



## Telecom Decision CRTC 2008-33

Ottawa, 17 April 2008

### TELUS Communications Company – Network access charge

Reference: 8661-C12-200716699, 8661-Y6-200717530, 8662-Y6-200717507, and  
8661-P8-200800088

*In this Decision, the Commission determines that it was inappropriate for TELUS Communications Company (TCC) to impose a \$2.95 per month network access charge for certain residential subscribers of basic toll services. For basic toll subscribers who had not used TCC's long distance network during the applicable period, the Commission finds that the network access charge was equivalent to an unauthorized residential local rate increase in non-forborne areas and contravened the rate cap in forborne areas, and directs TCC to reimburse or credit those affected customers.*

### Introduction

1. In November 2007, the Commission received complaints and comments regarding a \$2.95 network access charge that TELUS Communications Company (TCC) had applied, starting 1 November 2007, to its residential basic toll service customers in Alberta and British Columbia. In order to determine how this charge was applied, the Commission issued interrogatories to TCC on 20 November 2007. TCC filed its responses on 28 November 2007.
2. On 3 December 2007, Yak Communications (Canada) Corp. (Yak) filed two applications related to TCC's network access charge. Yak requested that the Commission declare TCC's network access charge to be an unauthorized residential local rate increase which was either contrary to the *Telecommunications Act* (the Act), in the case of non-forborne areas, or contrary to the forbearance rules established by the Commission, in the case of forborne areas. In the alternative, Yak requested that the Commission review and vary Telecom Decision 2007-56 to introduce a new toll constraint that would prohibit incumbent local exchange carriers from charging any long distance related fees to end-customers, unless such fees were directly associated with the usage of the incumbent local exchange carrier's toll services.
3. On 4 January 2008, the Public Interest Advocacy Centre, on behalf of the Consumers' Association of Canada and the National Anti-Poverty Organization (collectively, the Consumer Groups), filed an application requesting, among other things, that the Commission declare TCC's network access charge to be an unauthorized residential local rate increase.
4. By letter dated 14 January 2008, the Commission indicated that these three applications would be dealt with in the same proceeding.
5. The following parties participated in this proceeding: Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, Bell Canada et al.); the Consumer Groups; Primus Telecommunications Canada Inc. (Primus); Saskatchewan Telecommunications

(SaskTel); TCC; and Yak. The Commission received over 1,100 complaints and comments from TCC's customers and a comment from the Council of Senior Citizens' Organizations of British Columbia concerning the \$2.95 network access charge.

6. The public record of this proceeding is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."
7. The Commission has identified the following two issues to be addressed in its determinations:
  - I. Was TCC's network access charge appropriately applied?
  - II. What, if any, remedial actions are required?

### **I. Was TCC's network access charge appropriately applied?**

8. Yak and the Consumer Groups opposed TCC's network access charge. They submitted that, in non-forborne areas, section 25 of the Act requires the filing of a tariff application for any local rate increase, and that, in forborne areas, this local service rate increase was contrary to the rate cap established in Telecom Decision 2006-15.
9. Yak submitted that TCC's local exchange customers who had TCC as their long distance service provider by default could use casual calling services such as 10-10-Yak without ever having to use TCC's long distance services. Yak submitted that, for customers who used dial-around long distance services, there was no need for a standby TCC long distance service, and consequently, the network access charge was effectively a local rate increase.
10. Yak submitted that requiring customers to subscribe to a toll restrict service<sup>1</sup> in order to avoid paying this charge was not a solution since it did not permit access to dial-around service providers' networks.
11. The Consumer Groups submitted that Telecom Decision 99-16 requires access to the long distance network as a component of TCC's own basic local service. They noted that subscribing to toll restrict services in order to avoid the network access charge cut off all access to TCC's long distance services, resulting in consumers paying the same amount for local service while receiving less functionality.
12. TCC and Bell Canada et al. submitted that the network access charge related to toll service, which was forborne from regulation pursuant to Telecom Decisions 97-19 and 2007-56.
13. TCC submitted that it provided its customers with the ability to connect to and access the long distance network of their choice, whether it was TCC's long distance network or that of an alternate provider. TCC submitted that, if it had been identified as the customer's primary interexchange carrier, its long distance network stood ready, at all times, to originate long distance calls and to receive collect and third-party billing calls. TCC submitted that it must recover the costs of provisioning, maintaining the network, and standing ready to serve.

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<sup>1</sup> Toll restrict service (known as Toll Restriction Services and Call Guardian in TCC's operating territories of Alberta and British Columbia, respectively) restricts 0+ and 1+ dialed toll calls. Access to 1+"toll-free telephone numbers" (e.g. 800) is not restricted by the service.

14. TCC and Bell Canada et al. submitted that the network access charge was analogous to monthly charges for dial-up Internet access services or cellular services, which were applied whether or not the customer made use of the service or not.
15. TCC, SaskTel, and Bell Canada et al. submitted that Yak had provided no evidence that the introduction of the network access charge had changed the conditions which led to the Commission's conclusions in Telecom Decision 2007-56; therefore, Yak's application to review and vary Telecom Decision 2007-56 should be denied.
16. Primus submitted that, due to the competitive state of the long distance market, market forces could be relied upon to protect the interests of customers, and it would not be appropriate to interfere with the operation of competitive market forces in the manner proposed by Yak or the Consumer Groups at this time.

#### **Commission's analysis and determinations**

17. The Commission notes that the \$2.95 network access charge applied to residential customers who had TCC as their local exchange service provider and as their primary interexchange carrier without a long distance plan (TCC's basic toll customers) unless the customer subscribed, free of charge,<sup>2</sup> to a toll restrict service. The Commission notes that this charge was applied to these customers whether or not they used TCC's long distance services.
18. The Commission notes that TCC's General Tariff items 425 and 25, for the provinces of Alberta and British Columbia, respectively, classify Residence Individual Line as an exchange service. These items further state that exchange service consists of the provision of service and equipment necessary for telephone communication between customers in the same exchange and between such customers and the message toll office or facilities for that exchange. On that basis, the Commission finds that access to the long distance network is included in TCC's local exchange service.
19. In Telecom Decision 2007-56, the Commission removed the constraints on basic toll service. The Commission therefore considers that TCC's basic toll customers who used TCC's long distance network would have incurred charges, including the network access charge, which in a forborne market can be established by TCC. However, for TCC's basic toll customers that did not use TCC's long distance network, whether they made no long distance calls or only used dial-around long distance services, the network access charge imposed by TCC can only be viewed as equivalent to an increase in local rates.
20. The Commission notes that, in non-forborne areas, TCC may not charge rates in excess of the ones approved by the Commission, which are set out in TCC's tariffs. In forborne areas, the Commission notes that, in Telecom Decision 2006-15, it imposed price ceilings on stand-alone residential exchange service, at the time of forbearance, at the most recent approved rates.
21. In light of the above, the Commission determines that, for any month during the period over which the network access charge was applied, for any of TCC's residential basic toll customers that did not use TCC's long distance network, the network access charge was inappropriately

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<sup>2</sup> There is no installation or monthly charges for toll restrict service, but a one-time \$10 charge applies to remove the service.

applied as it was either contrary to the price ceilings imposed in Telecom Decision 2006-15 for forborne areas or in excess of approved local rates in non-forborne areas. Further, the Commission finds that TCC should not have billed the network access charge to these residential basic toll customers.

22. In view of its determinations above, the Commission considers that it is not necessary to make a determination on Yak's alternative request to review and vary Telecom Decision 2007-56.

## **II. What, if any, remedial actions are required?**

23. Both Yak and the Consumer Groups requested that the Commission order TCC to refund local customers that had been charged the network access charge and to provide information to its customers. Yak also requested that the Commission order TCC to compensate competitive toll providers for the extra call centre workload and the harm caused by the introduction of the network access charge.
24. TCC indicated that it had provided prior notification to its customers concerning its plan to introduce the network access charge through a targeted bill message.<sup>3</sup>
25. TCC submitted that there was no basis for the requests to refund monies collected. With respect to Yak's request for compensation, TCC was of the view that the Commission did not have the jurisdiction to order the relief sought.

### **Commission's analysis and determinations**

26. In light of its determination above, that the network access charge should not have been billed to TCC's residential basic toll customers who had not used TCC's long distance network in any month during the period over which this charge was applied, the Commission directs TCC to reimburse or credit these customers. Further, the Commission directs TCC to file a proposal, within six months of the date of this Decision, for dealing with any amounts that the company could not reimburse or credit because it was unable to locate certain eligible subscribers.
27. With regard to Yak's and the Consumer Groups' request that TCC provide notification to its customers, the Commission notes the large number of complaints it received from TCC's customers with regards to the network access charge and considers that TCC should, when reimbursing its customers, inform them of the reason.
28. The Commission notes that, to avoid the \$2.95 network access charge, TCC's customers may have subscribed to a toll restrict service, and that a one-time \$10 charge applies to remove that service. The Commission considers that customers who subscribed to a toll restrict service since TCC implemented the network access charge, and who wish to remove that service, should be allowed to do so, without charge, within three months from the date of this Decision. Accordingly, the Commission directs TCC to inform these customers that they may, within three months of the date of this Decision, remove the toll restrict service without charge.

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<sup>3</sup> The text of the message to TCC's customers was provided by the company as part of the record of this proceeding.

29. With regard to Yak's request for compensation for additional work required in its call centres and for harm, the Commission notes that its powers do not extend to the awarding of damages.
30. With regard to the request by the Consumer Groups that TCC provide written notice to its customers with an explanation of stand-alone primary exchange service and the rate cap, the Commission considers that this is unnecessary.

Secretary General

### **Related documents**

- *Review of the regulatory constraints that apply to the basic toll schedules*, Telecom Decision CRTC 2007-56, 23 July 2007, as amended by Telecom Decision CRTC 2007-56-1, 14 August 2007
- *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006, as amended by Governor in Council's *Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007-532, 4 April 2007
- *Telephone service to high-cost serving areas*, Telecom Decision CRTC 99-16, 19 October 1999
- *Forbearance – Regulation of toll services provided by incumbent telephone companies*, Telecom Decision CRTC 97-19, 18 December 1997, as amended by Telecom Decision CRTC 97-19-1, 9 March 1998

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*