



## Telecom Decision CRTC 2010-414

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Ottawa, 29 June 2010

### **Shaw Cablesystems Ltd. – Application to review and vary Telecom Decision 2009-462 concerning the reimbursement of costs associated with relocating transmission facilities**

File number: 8662-S9-201000802

*In this decision, the Commission denies an application by Shaw Cablesystems Ltd. (Shaw) to modify the Commission's determinations in Telecom Decision 2009-462 regarding the reimbursement by the Ministry of Transportation and Infrastructure of British Columbia of Shaw's costs of relocating its transmission facilities, whether those facilities are attached to Shaw's own support structures or to the support structures of third parties.*

#### **Introduction**

1. The Commission received an application by Shaw Cablesystems Ltd. (Shaw), dated 22 January 2010, requesting that the Commission review and vary its determinations in Telecom Decision 2009-462. In that decision, the Commission, among other things, refrained from directing the Ministry of Transportation and Infrastructure of British Columbia (the Ministry) to reimburse Shaw for the costs of relocating its transmission facilities that are attached to the support structures of third parties, on the basis of its finding that the dispute did not engage the Commission's jurisdiction under subsection 43(4) of the *Telecommunications Act* (the Act).
2. Shaw submitted that there was substantial doubt as to the correctness of the decision, arguing that the Commission had erred in law and in fact in concluding that it does not have jurisdiction under subsection 43(4) of the Act to order the Ministry to reimburse Shaw for costs incurred as a result of Ministry-initiated relocation of transmission lines placed on third-party support structures.
3. Shaw further submitted that the Commission had failed to consider a basic principle from Order 2000-13 that had been raised in the proceeding leading to Telecom Decision 2009-462, namely that support structure licensees should pursue compensation for relocation expenses directly with the third party requesting the relocation.
4. As such, the company requested that the Commission vary its determination in Telecom Decision 2009-462 that the company's original application did not engage the Commission's jurisdiction under subsection 43(4) of the Act. Shaw also requested that the Commission vary that decision by directing the Ministry to reimburse the company for the costs of relocating its transmission facilities at the request of the

Ministry, whether these facilities are located on Shaw's own support structures or attached to the support structures of third parties, on terms and conditions that are consistent with Decision 2001-23.

5. The Commission received comments regarding Shaw's application from the Ministry. The public record of this proceeding, which closed on 1 March 2010, 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.
6. The Commission has identified the following issues to be addressed in this decision:
  - I. Did the Commission err in Telecom Decision 2009-462 when it concluded that Shaw's application did not engage the Commission's jurisdiction under subsection 43(4) of the Act?
  - II. Did the Commission err in Telecom Decision 2009-462 by not addressing the principle set out in Order 2000-13 that support structure licensees should pursue compensation for relocation expenses directly with the third party requesting relocation?
- I. Did the Commission err in Telecom Decision 2009-462 when it concluded that Shaw's application did not engage the Commission's jurisdiction under subsection 43(4) of the Act?**
7. Shaw submitted that the Commission's interpretation of its jurisdiction was unduly narrow and created uncertainty. Shaw argued that the Commission's jurisdiction was engaged by the company's application on the basis that its inability to obtain the Ministry's consent to keep transmission lines in place on terms and conditions acceptable to Shaw was the type of situation captured by subsection 43(4) of the Act. In Shaw's view, the terms and conditions for access to power poles by utilities set out in the Ministry's public utility manual apply to it as it is a "utility" as defined therein. Shaw also argued that the suggestion that it is entitled under the Act to seek compensation from the Ministry for the relocation costs of only some of its transmission facilities, based on the ownership of the underlying support structure, is arbitrary.
8. The Commission notes that the Ministry does not require Shaw to obtain its consent in any form, whether by permit or otherwise, to install its facilities on support structures of third parties nor does the Ministry impose any terms or fees on Shaw as a condition of gaining access to the support structures of third parties.
9. In light of the above, the Commission considers that there is no issue of consent to engage subsection 43(4) of the Act. The Commission therefore finds that it did not err when it concluded in Telecom Decision 2009-462 that Shaw's application did not engage the Commission's jurisdiction under subsection 43(4) of the Act.

## **II. Did the Commission err in Telecom Decision 2009-462 by not addressing the principle set out in Order 2000-13 that support structure licensees should pursue compensation for relocation expenses directly with the third party requesting relocation?**

10. As noted above, Shaw submitted that the Commission had erred in Telecom Decision 2009-462 by not considering a basic principle set out in Order 2000-13, namely that support structure licensees should pursue compensation for relocation expenses directly with the third party requesting relocation. Shaw submitted that the Commission's failure to address this principle in Telecom Decision 2009-462 raises substantial doubt as to the correctness of that decision.
11. The Commission notes that it was not necessary to address the applicability of the principle set out in Order 2000-13 in the context of Shaw's access to third-parties' support structures as the Commission found that it did not have jurisdiction to address Shaw's reimbursement for the cost of relocating its transmission facilities on third-parties' support structures.
12. With respect to the reimbursement for the costs of relocating Shaw's transmission facilities that are attached to the company's own support structures, the Commission notes that it was not necessary to address explicitly the applicability of the principle set out in Order 2000-13, given that the Ministry had indicated it was willing to negotiate an agreement with Shaw.
13. In light of the above, the Commission finds that it did not err in Telecom Decision 2009-462 by not addressing the principle set out in Order 2000-13 that support structure licensees should pursue compensation for relocation expenses directly with the third party requesting relocation.

### **Conclusion**

14. In light of the above, the Commission finds that it did not err in law or in fact, and finds that Shaw did not raise substantial doubt as to the correctness of the Commission's determinations in Telecom Decision 2009-462. Accordingly, the Commission **denies** Shaw's application.

Secretary General

### **Related documents**

- *Shaw Cablesystems Ltd. – Application seeking access to highways controlled by the Ministry of Transportation and Infrastructure of British Columbia on terms consistent with Decision 2001-23*, Telecom Decision CRTC 2009-462, 30 July 2009
- *Ledcor/Vancouver – Construction, operation and maintenance of transmission lines in Vancouver*, Decision CRTC 2001-23, 25 January 2001
- *Rates set for access to telephone companies' support structures*, Order CRTC 2000-13, 18 January 2000