



Telecom Decision CRTC 2014-645

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Raftview Communications Ltd. – Request for relief from alleged inappropriate charges by TELUS Communications Company for privately owned service poles

The Commission finds that TCC is precluded by its Support Structure Service tariff from charging licensees for service poles it does not own, unless the company has an agreement through which it has the right to provide licensees with access to those poles and, hence, exercises control over those poles.

*The Commission **directs** TCC to withdraw all invoices to Raftview Communications Ltd. (Raftview) and/or provide refunds to Raftview, as appropriate, in accordance with TCC's Terms of Service, for payments related to privately owned service poles that TCC does not control. The onus is on TCC to demonstrate that it has an agreement in place through which the company controls privately owned service poles, as clarified in this decision, prior to invoicing a licensee for charges on those poles.*

*The Commission also **directs** TCC to apply the findings in this decision to any other similarly placed licensees.*

Background

1. In Telecom Decision 95-13, the Commission set out a pricing methodology for licensees¹ for the use of the support structures² provided by Island Telecom Inc., Maritime Tel & Tel Limited, The New Brunswick Telephone Company Limited, and NewTel Communications Inc. (now, collectively, Bell Aliant Regional Communications, Limited Partnership); Bell Canada; Northwestel Inc.; as well as BC TEL and TELUS Communications Inc. (now, collectively, TELUS Communications Company [TCC]).
2. In Telecom Decision 2010-900, the Commission approved revised rates for the support structure services provided by Bell Aliant Regional Communications, Limited Partnership; Bell Canada; and Télébec, Limited Partnership (collectively,

¹ Licensees are cable television undertakings or Canadian carriers that attach their facilities, such as wires, onto incumbent local exchange carriers' poles to serve their own end-users.

² "Support structures" are supporting structures (e.g. poles, strand, and conduit) that an incumbent local exchange carrier either owns or has the right to provide access to.

Bell Canada et al.); MTS Allstream Inc. (MTS Allstream);³ and TCC. The Commission also initiated a follow-up proceeding regarding service pole⁴ rates.

3. In Telecom Decision 2011-406, the Commission approved service-pole-specific rates for each of Bell Canada et al., MTS Allstream, and TCC equivalent to their respective pole rates, and required that these incumbent local exchange carriers (ILECs) determine the number of billable service poles to which they provide access for each user.

Application

4. The Commission received an application from Raftview Communications Ltd. (Raftview), dated 24 July 2014, concerning the administration of item 404 – Support Structure Service⁵ of TCC’s General Tariff (referred to hereafter as TCC’s Support Structure Service tariff). Specifically, Raftview requested that the Commission determine that TCC cannot charge licensees for privately owned service poles.
5. The Commission received interventions regarding Raftview’s application from Conuma Cable Systems Ltd., Country Broadcasting Corp., Keta Cable Inc., Mascon Cable Systems Inc., Seaview Communications Ltd., and Ucluelet Video Services Limited (collectively referred to hereafter as the intervening small licensees); as well as from the Canadian Cable Systems Alliance (CCSA), Shaw Communications Inc., and TCC. The public record of this proceeding, which closed on 5 September 2014, is available on the Commission’s website at www.crtc.gc.ca or by using the file number provided above.

Can TCC charge licensees for privately owned service poles?

6. Raftview submitted that TCC had no authority under Telecom Decisions 2010-900 and 2011-406 to charge licensees for privately owned service poles, and that TCC’s misinterpretation of those decisions resulted in inflated service pole charges to Raftview.
7. Raftview submitted that in Telecom Decision 2010-900, the Commission allowed ILECs to recover the costs they incurred for service poles. Raftview argued that the only cost incurred by TCC on the privately owned service poles for which TCC was invoicing Raftview was the purchase of a hook, which Raftview submitted cost between \$0.32 and \$0.55.

³ MTS Allstream Inc. was the entity that participated in the proceeding. However, as of early January 2012, MTS Allstream Inc. became known as two separate entities, namely, MTS Inc. and Allstream Inc.

⁴ A “service pole” refers to a pole owned by an incumbent local exchange carrier on which the only licensee attachment is a drop wire to the subscriber’s premises.

⁵ TCC’s Support Structure Service is a tariffed, wholesale service through which the company makes support structures available to licensees for use as an input to provide their own competitive retail services.

8. The CCSA submitted that TCC should not charge licensees for privately owned service poles, since the licensees would effectively be paying service pole rates to TCC for poles that they had already purchased, and for which TCC did not incur any embedded cost and does not likely incur any ongoing maintenance costs.
9. The intervening small licensees supported Raftview's application and requested similar relief.
10. TCC submitted that service pole ownership was irrelevant to the application of the service pole rate defined in the company's Support Structure Service tariff. TCC submitted that the Service Description in that tariff does not state that ownership of a service pole is a determining factor regarding TCC's ongoing responsibility to (i) provide support structure services on service poles, and (ii) ensure the continuity of services to TCC's customers and licensees.
11. TCC stated that it was difficult to determine service pole ownership. The company added that a property could experience numerous ownership changes, and that the time and resources necessary to determine the ownership and location of over 100,000 service poles in British Columbia would outweigh any benefit of doing so. TCC submitted that such an exercise would be extremely onerous, time-consuming, and costly for all parties.
12. TCC argued that, based on item 406 – Construction Charges of its General Tariff, TCC has the ongoing responsibility to administer and maintain service poles and their associated transmission facilities on private property up to the network demarcation point. TCC stated that this responsibility resulted in real and measurable costs for the company.
13. TCC submitted that when the Commission approved a service pole rate equivalent to the company's pole rate in Telecom Decision 2011-406, the Commission recognized that the affected ILECs incurred ongoing administrative and lost productivity costs associated with service poles. The company added that, given that the Commission approved a monthly service pole rate for TCC of \$1.44 per service pole per user, Raftview's statement that TCC's costs associated with licensee attachments were limited to a \$0.33 hook was incorrect and contrary to past Commission determinations.

Commission's analysis and determinations

14. TCC's Support Structure Service tariff states the following:

- 404.1 – Service Description

Support Structure Service provides, where Spare Capacity is available, a cable television undertaking or a Canadian carrier access to Company owned or controlled Support Structures for the placement of its Facilities.

- 404.3 – Access Approval Requirements

1. The Licensee must submit Applications to the Company for each use of, or connections to, Support Structures for the additions to, rearrangements, transfers, replacements or removals of the Licensee's Facilities located on or in the Company's Support Structures, for which a rental is provided in this Tariff Item and/or which affects the consumption of capacity of the Support Structure.

- 404.4 – Rates

2. Monthly Rates

- a. Pole – The charge applies to each pole, either owned by the Company or on which it is entitled to allow placement of the Licensee's Facilities [...]

15. The Commission notes that the service poles under consideration are not owned by TCC. The Commission therefore considers that in these circumstances, TCC's Support Structure Service tariff provides that the company can only charge licensees for service poles if the company controls the poles in question.
16. The term "controlled" is not defined in TCC's Support Structure Service tariff. The Commission considers, however, that based on the wording of this tariff set out in paragraph 14 above, it is reasonable to conclude that control would be evidenced by an agreement through which the company had obtained the right from the owners of the service poles in question to grant licensees access to attach their facilities to those poles.
17. Some ILECs have agreements in place that provide them with control of service poles that they do not own (e.g. service poles owned by hydro companies). The Commission considers that, in the absence of such agreements, an ILEC is not in control of service poles it does not own, and therefore does not provide support structure service on those poles.
18. In light of the above, the Commission finds that TCC is precluded by its Support Structure Service tariff from charging licensees for service poles it does not own, unless TCC can demonstrate that it has an agreement through which it has the right to provide licensees with access to the poles in question, and hence, exercises control over those poles.
19. Accordingly, the Commission **directs** TCC to withdraw all invoices to Raftview and/or provide refunds to Raftview, as appropriate, in accordance with TCC's Terms of Service, for payments related to privately owned service poles that TCC does not control, as determined in this decision. The onus is on TCC to demonstrate that it has agreements that permit the company to provide licensees with access to service poles it does not own.

20. The Commission also **directs** TCC to apply the findings in this decision to any other similarly placed licensees.

Secretary General

Related documents

- *Follow-up to Telecom Decision 2010-900 – Service pole rate and markup issues*, Telecom Decision CRTC 2011-406, 4 July 2011
- *Review of the large incumbent local exchange carriers' support structure service rates*, Telecom Decision CRTC 2010-900, 2 December 2010, as amended by Telecom Decision CRTC 2010-900-1, 9 December 2010
- *Access to telephone company support structures*, Telecom Decision CRTC 95-13, 22 June 1995