



Telecom Decision CRTC 2016-193

PDF version

Ottawa, 20 May 2016

File numbers: 8678-T66-201306845 and 8678-T66-201406075

TELUS Communications Company – Further proposals for the use of deferral account funds to improve access to telecommunications services for persons with disabilities

The Commission makes a number of determinations with respect to the request by TCC to use \$728,567 of the \$1.735 million remaining in the company's deferral account to improve access to telecommunications services for persons with disabilities. Specifically, the Commission

- ***approves** the use of \$236,063 for the company's proposed website accessibility upgrades for its telusquebec.com website;*
- ***approves** the use of \$135,077 for the company's proposed improvements to its webmail portal;*
- ***approves** the use of \$24,708 to conduct accessibility audits of the handsets TCC offers;*
- ***approves** the use of \$3,243 to fund an accessibility website section of the company's Koodo website; and*
- ***denies** the use of \$329,476 to fund accessibility upgrades for its national websites.*

*The Commission also **directs** TCC to show cause, within **60 days** of the date of this decision, why it should not be required to use the \$1.34 million of unallocated deferral account funds for one or more of the initiatives identified in this decision.*

As a result of today's decision, Canadians with disabilities will benefit from increased ability to access information pertaining to accessible wireless handsets, and having more direct access to information about accessibility-related products and services offered by TCC.

Background

1. In Telecom Decision 2006-9, the Commission concluded that proposals that focus on improving accessibility to telecommunications services for persons with disabilities would be an appropriate use of a portion of the funds remaining in the incumbent local exchange carriers' (ILECs) deferral accounts. The Commission directed TELUS Communications Company (TCC), among other ILECs, to allocate

a minimum of 5% of the accumulated balance in its deferral account to fund programs for this purpose.

2. In that same decision, the Commission established the following guidelines (the Guidelines) to be considered when assessing ILECs' proposed initiatives in this regard:
 - the initiative must improve accessibility to telecommunications services for persons with disabilities;
 - the ILECs must consult with advocacy organizations for persons with disabilities; and
 - drawdowns from each ILEC's deferral account were to be applied within its own operating territory.
3. The Commission also stated that competitive neutrality is a principal part of the objectives set out in Telecom Decisions 2002-34 and 2002-43 (the price cap decisions), which established the deferral accounts, and should be balanced against all relevant factors when proposals are evaluated.
4. In Telecom Decision 2008-1, the Commission determined that the use of deferral account funds for national initiatives was not consistent with the requirement that drawdowns from each ILEC's deferral account were to be applied within the ILEC's own territory. In addition, the Commission permitted the ILECs to set aside any unallocated portion of their accessibility deferral account funds for future accessibility initiatives, and considered that these funds were to be fully used by the end of 2011.
5. On 29 April 2013, TCC filed an application with the Commission, asking it to approve the use of \$1.735 million of deferral account funding for a "Website Accessibility" proposal (the 2013 application) to correct 17 accessibility-related website deficiencies identified in an audit performed by CNIB Accessibility Consulting. TCC's application included a detailed cost study and a copy of CNIB's audit report.
6. Following a request for further details concerning the company's cost study, TCC withdrew the 2013 application, indicating that, upon further review, it no longer believed the full amount of \$1.735 million would be required to complete its "Website Accessibility" proposal.

Application

7. TCC filed another application with the Commission on 30 June 2014 requesting approval of the use of \$728,567 of the \$1.735 million remaining in its deferral account for four initiatives described below (the current application). Under the current application, just over \$1 million of deferral account funds would remain unallocated for accessibility initiatives.

8. Given the similarities between TCC's website accessibility-related initiatives in both the current and 2013 applications, the record of the proceeding associated with the 2013 application was made part of the record of the current proceeding. This helped reduce the burden on the interveners who had intervened in respect of the 2013 application, namely CNIB, the Neil Squire Society (NSS), and one individual, Lisa Anderson-Kellett.
9. Ms. Anderson-Kellett agreed with the use of deferral account funds to improve accessibility, but did not provide specific comments on the various initiatives proposed by TCC.
10. The Commission received no new interventions regarding TCC's current application. The public record of this proceeding, which closed on 13 July 2015, is available on the Commission's website at www.crtc.gc.ca or by using the file numbers provided above.

Analytical framework

11. In its assessment of the initiatives proposed by TCC, the Commission examined the extent to which the company consulted with advocacy organizations for persons with disabilities. The Commission also considered, within the context of each proposed initiative, the following:
 - Does the initiative improve accessibility to telecommunications services for persons with disabilities?
 - Will the initiative be offered within TCC's incumbent serving territory?
 - Is the initiative competitively neutral, and, if not, is there a rationale for approval?

Consultation with advocacy organizations

12. TCC submitted that it had consulted with various advocacy groups for persons with disabilities in early 2014 in preparation for this proposal. These advocacy groups included GF Strong Rehabilitation Centre, Communication Assistance for Youth and Adults (CAYA), and Communication Disabilities Access Canada (CDAC).
13. In assessing the application as a whole, the Commission is satisfied that TCC has sufficiently consulted with advocacy organizations for persons with disabilities and through that process obtained a better understanding of their needs.

Proposed initiatives

Accessibility website section on Koodo Mobile website

14. TCC requested a drawdown from its deferral account of \$3,243 to cover the costs of creating an Accessibility Section on its Koodo Mobile (Koodo) website. TCC

submitted that this upgrade to the Koodo website would improve the accessibility of telecommunications through targeted product and service information of interest to customers with various types of disabilities. TCC further submitted that this proposal would be compliant with Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy) in which the Commission encouraged telecommunications service providers (TSPs) to promote disability-specific information through their websites, and with Telecom Regulatory Policy 2013-271 (the Wireless Code) in which the Commission expected wireless service providers to ensure that customers with disabilities have the information they need to determine which wireless plans and services best meet their needs.

Commission's analysis and determinations

15. The Commission notes the functional similarity between this initiative and TCC's "Special Needs" website initiative approved by the Commission in Telecom Decision 2008-1. Both initiatives have distinct website "accessibility sections" that provide information on products and services of interest to persons with disabilities. The Commission thus considers that the Koodo Accessibility website section would improve accessibility to telecommunications services for persons with disabilities by creating a centralized location on its website that houses specific information that enables persons with disabilities to acquire products and services that meet their needs.
16. With respect to the guideline that drawdowns are to be applied within the incumbent's own operating territory (in this case, Alberta, British Columbia, and Quebec), the Commission notes that it granted Bell Canada an exception to this in Telecom Decision 2015-563,¹ permitting Bell Canada to offer outside of its operating territory of Ontario and Quebec the wireless accessibility technologies approved by the Commission.² This measure was intended to reflect that Bell Mobility Inc.'s (Bell Mobility) services are national in scope, and therefore ensure that all Bell Mobility's wireless customers with disabilities would benefit from these particular technologies wherever they reside. The Commission notes that TCC markets its Koodo wireless brand to customers outside of its incumbent operating territory. Consistent with the approach taken with Bell Canada, the Commission considers it appropriate to grant to TCC the same exception allowing it to offer its Mobile Accessibility website initiative to all of its Koodo wireless customers.
17. The Commission also considers that this initiative does not raise competitive neutrality issues. While Koodo markets its products and services online in Ontario where the *Accessibility for Ontarians with Disabilities Act, 2005* (AODA)³ applies, that legislation does not mandate accessibility sections on websites. Therefore, the

¹ See paragraph 40 of Telecom Decision 2015-563.

² In particular, see certain mobile wireless technology initiatives approved in Telecom Decision 2014-527, as listed in Appendix B of that decision.

³ Legislation developed by the Government of Ontario which sets out mandatory accessibility standards that identify, remove, and prevent barriers for persons with disabilities.

funds would not be used to meet a regulatory obligation that other service providers, which do not have the benefit of accessing deferral accounts, would need to meet.

18. Accordingly, the Commission **approves** TCC's request for a deferral account drawdown of \$3,243 to cover the costs associated with creating an Accessibility Section on TCC's Koodo website.

Accessibility audits of mobile wireless handsets

19. TCC requested a drawdown from its deferral account of \$24,708 to cover the costs of two separate audits concerning the accessibility of the mobile wireless handsets that it offers. TCC submitted that the findings of the audits have guided improvements in the way the company serves its customers with disabilities, and will be used to update its website-based handset selector tool with accessibility information.
20. The audits encompassed a review of six different mobile wireless handsets offered by TCC, and were conducted by the Inclusive Design Research Centre (IDRC) of OCAD University⁴ in 2013 and 2014. The audits included two reports that explained how various handset features serve people with hearing, visual, mobility or agility, and cognitive disabilities, as well as the following:
 - a Support Matrix (a chart that records whether or not each of the handsets possesses various accessibility features), which outlined 31 accessibility features with definitions of how each feature serves users with different disability types; and
 - a Persona Analysis, which described 11 hypothetical users, or 'personas,' with various types of disabilities and assessed whether they can have an accessible user experience with a given mobile wireless handset.

Commission's analysis and determinations

21. The Commission considers that the audits of the mobile wireless handsets will improve the accessibility of telecommunications services for persons with disabilities by providing them with the information through TCC's website-based handset selector tool that will better enable them to determine the types of handsets suited for their accessibility needs.
22. With respect to the guideline that drawdowns are to be applied within the company's incumbent operating territory, for reasons similar to those identified for the previous initiative, the Commission considers it appropriate to grant to TCC an exception to this criterion for this initiative so that customers with disabilities, across the country, can benefit from improved information concerning the accessibility of TCC's mobile wireless handsets.

⁴ Formerly the Ontario College of Art and Design

23. The Commission considers that this initiative does not raise competitive neutrality issues, as the funds would not be used to meet a regulatory obligation that other service providers, which do not have the benefit of accessing deferral accounts, would need to meet.
24. Accordingly, the Commission **approves** TCC's request for a deferral account drawdown of \$24,708 to cover the costs associated with conducting the two accessibility audits of the mobile wireless handsets offered by the company.

TCC webmail

25. TCC requested a drawdown from its deferral account of \$135,077 to cover the costs of bringing its webmail portal into compliance with the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) [hereinafter, the W3C Guidelines] level A and AA standards,⁵ and thus improving its accessibility. TCC stated that the webmail portal is used by its retail Internet subscribers to access their email accounts and that this accessibility improvement would only be available to customers of its Internet services residing in Alberta and British Columbia where the service is offered.

Commission's analysis and determinations

26. The Commission considers that the enhancements to the webmail portal proposed by TCC will improve the accessibility of telecommunications services for persons with disabilities. For instance, given that TCC's webmail is only available to its Internet customers, subscribers might use webmail to access their monthly bills, communicate with their service provider, or otherwise manage their Internet services. In the Accessibility Policy, the Commission stated that access to appropriate information, customer service, and support in relation to telecommunications and broadcasting services allows customers with disabilities to make meaningful use of provided services. That regulatory policy also encouraged the adoption of the W3C Guidelines.
27. As TCC's webmail portal is available only to its retail Internet subscribers residing in Alberta and British Columbia, this initiative is consistent with the criterion set out in the Guidelines that drawdowns be applied within the company's traditional operating territory.
28. The Commission considers that this website initiative does not raise competitive neutrality issues as there are no regulatory requirements (e.g. accessibility-related legislation) in place in Alberta and British Columbia that would require the proposed enhancements.

⁵ W3C Guidelines consist of web standards that include level A, AA, and AAA standards.

29. Accordingly, the Commission **approves** TCC's request for a deferral account drawdown of \$135,077 to cover the costs associated with improving the accessibility to its webmail portal.

Website Accessibility Initiative

30. TCC requested a drawdown from its deferral account of \$565,539 to cover the costs of implementing accessibility-related improvements to its customer-focused websites,⁶ which extend beyond TCC's traditional operating territory. TCC submitted that the proposed changes to its websites would improve access to telecommunications services for persons with disabilities by increasing the accessibility of its websites, which market the products and services that it offers. TCC submitted that it has completed a total rebuild of its customer-focused websites and that the new websites are now compliant with the W3C Guidelines level A standard, with several areas also compliant with the level AA standard. TCC submitted that the accessibility of its new websites exceed that which is required by the AODA, which currently requires that the company's websites offering services in Ontario be compliant with the W3C Guidelines level A standard.
31. On the record of the proceeding associated with the 2013 application, CNIB and the NSS submitted that there are a variety of policies and laws in place that require businesses to make their websites accessible, and that TCC has an obligation to perform the website accessibility modifications under the AODA as part of its normal course of business. CNIB submitted that although it is referenced as being consulted by TCC on this matter, and although it supports the increased accessibility to TCC's websites, it does not endorse the use of deferral account funds for this purpose. The NSS submitted that the use of deferral account funds should be allocated to initiatives such as the development of procurement and lifestyle support strategies.
32. In reply, TCC acknowledged that it has obligations under the AODA,⁷ but submitted that its plans to improve the accessibility of its websites are wholly independent of those obligations. The company maintained that its proposed initiative remains appropriate as
- the proposed improvements would match and in some cases exceed other common standards or requirements, including those set out in the AODA;
 - TCC is a national company and its websites market its products and services that are not necessarily available to residential customers in Ontario;

⁶ telus.com, telusmobility.com, telusquebec.com, and koodomobile.com

⁷ TCC, as a provider of telecommunications services in Ontario, is required to abide with the AODA, a provincial statute whose purpose is to ensure that all Ontarians have fair and equitable access to programs and services. As part of this, the AODA sets accessibility standards required for websites and states that websites and their content must meet WCAG 2.0. The standards are imposed upon all businesses, including TSPs that operate within Ontario.

- benefiting TCC customers across Canada, especially those residing in its incumbent operating territory, is at the heart of this initiative, and it is not merely being proposed because of provincial legislation; and
- TCC's proposal is made pursuant to the Commission's Accessibility Policy where the Commission encouraged TSPs to make their websites as accessible as possible.

Commission's analysis and determinations

33. While acknowledging the position taken by CNIB and the NSS, the Commission notes that it has previously approved the use of deferral account funds in Telecom Decision 2008-1 to improve the accessibility of the websites for a number of ILECs. Further, more recently in Telecom Decision 2015-308, the Commission approved an application by MTS Inc. for various accessibility-related website enhancements. The Commission therefore considers that the proposal put forward by TCC will serve to improve access to telecommunications services for persons with disabilities.
34. Consistent with its determinations above related to the Accessibility Section of the Koodo website, and the accessibility audits of wireless handsets initiative, the Commission considers that this initiative would provide persons with disabilities outside of TCC's traditional operating territory with increased access to telecommunications services, and therefore TCC should be allowed to implement this initiative outside of its incumbent serving territory.
35. However, this initiative raises competitive neutrality issues, as portions of this proposal are required to be implemented under Ontario's provincial legislation related to accessibility.
36. In order to assess the competitive neutrality of the initiative, it is important to distinguish between TCC's nationally operated websites and those targeted to a single province or territory. These websites are addressed separately below.
37. The Commission notes that the Accessibility Policy encouraged all TSPs to adopt the W3C Guidelines to make the customer-service portion of their websites as accessible as possible for persons with disabilities. However, this policy only requires that TSPs make information on telecommunications services and products on their websites accessible to the point of providing a reasonable accommodation for persons with disabilities, and it does not go as far as requiring compliance with the W3C Guidelines.

Website Accessibility Initiative - Quebec only website

38. Of the total amount proposed for the website accessibility initiative, the company estimated that the drawdown of \$236,063 would be needed to fund the necessary upgrades for its *telusquebec.com* website. This website is for TCC's Quebec operating territory and underwent an independent rebuild which brought the website

into compliance with the W3C Guidelines level A standard and several level AA standards.

39. Given that telusquebec.com markets products and services only for those customers residing in Quebec, and that Quebec currently has no accessibility legislation in place prescribing accessibility requirements for the websites and customer services of TSPs, the Commission considers that this part of the company's website accessibility initiative does not raise competitive neutrality issues.
40. Accordingly, the Commission **approves** TCC's request for a deferral account drawdown of \$236,063 to cover the costs associated with the website accessibility upgrades for its telusquebec.com website.

Website Accessibility Initiative - National and Ontario only websites

41. TCC estimated that the amount of drawdown from its deferral account that would be needed to fund the necessary upgrades for its telus.com and telusmobility.com websites would be \$226,436, and the amount required to upgrade koodomobile.com would be \$103,040 (for a total of \$329,476).
42. As mentioned above, the AODA, among other things, lays out accessibility standards for websites offering services in Ontario, and identifies certain timelines for organizations operating in Ontario (including TCC as a provider of telecommunications services in Ontario) to meet these standards. For example, beginning on 1 January 2014, whenever a new or significantly updated website is published, it must follow the W3C Guidelines level A standard.
43. TCC indicated that from April 2013 to April 2014 its telus.com website underwent a total rebuild, part of which involved the migration of the telusmobility.com website into the telus.com website. This allowed the offering of a new unified digital experience through a single site. TCC noted that its koodomobile.com website went through a separate rebuild at the same time.
44. Since TCC completed the rebuild of these websites in 2014, it was subject to the above-noted website accessibility obligations under the AODA (i.e. WCAG 2.0 level A standard). As part of the present initiative, TCC proposed that it would draw upon its deferral account to fund website upgrades – primarily to the level A standard. As such, implementation of the national elements of TCC's website initiative would result in meeting the AODA's accessibility requirements for websites. Other TSPs operating in Ontario are also subject to the same AODA obligations, and these providers do not have access to deferral account funds to recover costs associated with website accessibility accommodations.
45. As regards TCC's submission that its proposed initiative would go beyond the AODA's accessibility requirements, the Commission considers that TCC's list of level AA standards adopted by telus.com and koodomobile.com consists of relatively minor updates and would not require \$329,476 to implement.

46. TCC has described its websites as introducing a new unified, single website. Therefore, the Commission considers that any changes made to the portion of TCC's website serving Ontario customers would consequently (and would have been) applied across the entire website as a whole.
47. Based on the above, the Commission finds that the use of deferral account funds to cover the costs associated with the upgrades to TCC's national and Ontario websites would not be competitively neutral.
48. Accordingly, the Commission **denies** TCC's request for deferral account drawdowns of \$226,436 and \$103,040 to cover the costs associated with the necessary upgrades for its telus.com and telusmobility.com, and koodomobile.com websites, respectively.

Conclusion

Follow-up proceeding

49. Based on the Commission's determinations set out above, an estimated amount of \$1,335,909 would remain unallocated in TCC's deferral account.
50. The Commission notes that various accessibility initiatives were identified on the record of (i) the Bell Canada proceeding that culminated in approved drawdowns, as set out in Telecom Decision 2014-527, and (ii) the most-recent Bell Canada proceeding where that company was asked to show cause why it should not be required to allocate its remaining deferral account funds to some or all of additional initiatives outlined in Telecom Decision 2014-527.⁸ With the issuance of Telecom Decision 2015-563, the Commission fully disposed of Bell Canada's deferral account funds allocated to improving accessibility.
51. The Commission considers that a similar approach should be taken to dispose of the remaining unallocated funds in TCC's deferral account. In fact, TCC indicated during the proceeding that it was investigating the Commission's determinations on Bell Canada's deferral account initiatives to see what initiatives could be relevant to it to use any remaining amounts of its deferral account funds. Accordingly, the Commission **directs** TCC to show cause, including the provision of detailed costing information, why it should not be required to use all of the \$1,335,909 of its unallocated deferral account funds for some or all of the four initiatives set out below:⁹

⁸ See paragraph 74 of Telecom Decision 2014-527.

⁹ These possible initiatives are either derived from the list of six possible initiatives at issue in Bell Canada's show cause proceeding (identified in paragraph 74 of Telecom Decision 2014-527 and discussed in the resulting decision, Telecom Decision 2015-563) or were approved by the Commission in Telecom Decision 2014-527.

- offer and support a smartphone with Universal Serial Bus On-the-Go (USB OTG) technology for at least 5 years (e.g. Samsung Galaxy S4). This smartphone should include the full Human Interface Device (HID) profile, which provides support for the connection of a wide variety of input devices such as mice, keyboards, and joysticks;
- offer a lower-price, easy-to-use wireless phone for blind persons for at least five years. This phone should offer a tactile, physical keyboard and would act as an alternative to the iPhone (whose touch screen is not accessible for persons who are blind);
- offer Code Factory’s Mobile Accessibility App with a compatible smartphone packaged as a lower-priced bundle for at least five years; and
- offer Tecla Access Solution and a compatible smartphone packaged as a lower-priced bundle for at least five years.¹⁰

Procedure

52. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to the follow-up proceeding referenced above.¹¹ For help understanding the Rules of Procedure, see the *Guidelines on the CRTC Rules of Practice and Procedure*.¹²

53. The procedure for the above-referenced follow-up proceeding is as follows:

- TCC is to file with the Commission its submission regarding the use of its unallocated deferral account funds in accordance with the proposed initiatives set out in paragraph 51 above by **19 July 2016**.
- Interested persons who wish to become parties to the show cause proceeding are to file with the Commission an intervention regarding TCC’s submission by **18 August 2016**.
- TCC may file replies to interventions with the Commission by **29 August 2016**.

¹⁰ This initiative should include the provision of technical support to TCC’s customers who use Tecla Access Solution.

¹¹ The Rules of Procedure set out, among other things, the rules for the content, format, filing, and service of interventions, answers, replies, and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out in this decision must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission’s website at www.crtc.gc.ca under “Statutes and Regulations.”

¹² These guidelines are set out in Broadcasting and Telecom Information Bulletin 2010-959.

Reporting

54. The Commission **directs** TCC to report to the Commission, as previously directed in Telecom Decision 2008-1, and until the deferral account funds are fully utilized, an annual report, by 31 March each year, detailing the initiatives implemented in the previous year. Additionally, the Commission **directs** TCC to report within **30 days** of the date of this decision when implementation of the approved initiatives is expected to be completed.

Summary of the Commission's determinations

55. A summary of the Commission's determinations is set out in the Appendix to this decision.

Secretary General

Related documents

- *Bell Canada and Bell Mobility Inc. – Show cause proceeding concerning the use of deferral account funds to improve access to telecommunications services for persons with disabilities*, Telecom Decision CRTC 2015-563, 21 December 2015
- *MTS Inc. – Proposals for the use of the remaining funds in the company's deferral account to improve access to telecommunications services for persons with disabilities*, Telecom Decision CRTC 2015-308, 13 July 2015
- *Bell Canada and Bell Mobility Inc. – Further proposals for the use of deferral account funds for accessibility initiatives*, Telecom Decision CRTC 2014-527, 8 October 2014
- *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009, as amended by Broadcasting and Telecom Regulatory Policy CRTC 2009-430-1, 17 December 2009
- *Use of deferral account funds to improve access to telecommunications services for persons with disabilities and to expand broadband services to rural and remote communities*, Telecom Decision CRTC 2008-1, 17 January 2008
- *Disposition of funds in the deferral accounts*, Telecom Decision CRTC 2006-9, 16 February 2006

- *Implementation of price regulation for Télébec and TELUS Québec*, Telecom Decision CRTC 2002-43, 31 July 2002
- *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002, as amended by Telecom Decision CRTC 2002-34-1, 15 July 2002

Appendix to Telecom Decision CRTC 2016-193

Summary of the Commission's determinations in this decision

Proposed initiative	Proposed deferral account drawdown	Commission's determination
Accessibility website section on Koodo website	\$3,243	Approved
Accessibility audit of wireless handsets	\$24,708	Approved
TCC's webmail portal	\$135,077	Approved
Website accessibility initiative: telusquebec.com	\$236,063	Approved
telus.com, telusmobility.com, koodomobile.com	\$329,476	Denied