (TCI), dated 13 September 2005, in which it proposed revisions to item 4.01, Radio Tower Access Service, of TCQ's Access Services Tariff to amend the definition of wireless service operator (WSO).
3. In its application, TCI had explained that it wanted to amend the definition of WSO to include any entity holding a radio licence pursuant to the *Radiocommunications Act*, because it had already been applying the rate in question to these entities since the effective date of item 4.01. TCI had asked the Commission to ratify the application of the tariff in question to change the effective date of the proposed tariff amendments to 22 October 2004 for all subscribers to this service.
4. TCI had further noted that, according to the directives set out in paragraph 183 of *Implementation of price regulation for Télébec and TELUS Québec*, Telecom Decision CRTC 2002-43, 31 July 2002, this tariff element would not have any impact on the service band limit and would not require any update of the Category II Competitor Services basket with respect to the service band index.

Comments

5. On 12 October 2005, the Commission received comments from the Quebec government's Direction générale des technologies de l'information et des communications (DGTIC). DGTIC explained that it had an agreement with TCI for the provision of the radio tower access service, and asked the Commission to direct that the tariff amendment in question not take effect until the date of approval by the Commission. DGTIC noted that it was not included in the WSO definition and that it therefore was not subject to the rate when it was approved by the Commission in Order 2004-352.

Reply to comments

6. On 25 October 2005, in its reply to DGTIC comments, TCI noted that following publication of Order 2004-352, it had informed DGTIC that radio tower access service would be provided according to the terms of the tariff, but that DGTIC was opposed to application of the rate, stating that it was not included in the definition of WSO set out in item 4.01. TCI explained that its purpose in filing Tariff Notice 412 (TN 412) was to remedy the situation and straighten out the provision of the service to DGTIC.
7. TCI reiterated that it was proposing that the Commission approve the proposed amendment to the definition of WSO as of 22 October 2004 to ensure consistency in the provision of this service since the Commission's original approval. However, TCI amended its application and proposed that the Commission approve the rates set out in item 4.01 so that they apply to the services provided to WSOs that hold radio licences under the *Radiocommunications Act*, as stipulated in TN 412, as of the date of Order 2005-337, i.e., 27 September 2005.

Additional comments

8. On 28 October 2005, DGTIC filed additional comments informing the Commission that it was satisfied with TCI's new proposal and requesting approval of TCI's application according to the terms set out in TCI's reply of 25 October 2005.

Interrogatory

9. On 22 December 2005, the Commission sent an interrogatory to TCI requesting the effective dates and expiry dates of existing contracts between DGTIC and TCI for radio tower access service, as well as clarifications as to the existence of contracts with other customers. TCI replied to the interrogatory on 20 January 2006.

Commission's analysis and determination

10. The Commission notes that in its application, TCI explained that it had already been applying the rate in question, not only to the WSOs subject to the rate approved in Order 2004-352, but also to any entity holding a radio licence pursuant to the *Radiocommunications Act*, since the effective date of item 4.01, i.e., 22 October 2004. Accordingly, the Commission is of the view that it would be appropriate to ratify the application of this rate to all radio tower access service subscribers during the period between the initial approval of the service in Order 2004-352 and the interim approval of the proposed amendment to the definition of WSO in Order 2005-337, i.e., 22 October 2004 to 27 September 2005.
11. The Commission notes that section 27 of the *Telecommunications Act* stipulates that every rate charged for a telecommunications service shall be just and reasonable and that it is prohibited to unjustly discriminate or give an undue preference or subject any person to an undue disadvantage.
12. The Commission notes that radio tower access service customers other than DGTIC were charged the rate in question following publication of Order 2004-352. The Commission also notes that although DGTIC pointed out that it was not included in the definition of WSO set out

in item 4.01, it has been receiving radio tower access service since April 2003. The Commission finds that it would be unjust for DGTIC to benefit from the terms and rates stipulated in the agreements it had with TCI after publication of Order 2004-352.

13. Finally, the Commission notes that TCI pointed out that this tariff element was part of Category II Competitor Services. The Commission notes that for a service to be defined as a “competitor service” it must be available only to competitors. However, the Commission notes that TCI’s radio tower access service in Quebec is available only to retail customers. The Commission therefore finds that the radio tower access service should be transferred from the Access Services Tariff of the former TCQ to the General Tariff of the former TCQ. The Commission is of the view that if TCI wishes to offer this service to competitors, the company should file an application with the Commission with a cost study.
14. Accordingly, the Commission **approves on a final basis** the proposed amendment to the definition of WSO to include any entity holding a radio licence pursuant to the *Radiocommunications Act*. The Commission also ratify the application of the rate in question to all radio licence holders that were not included in the definition of WSO approved in Order 2004-352 between 22 October 2004 and 13 September 2005. Finally, the Commission directs TCI to transfer the radio tower access service from the Access Services Tariff of the former TCQ to the General Tariff of the former TCQ.
15. TCI is to issue revised tariff pages forthwith.

Secretary General

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