



## Telecom Decision CRTC 2010-11

Route reference: Telecom Decision 2009-85

Ottawa, 14 January 2010

### **TELUS Communications Company – Application to review and vary portions of Telecom Decision 2009-85 regarding telecommunications services provided by Bell Canada to PWGSC**

File number: 8662-T66-200910853

*In this decision, the Commission finds that TCC has failed to demonstrate substantial doubt as to the correctness of the Commission's determinations in Telecom Decision 2009-85. TCC's request to review and vary Telecom Decision 2009-85 is denied.*

### **Introduction**

1. The Commission received an application by TELUS Communications Company (TCC), dated 29 July 2009, requesting that the Commission review and vary *Public Works and Government Services Canada – Application for a Commission determination regarding telecommunications services provided by Bell Canada*, Telecom Decision CRTC 2009-85, 20 February 2009 (Telecom Decision 2009-85).
2. In Telecom Decision 2009-85, the Commission set out its reasons for its determination on 30 January 2009 that Bell Canada's Telecommunications Services Renewal Project Extension Proposal #5 (Proposal #5) was to apply to transition services that the company provides to Public Works and Government Services Canada (PWGSC). The transition services include Digital Voice Access Control System (DVACS) services which would be provided for a period of up to three years and Other Services<sup>1</sup> which would be provided for a period of up to X plus 0.5X months<sup>2</sup> (the Transition Services).
3. Specifically, TCC submitted that the very rapid transfer of the Other Services to its network constitutes a fundamental change of circumstances or facts since the issuance of Telecom Decision 2009-85. TCC requested that the Commission establish revised rates for the Other Services that are actually being provided by Bell Canada and that these rates should apply, on a final basis, as of 15 December 2008.
4. The Commission received comments regarding TCC's application from Bell Canada. The public record of this proceeding, which closed on 8 October 2009, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings" or by using the file number provided above.
5. The Commission has identified the following issues to be addressed in this decision:

<sup>1</sup> Other Services includes such services as private lines, digital network access, and high-speed digital services.

<sup>2</sup> X represents a figure that was provided in confidence to PWGSC and Bell Canada in Telecom Decision 2009-85.

- I. Should certain comments in TCC's reply be struck from the record as requested by Bell Canada?
- II. Has there been a fundamental change in circumstances demonstrating substantial doubt as to the correctness of the Commission's determinations in Telecom Decision 2009-85?

**I. Should certain comments in TCC's reply be struck from the record as requested by Bell Canada?**

6. Bell Canada submitted that TCC, in its reply comments, went beyond the scope permitted in the *CRTC Telecommunications Rules of Procedure* as it elaborated on arguments which should have been fully presented in the original application, and introduced new evidence and arguments that were not connected to the issues raised in Bell Canada's comments.
7. Bell Canada requested that the financial details filed in TCC's reply comments to support the allegation in its application that Telecom Decision 2009-85 results in overpayments to Bell Canada and the assertion that Bell Canada will be receiving wholesale and retail revenues for the same services be struck from the record.
8. Bell Canada provided responses to TCC's assertion that Bell Canada routinely processes thousands of disconnection orders every month, as well as additional information in response to TCC, including evidence on the status of the migration.
9. TCC responded that it had no objection to the inclusion of Bell Canada's submissions filed in response to TCC's reply.

**Commission's analysis and determination**

10. The Commission notes that Bell Canada provided its response to the information addressed in TCC's reply. The Commission considers that, in order to ensure that it has a full record upon which to make its decision, it would be appropriate to retain the information filed by TCC in its reply comments as well as the additional information filed by Bell Canada.

**II. Has there been a fundamental change in circumstances demonstrating substantial doubt as to the correctness of the Commission's determinations in Telecom Decision 2009-85?**

11. TCC submitted that, at the time of the Commission's determination, there had been uncertainty regarding the length of the transition period that would be required to migrate the services used by the Department of National Defence (DND) to TCC's network. TCC indicated that, as of October 2009, DND had issued disconnection orders for 100 percent of the Other Services and the associated service delivery areas, and that only two circuits remained to be migrated. TCC submitted that the very rapid transfer of Other Services constituted a fundamental change in the circumstances or facts.

12. TCC submitted that the Commission should establish the facts necessary to set just and reasonable rates and that PWGSC should not continue to pay rates over the entire X plus 0.5X month transition period for services that are no longer being provided. TCC requested that the Commission should require Bell Canada to refile the rates and cost studies, excluding any costs, expenses, or investments made to support DVACS services, demonstrating what capital expenditures or operating expenses were actually incurred.
13. TCC submitted that permitting Bell Canada to continue charging the customers after the disconnection of services would be a radical and highly unusual approach to rate setting. TCC suggested that such a principle represented a new major cost of switching suppliers, constituted a significant barrier to effective competition in the large account market, and was contrary to the Policy Direction.<sup>3</sup>
14. Bell Canada responded that there had not been any change of circumstances and that the events have unfolded as the company submitted they would during the proceeding. Bell Canada submitted that the terms, rates, and conditions set out in Telecom Decision 2009-85 remain just and reasonable.
15. Bell Canada submitted that, while the Commission considered that there was a significant risk that PWGSC would continue to require the Other Services for a period longer than it had initially specified, the Commission did consider that PWGSC might cease needing the Other Services sooner. Bell Canada further submitted that this situation matches one of the scenarios addressed in Proposal #5, whereby PWGSC would receive all early disconnection incentives set out in the proposal.
16. Bell Canada submitted that the migration of the Other Services onto the TCC network is only the preliminary step to the disconnection of these services from its network. Bell Canada submitted that the transition time frame set out in Telecom Decision 2009-85 provides a more realistic and orderly time frame, in view of the high volume of disconnection orders that Bell Canada needs to process. Bell Canada further submitted that, in recognition of this high volume of work, the Commission explicitly allowed Bell Canada to be compensated over the transition period it had proposed, even though PWGSC's actual usage of Other Services would be declining and, at the limit, could be nil.
17. Bell Canada indicated that the inventory of remaining Other Services was incomplete since it had uncovered circuits that were still in use that were not in the inventory provided to Bell Canada from PWGSC. In addition, Bell Canada submitted that DND continued to utilize certain Bell Canada Other Services for which it had issued disconnection orders.
18. Finally, Bell Canada noted that Proposal #5 bundled the Other Services with the DVACS and that the bundled prices of the DVACS were lower than if the DVACS were offered on a stand-alone basis.

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<sup>3</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

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

19. In Telecom Decision 2009-85, the Commission recognized that the continued requirement for the Transition Services by DND was necessary due to delays not occasioned by Bell Canada and that Bell Canada would incur additional costs to provide such services.
20. In Telecom Decision 2009-85, the Commission outlined the process for transitioning services to TCC's network, which included an acceptance process by DND, and noted that there had been significant delays in the transition to TCC's network and the subsequent issuing of disconnection orders by DND. The Commission noted its concern about the significant risk that DND would not have issued disconnection orders within PWGSC's proposed time frame of X months. The Commission considered that it was unacceptable, given that national security is involved, to limit Bell Canada's contractual obligation to provide the Other Services to X months.
21. In selecting Bell Canada's final proposal, the Commission considered that Bell Canada's proposal for an X plus 0.5X month transition period for the Other Services provided for a more realistic and orderly transition time frame. Further, the Commission noted that Bell Canada's pricing proposal included significant financial incentives to PWGSC for timely disconnection. The Commission also considered that Bell Canada's proposal better reflected the significant risk that PWGSC would continue to require some Other Services from Bell Canada for more than X months, while still allowing PWGSC to benefit from cost savings should it meet its X-month target.
22. The Commission notes that its determinations specifically contemplated that, despite the delays experienced at the time, the migration to TCC's network could be completed within the target established by PWGSC. Further, the Commission notes that the terms and conditions of Bell Canada's Proposal #5 provided incentives for meeting early disconnection targets, and also flexibility should additional time be required for the migration to TCC's network. Under the situation where PWGSC has disconnected the Other Services within the X months, the Commission expects that PWGSC will benefit from a significant reduction in the value of the contract as a result of receiving the disconnection incentives.
23. In light of all the facts underlying the Commission's original decision, including in particular the fact that the pricing structure selected by the Commission for the Transition Services contemplated the possibility of an earlier migration of Other Services, the Commission concludes that TCC has failed to demonstrate that there has been a substantial change in circumstances or facts. Accordingly, the Commission finds that TCC has failed to demonstrate substantial doubt as to the correctness of the Commission's determinations in Telecom Decision 2009-85 based on a fundamental change of circumstances or facts.
24. In light of the above, the Commission **denies** TCC's application.

Secretary General

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