



Telecom Decision CRTC 2010-262

Ottawa, 7 May 2010

Canadian Association of Petroleum Producers – Application to review and vary Telecom Decision 2008-45 regarding Alberta One-Call membership

File number: 8662-C160-200817406

Introduction

1. The Commission received an application by the Canadian Association of Petroleum Producers (CAPP), dated 19 December 2008, requesting that the Commission review and vary Telecom Decision 2008-45. In that decision, the Commission granted Shaw Cablesystems Limited (Shaw) access to highways and other public places in the County of Wheatland, Alberta (the County), and provided the terms and conditions of the Municipal Access Agreement (MAA) that would govern that access. The Commission considered that Alberta One-Call¹ membership should not be a condition of the MAA between Shaw and the County, but added that, to the extent that Alberta One-Call is beneficial to all parties, the parties could continue to engage in negotiations with regard to Shaw's membership.
2. In Telecom Public Notice 98-6, the Commission outlined the criteria to consider review and vary applications filed pursuant to section 62 of the *Telecommunications Act*. Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example, due to one or more of the following: i) an error in law or in fact, ii) a fundamental change in circumstances or facts since the decision, iii) a failure to consider a basic principle which had been raised in the original proceeding, or iv) a new principle which has arisen as a result of the decision.
3. CAPP claimed that the Commission failed to consider a basic principle raised in the proceeding leading to Telecom Decision 2008-45. CAPP submitted that the Commission's decision allowed telecommunications companies to undermine the Alberta One-Call system and dilute the pool of locate services to such an extent as to compromise safety, effectiveness, and timeliness for Alberta One-Call users. CAPP further submitted that it was concerned that the Commission had rendered its decision without consulting stakeholders or reviewing the potential risks associated with such a decision.
4. The Commission received comments regarding CAPP's application from Shaw. The public record of this proceeding, which closed on 29 January 2009, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

¹ Alberta One-Call, a non-profit organization, is a locate service that acts as the single point of contact for a number of operators of buried facilities in the Province of Alberta.

Is there substantial doubt as to the correctness of the decision?

5. CAPP submitted that the Commission erred when it stated in Telecom Decision 2008-45 that there was no evidence on the record that demonstrated that Shaw's locate service, DIGSHAW, was less efficient or less reliable than the Alberta One-Call service. CAPP noted that the County illustrated Alberta One-Call's effectiveness in its submission that Alberta One-Call had an extensive annual advertising and awareness campaign, and processed 450,000 annual locate requests. CAPP submitted that, in contrast, the record indicated that DIGSHAW suffered from a lack of public awareness and had received only 50,000 locate requests the previous year.
6. Shaw submitted that DIGSHAW is identical to Alberta One-Call, in that it provides service within two workdays and performs emergency locates 24 hours a day, 7 days a week. Shaw also stated that DIGSHAW is well-known and recognized in the digging community.

Commission's analysis and determinations

7. In Telecom Decision 2008-45, the Commission acknowledged the submissions of Shaw, the County, Alberta One-Call, and interveners representing the excavation and digging community regarding the question of mandatory membership in Alberta One-Call. The Commission reviewed and considered those submissions, and concluded that Alberta One-Call is beneficial to the digging community and to Shaw. The Commission noted, however, that based on the record of that proceeding, which included information that DIGSHAW received fewer annual locate requests than Alberta One-Call did and that DIGSHAW was well-known in the digging community and met the same locate standards that Alberta One-Call members meet, there was no evidence that DIGSHAW was less efficient or less reliable than Alberta One-Call.
8. Accordingly, the Commission considers that it appropriately examined all evidence and arguments provided on the record of the proceeding leading to Telecom Decision 2008-45.
9. The Commission further considers that CAPP has not provided any new evidence that DIGSHAW is inefficient in comparison with Alberta One-Call. The Commission notes, specifically, that there is no evidence on the record that service interruptions due to disturbances of Shaw's buried facilities during excavation are an issue for Shaw's customers.
10. The Commission concludes that CAPP has failed to raise new arguments that had not been raised and considered in the proceeding leading to Telecom Decision 2008-45, and has simply restated arguments raised by parties who participated in the original proceeding. Accordingly, the Commission finds that CAPP has failed to demonstrate that there is substantial doubt as to the correctness of the original decision.
11. In light of the above, the Commission **denies** CAPP's application.

Secretary General

Related documents

- *Shaw Cablesystems Limited's request for access to highways and other public places in the County of Wheatland, Alberta*, Telecom Decision CRTC 2008-45, 30 May 2008
- *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998

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