Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2014-389

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Follow-up to Telecom Decision 2014-77 – Show cause regarding permit requirements for strand equipment

*The Commission **determines** that its determination that licensees are not required to obtain permits from incumbent local exchange carriers (ILECs) for strand equipment inserted into licensee cabling attached to ILEC strand applies to all ILECs that provide support structure services.*

Introduction

1. In *Shaw Communications Inc. – Application concerning the administration of TELUS Communications Company's tariff for support structure service*, Telecom Decision CRTC 2014-77, 20 February 2014 (Telecom Decision 2014-77), the Commission determined that the Support Structure Service item of TELUS Communications Company's (TCC) General Tariff should be modified to provide that a licensee is not required to obtain a permit to place strand equipment on its own cable located on strand leased from TCC. In particular, the Commission considered that the record associated with the proceeding that led to that decision (the Telecom Decision 2014-77 proceeding) demonstrated the following:

    - incumbent local exchange carriers (ILECs) had historically not required permit applications for licensee strand equipment, nor had they taken measures to ensure that permits were obtained for such equipment;

    - TCC had been able to manage capacity on its support structures without requiring permit applications for strand equipment;

    - safety and technical concerns could be addressed through TCC's construction standards, and TCC's tariff provided a comprehensive regime to properly manage licensee compliance with established construction standards; and

    - requiring permits for every addition, rearrangement, transfer, replacement, or removal of strand equipment would represent a significant administrative burden for both TCC and the licensee, as well as a significant financial burden on the latter.

2. The Commission also directed all other ILECs that provide support structure services to show cause, within 30 days of the date of the decision, why the same determination should not be reflected in their tariffs.

3. On 24 March 2014, responses to the show cause directive were filed by Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (collectively, the Bell companies), and by MTS Inc. (MTS). MTS supported the Commission's ruling and did not in principle oppose amending its tariff to reflect its historical practices regarding permit applications for strand equipment. The Bell companies did not support the Commission's determination. Further, they submitted that, if the Commission determines that permits are not required for strand equipment, at the very least, licensees that wish to attach new or non-standard types of equipment on strand leased from an ILEC ought to be required to first submit a request to this effect to the ILEC.

4. The public record of this proceeding, which closed on 24 March 2014,[1] is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

5. The Commission has identified the following issues to be addressed in this decision:

    - Should the determination in Telecom Decision 2014-77 regarding permits for strand equipment apply to all ILECs that provide support structure services?

    - Should the ILECs be permitted to require licensees to submit a request before attaching new or non-standard strand equipment to licensee cable located on leased strand?

Should the determination in Telecom Decision 2014-77 regarding permits for strand equipment apply to all ILECs that provide support structure services?

6. The Bell companies stated that they do not support the Commission's determination for the following reasons.

7. First, the Bell companies submitted that the objective of furthering competition should never trump worker safety or the orderly deployment of facilities. In support of their position and with reference to the WiFi network equipment that was prominently discussed in the Telecom Decision 2014-77 proceeding, they noted that Health Canada's Safety Code 6[2] recommends limits for safe human exposure to

[1] After the close of record on 24 March 2014, the Commission received comments on the Bell companies' submissions from Cogeco Cable Inc., Rogers Communications Partnership, and Quebecor Media Inc. on behalf of its affiliate Videotron G.P., dated 9 April 2014, and from Shaw Communications Inc., dated 23 April 2014. The Commission did not take these comments into consideration in reaching its decision because they were out of process.

[2] *Limits of Human Exposure to Radiofrequency Electromagnetic Energy in the Frequency Range from 3 kHz to 300 GHz – Safety Code 6 (2009)*

radio-frequency (RF) fields. They argued that equipment that meets Safety Code 6 in some circumstances may not meet it for workers working in close proximity to the equipment if certain precautionary processes or configurations are not applied. The Bell companies added that, similarly, extra precautions must be taken with regard to powered equipment, including (but not limited to) WiFi equipment. They submitted that it is difficult to create appropriate standards without knowing what type of equipment licensees intend to deploy.

8. The Bell companies submitted that it is therefore crucial for the safety of workers that any new equipment be submitted for approval prior to its installation and that new construction standards be developed, if necessary, based on the specifications of the proposed equipment. They stated that it is impossible for them to properly train their workers, inform them of potential hazards, and ensure that they follow proper safe work procedures if licensees do not provide information on new types of equipment installations that can pose a safety risk.

9. Second, the Bell companies submitted that they have historically required, and continue to require, permits for strand equipment in certain regions. Where they do not require permits, they do require prior vetting of new non-standard equipment before proceeding with its attachment.

10. In this regard, the Bell companies stated that their permit procedures in the Ontario region, for example, provide that they may reject a permit application by applying defect code "A," which is defined as "equipment too close to pole." In Quebec, licensees are required to indicate in their permit applications whether strand equipment is present, and they are currently doing so. As evidence, the Bell companies filed three permit applications by three major licensees in their Quebec region, which all indicate the presence of splicing enclosures (a type of strand equipment). The Bell companies submitted that, as evidenced by these applications, their historical practice in Quebec, where their network is mostly aerial and is capacity constrained, has been to request permits for strand equipment and to enforce compliance with the permitting process.

11. The Bell companies stated that in the Atlantic regions, where they do not have the same capacity constraints, Bell Aliant does not require permits for every installation of strand equipment. However, the Bell companies do require that licensees inform them prior to installing non-standard equipment, in order to allow Bell Aliant's Standards group to vet the equipment.

12. The Bell companies argued that, based on the above, it is clear that their historical practice has been to apply a permitting process for strand equipment or, at the very least, to require that they be informed prior to the installation of new types of equipment.

13. Third, the Bell companies submitted that the permitting process does not impose a significant financial or administrative burden on licensees and does not impede competition. They noted that their permitting process regarding support structures is

subject to regulated response times, as set out in Item 901.4(a) of their National Services Tariff.

14. The Bell companies also noted that licensees are already required to request permits for cabling on strand, and the incremental cost and administrative burden of a permitting process for the placement of strand equipment are negligible. They submitted that it is not an overly burdensome process to mark a box already present on the permit application forms.

15. They further submitted that even if licensees were to request permits solely for the installation of new equipment on a strand and not in combination with cabling, it is doubtful that the Bell companies' search and inspection charges, which are cost-based, would constitute an unreasonable financial burden for licensees. A licensee that is undertaking a massive deployment of equipment on strand could submit a single permit application for several strand equipment locations at once (and incur a single search charge for that application).

16. In conclusion, the Bell companies submitted that, if the Commission wants to ensure that a permitting process does not constitute an unreasonable administrative burden for licensees, it may decide to direct ILECs that wish to apply such a process to develop permit application forms that allow licensees to tick a box when requesting a permit for strand equipment.

Commission's analysis and determinations

17. The absence of a permit requirement does not mean that ILECs cannot effectively ensure worker safety or the orderly deployment of facilities. The ILECs can amend their construction standards to require compliance with any relevant standards, including safety and technical standards for RF-emitting devices issued by appropriate governmental bodies. In this regard, the Support Structure Service item (Item 901) of the Bell companies' National Services Tariff (i) provides that licensees must comply with the construction standards, and (ii) provides the Bell companies with recourse if the licensees' facilities do not comply. The Commission considers that Item 901 includes a comprehensive regime associated with the requirement to comply with appropriate construction standards.

18. With respect to the matter of historical practices, in the Telecom Decision 2014-77 proceeding, the ILECs were requested to identify their practices with respect to licensee strand equipment. In response to that request, the Bell companies provided the same information that they provided in the current proceeding concerning their practices in certain regions, with the exception of the three permit applications referred to in paragraph 10 above.

19. In the Commission's view, the evidence provided by the Bell companies with respect to their historical practices does not demonstrate that permits associated with strand equipment are necessary for them to properly manage support structure capacity and compliance with construction standards. In this regard, the Commission

considers that the three permit applications that were filed on the record of this proceeding do not demonstrate that the Bell companies have required the issuance of permits for additions, rearrangements, transfers, replacements, or removals of strand equipment, as currently contemplated by their tariffs. Other than the three permit applications relating to the initial installation of cable on leased strand, the Bell companies have not filed any evidence showing that they took active measures to ensure that permits were obtained for activities related to strand equipment.

20. With respect to the issue of financial burden, the Commission notes that licensees are required to request permits to place cable on strand. However, the Commission considers that a requirement for a licensee to apply for and obtain a permit prior to every addition, rearrangement, transfer, replacement, or removal of strand equipment imposes a potentially significant financial burden on the licensee.

21. The Commission also considers that a permit process would impose a significant administrative burden on both ILECs and licensees, given the number of pieces of strand equipment that exist, and could impede competition. Furthermore, as referenced above, permits would not only be required for the initial attachment of strand equipment but also for any additions, rearrangements, transfers, replacements, or removals of that equipment. Finally, the Commission is concerned that requiring such permits would affect the ability of licensees to provision, maintain, and upgrade their networks in a timely manner in order to deliver services to end-users.

22. In the Commission's view, the Bell companies have not raised any new arguments that were not addressed in the Telecom Decision 2014-77 proceeding, nor have they provided any significant new evidence.

23. In light of all the above, the Commission considers that the ILECs subject to this proceeding have not demonstrated why the determinations in Telecom Decision 2014-77 should not apply to them. The Commission therefore **determines** that the determination set out in paragraph 78 of Telecom Decision 2014-77 regarding permits for strand equipment is to apply to the ILECs subject to this proceeding.

Should the ILECs be permitted to require licensees to submit a request before attaching new or non-standard strand equipment to licensee cable located on leased strand?

24. The Bell companies submitted that in all cases, and at the very least, licensees that wish to deploy new or non-standard types of strand equipment ought to be required to first submit a request to the ILEC. This procedure would allow the ILEC to ensure that such equipment meets the construction standards and, if needed, to take appropriate measures to train its personnel and/or issue notices to licensees regarding potential changes to the construction standards, including safety precautions, in light of the new equipment.

Commission's analysis and determinations

25. The Bell companies did not provide evidence to demonstrate that their existing construction standards are unable to address new and non-standard strand equipment. In this regard, the Commission considers that the Bell companies have not demonstrated whether and how their construction standards are dependent on the identification of the precise nature of a given piece of strand equipment. Construction standards can provide that all equipment installed on the ILEC's support structures must comply with various safety and technical standards issued by relevant bodies.

26. In addition, as noted above, Item 901 includes a comprehensive regime associated with the requirement to comply with appropriate construction standards, including providing the ILEC with the means to take remedial action should non-compliance occur.

27. Further, the Bell companies did not provide any suggested parameters relating to how their proposed requirement would operate. In particular, they did not suggest a workable definition of what would constitute a "new or non-standard" piece of strand equipment for the purposes of triggering the requirement, nor did they present any views with respect to timelines for the provision of notice to licensees regarding potential changes to the construction standards.

28. Based on the above, the Commission **denies** the Bell companies' request that the Commission direct licensees that wish to deploy new or non-standard strand equipment to first submit a request to this effect to the ILEC.

Directive

29. The Commission **directs** all the ILECs that are subject to this proceeding to file for approval, within **30 days** of the date of this decision, tariff revisions stating that communications-related equipment inserted into licensee cabling located on ILEC strand (i.e. strand equipment) does not require a permit.

Secretary General