



## Telecom Decision CRTC 2022-148

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Ottawa, 8 June 2022

*Public record: 8622-R28-202105304*

### **Rogers Communications Canada Inc. – Application for non-discriminatory and timely access under reasonable terms and conditions to the multi-dwelling unit at 70 Yorkville Avenue, Toronto, Ontario**

The Commission finds that Rogers Communications Canada Inc. (RCCI) is being denied access under reasonable terms and conditions to 70 Yorkville Avenue, Toronto, Ontario (70 Yorkville Avenue), a multi-dwelling unit (MDU) owned by Lixo Investments Limited.

The Commission **approves in part** RCCI's request that it be granted timely access under reasonable terms and conditions to 70 Yorkville Avenue for the purposes of installing, operating, repairing, maintaining, and replacing transmission facilities and ancillary telecommunications equipment. Pursuant to its powers under section 24 of the *Telecommunications Act*, the Commission is enforcing the MDU access condition, as set out in Telecom Decision 2003-45. At **30 days** and **45 days** following the date of this decision, increasingly stringent regulatory measures will come into effect unless RCCI reports that it has been granted timely access under reasonable terms and conditions.

The Commission **directs** all local exchange carriers and carrier Internet service providers serving occupants of 70 Yorkville Avenue, including Bell Canada and Distributel Communications Limited, to provide their customers in the building with a copy of this decision by mail, to be posted within **five days** following the date of this decision to ensure that the occupants are aware of any potential impacts on their telecommunications services.

### **Background**

1. In Telecom Decision 2003-45, the Commission set out the multi-dwelling unit (MDU) access framework, in which it emphasized the importance of facilitating competition and specified that end-users should have the right to access the telecommunications service provider (TSP) of their choice, regardless of the type of dwelling. The Commission also set out guidelines to assist building owners and local exchange carriers (LECs) in negotiating just and expedient conditions of access to MDUs.
2. In paragraph 141 of that decision, the Commission established the MDU access condition, which states the following:

Accordingly, pursuant to its powers under section 24 of the [Telecommunications] Act, the Commission requires that the provision of telecommunications service by a LEC in an MDU be subject to the condition that all LECs wishing to serve end-users in that MDU are able to access end-users in that MDU on a timely basis, by means of resale, leased facilities or their own facilities, at their choice, under reasonable terms and conditions (the MDU access condition).

3. In Telecom Regulatory Policy 2021-239, the Commission extended the MDU access condition and associated obligations to all carrier Internet service providers (ISPs) that provide services to end-users in MDUs.
4. In Telecom Decisions 2003-45 and 2021-239, the Commission indicated that it would take further action as appropriate to ensure that all LECs are able to provide telecommunications services in an MDU. In particular, the Commission specified that it would be prepared, in appropriate circumstances, to issue an order under section 42 of the *Telecommunications Act* (the Act), subject to such conditions as to compensation or otherwise as the Commission determines to be just and expedient.

## **70 Yorkville Avenue**

5. Rogers Communications Canada Inc. (RCCI) submitted in its Part 1 application that it installed facilities and began providing telecommunications services in 1984 to an MDU building located at 70 Yorkville Avenue, Toronto, Ontario (70 Yorkville Avenue).
6. RCCI stated that Lixo Investments Limited (Lixo) has been 70 Yorkville Avenue's registered owner since before RCCI installed telecommunications facilities on the premises. Lixo submitted that it has no knowledge of RCCI's facilities installed in the building or of any building occupants who are being served by these facilities.
7. Both Lixo and RCCI confirmed that there is no building access agreement, and RCCI submitted that Lixo has been denying RCCI access to 70 Yorkville Avenue for several years.
8. According to RCCI, it first became aware of noise issues that it suspected were emanating from its telecommunications facilities installed in 70 Yorkville Avenue in October 2020. RCCI submitted that it confirmed that the noise issues were emanating from its facilities in the building after an investigation in December 2020. RCCI added that it began requesting access to 70 Yorkville Avenue; however, Lixo's property manager repeatedly denied RCCI's requests to access the building.
9. RCCI submitted that it was seeking access to 70 Yorkville Avenue to perform installation, maintenance, and repair work on its transmission facilities installed in the building. RCCI added that the inability to access 70 Yorkville Avenue was having a negative impact on the quality of services provided to 10 RCCI customers in the building.

10. RCCI submitted that in December 2020, a temporary, technical workaround was implemented to maintain some quality of service to the customers who are serviced using the facilities. RCCI added that the consequence of that workaround has been increased congestion with services that are currently operating at an intermittent, degraded state. According to RCCI, these issues could be fixed promptly if it were granted access to 70 Yorkville Avenue.
11. RCCI submitted that on June 2021, a Lixo representative told RCCI that it would not be authorized to enter 70 Yorkville Avenue without a written and executed access agreement. RCCI added that it communicated its willingness to enter into such an agreement with Lixo. On 23 June 2021, RCCI emailed the representative to inform them of the MDU access condition and provided a draft building access agreement for review.
12. According to RCCI, Lixo's representative emailed a reply on 30 June 2021, asserting that any prior building access by RCCI must have been based on false pretenses and was not the result of the authorization of nor compensation to the building owners. RCCI submitted that the Lixo representative encouraged RCCI to seek legal remedies and concluded by saying that Lixo would be contacting the Commission to seek a written opinion on the matter. According to RCCI, the Lixo representative refused to engage further with RCCI.
13. RCCI stated that on 13 July 2021, its legal representatives sent Lixo a demand letter, in which it repeated its request for immediate access to 70 Yorkville Avenue and added that a denial of access would constitute a breach of the MDU access framework.
14. RCCI's legal representatives also notified Lixo in the 13 July demand letter that over the previous month, the degradation in the services it provides through the telecommunications facilities located in 70 Yorkville Avenue had worsened and was now also impacting RCCI's customers outside of the building.
15. RCCI submitted that its customers who reside in 70 Yorkville Avenue and customers whom RCCI serves in neighbouring properties are fed by the same service node, which is located outside of the building. The noise issues emanating from RCCI's facilities located inside of 70 Yorkville Avenue were impacting the service node. RCCI mentioned in the demand letter that over the past few days, the degradation was now affecting services not only to the 10 RCCI customers in 70 Yorkville Avenue but also to over 300 RCCI customers in surrounding MDU and single family properties.
16. RCCI submitted that Lixo's representative replied on 14 July 2021, asking RCCI to cease and desist from any attempt to gain access for any reason whatsoever to 70 Yorkville Avenue. RCCI added that it has not received any further response from Lixo.
17. RCCI submitted that it was not aware of the identity of other TSPs that might currently be operating in 70 Yorkville Avenue. Commission staff sent a request for

information on 8 April 2022 to gather additional information about TSP services provided to the occupants of 70 Yorkville Avenue. Both Bell Canada and Distributel Communications Limited (Distributel) confirmed they provide services to occupants of 70 Yorkville Avenue.

## **Application**

18. On 5 August 2021, RCCI filed an application, seeking a determination on an expedited basis. It requested that the Commission issue
- a declaration stating that Lixu is denying timely access under reasonable terms and conditions to 70 Yorkville Avenue, contrary to the Commission's MDU access framework;
  - an order that RCCI be granted non-discriminatory and timely access under reasonable terms and conditions to 70 Yorkville Avenue for the purposes of installing, operating, repairing, maintaining, and replacing transmission facilities and ancillary telecommunications equipment;
  - an order that other carriers immediately stop providing services to 70 Yorkville Avenue unless RCCI has also been granted timely access under reasonable terms and conditions; and
  - any other relief as the Commission may consider just and reasonable under the circumstances.
19. Commission staff issued a letter to Lixu and RCCI on 11 August 2021, setting out expedited filing deadlines in response to RCCI's request for the Commission to dispose of its application on an expedited basis.
20. On 20 August 2021, Lixu filed a response to RCCI's application in which it asked that the Commission dismiss RCCI's application or require that RCCI provide particulars that would enable Lixu to better understand and respond to the allegations made in the application.
21. The Commission received an intervention from Bell Canada.

## **Issues**

22. The Commission has identified the following issues to be addressed in this decision:
- Is RCCI being denied access to 70 Yorkville Avenue under reasonable terms and conditions?
  - If RCCI is being denied access, what form of access to 70 Yorkville Avenue by RCCI would constitute access under reasonable terms and conditions on a timely basis?

- What action, if any, should the Commission take to ensure that RCCI obtains access under reasonable terms and conditions on a timely basis to 70 Yorkville Avenue?

### **Is RCCI being denied access to 70 Yorkville Avenue under reasonable terms and conditions?**

#### **Positions of parties**

##### ***RCCI***

23. In its application, RCCI submitted that in Telecom Decision 2003-45, the Commission stated in the MDU access framework that as a condition of providing service, each LEC is required to ensure that all LECs wishing to serve end-users in an MDU are able to access end-users on a timely basis, under reasonable terms and conditions. Further, RCCI submitted that access to an MDU is to be granted to LECs not only for the purpose of installing their facilities, but also to repair and maintain them as a means to ensure they are able to provide reliable, high-quality service to their customers who reside in an MDU. RCCI added that the Commission has emphasized that one of the guiding principles is that end-users in MDUs should have direct access to the TSP of their choice.
24. RCCI argued that the denial of access to 70 Yorkville Avenue by Lixco breaches the Commission's MDU access condition. RCCI commented that these circumstances are particularly egregious because Lixco is aware that RCCI serves existing occupants, and that RCCI is willing to negotiate an access agreement on terms that it believes are fair and reasonable for both parties.
25. RCCI submitted that in recent years, its practice has been to only install facilities in an MDU where it has an access agreement with the building owner or developer. With respect to 70 Yorkville Avenue, however, RCCI indicated that the installation of its facilities took place many years ago when formal access agreements were not the norm. As a result, RCCI does not currently have a written access agreement in place with Lixco, despite having telecommunications facilities installed and customers in 70 Yorkville Avenue since 1984.
26. RCCI submitted that Commission intervention in this case is justified and that the relief requested by RCCI complies with the 2006 Policy Direction<sup>1</sup> and 2019 Policy Direction<sup>2</sup> (collectively, the Policy Directions) and would advance the policy objectives in section 7 of the Act, by, specifically,

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<sup>1</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

<sup>2</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

- providing end-users in MDUs with the ability to choose their preferred TSP, thus fostering competition in these MDUs; and
- ensuring that existing subscribers in 70 Yorkville Avenue have the highest quality of telecommunications services possible, free from unnecessary network or quality issues due to lack of access.

***Lixo's response***

27. Lixo submitted that it has no knowledge or record of any agreement or arrangement with RCCI with respect to RCCI's installed facilities and requested that RCCI provide particulars and documents pertaining to the installed facilities. Lixo added that it does not know whether RCCI's facilities were installed to serve customers who were occupants of 70 Yorkville Avenue or to serve customers at other locations.
28. Lixo disagreed that it has denied RCCI access to 70 Yorkville Avenue for a number of years. Lixo submitted that prior to the pandemic, the doors to 70 Yorkville Avenue were unlocked, and if RCCI has facilities in 70 Yorkville Avenue, Lixo suggested that RCCI had accessed the building without permission.
29. Lixo submitted that it requires more particulars about the MDU access framework and denied that RCCI is entitled to the relief sought in its application given that RCCI has failed to provide
- the agreement or arrangement whereby RCCI installed the facilities in 70 Yorkville Avenue in 1984;
  - the location of the facilities in 70 Yorkville Avenue;
  - the type, configuration, capabilities, and purpose of these facilities;
  - a list of the occupants who RCCI serves in 70 Yorkville Avenue and the types of service provided using these facilities; and
  - evidence that the facility is not serving customers outside of 70 Yorkville Avenue.
30. Lixo indicated that it is unable to substantively respond to the allegations contained in RCCI's application until it is provided with these particulars. Lixo requested that the Commission dismiss the application or require RCCI to provide this information.

***Bell Canada***

31. In its intervention, Bell Canada submitted that it services a handful of customers over copper lines at 70 Yorkville Avenue.

32. Bell Canada confirmed that it has no building access licence in place or any other agreement with Lixo that in any way prevents the owner of 70 Yorkville Avenue from entering into building access agreements with other TSPs.

***RCCI's response***

33. RCCI submitted that the demands for additional information that Lixo made in its answer are irrelevant to Lixo's refusal to grant access to RCCI to install, repair, and maintain facilities in 70 Yorkville Avenue. To address Lixo's request for additional information, RCCI submitted as part of its response a list with the number of current RCCI customers in 70 Yorkville Avenue and the services it provides to them.<sup>3</sup>

34. RCCI clarified that contrary to Lixo's suggestion, RCCI's facilities installed at 70 Yorkville Avenue do not serve customers residing outside of that building. The noise issues emanating from RCCI's facilities in 70 Yorkville Avenue are also impacting customers in surrounding properties; however, 70 Yorkville Avenue's facilities are used solely for the provision of services to the occupants of 70 Yorkville Avenue.

35. RCCI submitted that although it has continually provided services in 70 Yorkville Avenue since 1984, over the past several years, RCCI has not needed to enter the equipment room or the public areas of 70 Yorkville Avenue because it has been able to activate customers' services remotely.

36. RCCI further submitted that given its efforts to communicate with Lixo representatives over the past months, the suggestion by Lixo that it is unaware of the presence of RCCI's facilities and customers in 70 Yorkville Avenue, the contention that Lixo requires further information, and the request that Lixo needs a description of the MDU access framework before responding to the access request and RCCI's application are unacceptable. RCCI added that Lixo's assertions of being unaware of RCCI's facilities are a stall tactic and are contradicted by the evidence that RCCI placed on the record of this proceeding.

**Commission's analysis and determinations**

37. The Commission notes that RCCI does not have a building access agreement, that the representatives of Lixo and RCCI have not been able to negotiate one, and that they have not had any substantive discussions on granting access to 70 Yorkville Avenue since June 2021. RCCI submitted that Lixo has asked RCCI to cease and desist from any attempt to gain access for any reason whatsoever to 70 Yorkville Avenue. In addition, RCCI stated that it filed its application because Lixo was not responding to RCCI's request to negotiate an access agreement.

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<sup>3</sup> The confidential list contains the names and addresses of 10 customers and the services they are receiving from RCCI. The abridged version was placed on the public record and sent to Lixo as part of RCCI's reply.

38. Lixio denies knowledge of RCCI's installed telecommunications facilities, the location of the facilities in 70 Yorkville Avenue, and the services currently being provided by RCCI to occupants. Lixio submitted that RCCI is not entitled to access the building given that it has not provided this information to Lixio. The Commission finds that the fact that RCCI has not provided all of the information requested by Lixio is not by itself sufficient to justify denying access to 70 Yorkville Avenue.
39. The Commission notes that the record includes a list of RCCI's customers in 70 Yorkville Avenue, the type of services offered to each customer, and the date on which RCCI began offering those services. The Commission also considers that RCCI has clarified for Lixio that the facilities installed inside of 70 Yorkville Avenue are providing services solely to the building's occupants. Therefore, the Commission considers that RCCI has responded sufficiently for the purposes of this application to Lixio's request for more information, and demonstrated that it has customers in 70 Yorkville Avenue but that it cannot access the building to install, repair, or maintain its facilities used to serve those customers.
40. The Commission stated in Telecom Decision 2003-45 that LECs must have the ability to access and enter into MDUs in order to connect or install their facilities, as well as repair and maintain them and do whatever else may be required to provide reliable, high-quality service to end-users in MDUs. The Commission considers that by not allowing RCCI to enter 70 Yorkville Avenue to make repairs, Lixio is denying access to 70 Yorkville Avenue.
41. In light of the above, the Commission finds that RCCI is being denied access to 70 Yorkville Avenue under reasonable terms and conditions, contrary to the requirements of the MDU access framework.

**If RCCI is being denied access, what form of access to 70 Yorkville Avenue by RCCI would constitute access under reasonable terms and conditions on a timely basis?**

**Positions of parties**

***RCCI***

42. RCCI submitted that noise issues are believed to be emanating from facilities inside 70 Yorkville Avenue. Although a temporary technical workaround was implemented in December 2020, this workaround increased congestion. RCCI customers in surrounding properties also suffer from degraded services. RCCI added that this congestion is now causing customers' services to be operating at an intermittent, degraded state with potential negative impacts on connection reliability and speed. These customers may also not be able to select from a full complement of RCCI's services as a result of the congestion. RCCI submitted that its field operations team believes these issues could be fixed promptly if RCCI were granted access to 70 Yorkville Avenue.

43. RCCI indicated that it remains open to negotiating commercially reasonable access terms with Lixco. However, due to the refusal by Lixco's representatives to acknowledge the draft access agreement that RCCI sent to Lixco's representative, RCCI is not certain what terms Lixco would expect for access.
44. RCCI submitted that because it already has existing facilities in 70 Yorkville Avenue and is now being denied access to 70 Yorkville Avenue, it believes that fair and reasonable terms and conditions must also include, at a minimum, access to the areas where RCCI's facilities were installed prior to the denial of access. RCCI suggested that the Commission needs to make an immediate and swift example in circumstances of unjustified denial of access by MDU building owners, especially where TSPs have existing telecommunications facilities and already serve customers.

#### **Commission's analysis and determinations**

45. RCCI submitted in its application that customers residing in 70 Yorkville Avenue are currently suffering from degraded services due to its malfunctioning telecommunications facilities installed inside 70 Yorkville Avenue. These facilities inside the building are also negatively impacting a node located outside of the building, which serves hundreds of customers in surrounding properties. RCCI added that it must obtain access to 70 Yorkville Avenue to perform the maintenance and repair work necessary to ensure it is able to provide service to its customers in 70 Yorkville Avenue. This would also resolve the degradation in services to surrounding properties related to the node located outside of the property.
46. Considering the above and the objectives of the MDU access framework, the Commission is of the view that granting RCCI all of the access that it requires to maintain and repair its telecommunications facilities is necessary to ensure that consumers have access to quality and properly functioning telecommunications services. In addition, granting RCCI this access helps to ensure that it has the opportunity to offer services competitive to those of other TSPs.
47. Lixco did not provide any submission as to the appropriate conditions for RCCI to access the building, but instead continued to maintain its position that it did not need to allow access. The Commission considers that Lixco's refusal to provide RCCI with access is detrimental to the realization of the full benefits of competition contrary to Telecom Decision 2003-45, and is impacting TSPs' ability to make reliable, high-quality services available to Canadian consumers, including end-users residing in MDUs. To that effect, RCCI submitted that the congestion on its network is limiting the product differentiation and choice of services it can make available to end-users.
48. Granting RCCI immediate access will fulfill the policy objectives of the MDU access framework. This includes ensuring that end-users in an MDU have the right to access the TSP of their choice, regardless of the type of dwelling, and that all LECs wishing to serve end-users in an MDU are able to access end-user units on a timely basis by means of resale, leased facilities, or their own facilities, at their choice.

49. In light of the above, the Commission considers that RCCI must be granted access to 70 Yorkville Avenue as soon as possible. The Commission also considers that Lixó's refusal to grant RCCI access to 70 Yorkville Avenue under reasonable terms and conditions and its refusal to enter into discussions for negotiation of a building access agreement with RCCI is contrary to the MDU access framework's policy objectives of competition and end-user choice.
50. In this case, timely access under reasonable terms and conditions—such that the MDU access framework is satisfied—consists of, at a minimum, immediate access by RCCI to 70 Yorkville Avenue for the purposes of installing, operating, repairing, maintaining, and replacing transmission facilities and ancillary telecommunications equipment. This includes access to the areas where RCCI's telecommunications facilities are installed and any areas to which access is necessary to carry out the installing, operating, repairing, maintaining, and replacing, as the case may be.

**What action, if any, should the Commission take to ensure that RCCI obtains access under reasonable terms and conditions on a timely basis to 70 Yorkville Avenue?**

**Positions of parties**

***RCCI***

51. RCCI submitted that regulatory intervention is required to ensure that it can continue to properly serve its customers in 70 Yorkville Avenue and its customers in surrounding properties.
52. RCCI added that Telecom Decision 2003-45 provides that LECs are entitled to seek an order under section 42 of the Act in order to ensure that they are able to provide telecommunications services in an MDU where negotiations on access could not be concluded on a timely basis and where the Commission determines that access to an MDU has not been, or will likely not be, provided on a reasonable basis.
53. Given the negative impact on the quality of services received by RCCI's customers in 70 Yorkville Avenue and by customers in neighbouring properties, RCCI requested that the Commission impose an immediate access order, as it did in Telecom Decisions 2014-42 and 2015-148, rather than the milestone approach used in Telecom Decision 2016-324, when determining the appropriate relief in this current proceeding. Further, RCCI requested that the Commission impose an order that other carriers immediately stop providing services to 70 Yorkville Avenue unless RCCI has also been granted timely access under reasonable terms and conditions.

***Lixó's reply***

54. Lixó submitted, without offering a rationale to support its submission, that the Commission lacks the jurisdiction to make an order compelling Lixó to grant RCCI access to 70 Yorkville Avenue to the extent that RCCI is seeking.

### **Commission's analysis and determinations**

55. The MDU access framework is aimed at facilitating competition and ensuring end-users can access the TSP of their choice, regardless of the type of dwelling. As previously noted, the Commission indicated in Telecom Decision 2003-45 the action it could take in cases where negotiations on access could not be concluded on a timely basis, or where the Commission determines that access to an MDU has not been, or is not likely to be, provided on a reasonable basis. The intent of such action is to ensure that all LECs are able to provide telecommunications services in an MDU.
56. To enforce the MDU access framework, past actions taken by the Commission included both incremental and immediate access approaches. An incremental approach was adopted in occupied MDU properties to encourage prompt negotiations between a TSP and the building owner while limiting the impact on occupants who were being served by other TSPs that already had access to the building. For instance, in Telecom Decision 2022-5, the Commission set out conditions with escalating restrictions at 15, 30, and 45 days after its decision unless the property owner allowed access to the MDU. With this incremental approach, the Commission attempted to mitigate the impact on occupants by phasing in escalating restrictions to the types of services available to building occupants over time.
57. In this case, RCCI requested that the Commission issue an immediate access order under section 42 of the Act, and that rather than apply an incremental approach, the Commission adopt the immediate access approach similar to Telecom Decisions 2014-42 and 2015-148. In those decisions, rather than escalating restrictions coming into force in phases, the Commission directed that the applicant was to receive access by a certain date, or other TSPs would have to discontinue serving occupants residing in those MDUs.
58. RCCI's proposed approach is not appropriate in the circumstances because the Commission is not satisfied that parties have exhausted all reasonable avenues to reach a negotiated settlement for access to the MDU. An immediate access order could significantly impact occupants by causing a loss of telecommunications services before parties have exhausted all efforts to negotiate an access agreement.
59. The Commission considers that a modification to both the past incremental and immediate access approaches may provide increased incentive for parties to negotiate access, and that this modification is necessary in the present context given that 70 Yorkville Avenue has been occupied for more than 35 years. The impact of restricting carriers from serving new occupants or current occupants who are not already customers would likely be minimal and would not provide effective incentive for the parties to negotiate access.
60. The Commission considers that due to the number of RCCI's customers impacted by the malfunctioning node, combining the following restrictions would be more effective in incentivizing an accelerated resolution than the past incremental and

immediate access approaches adopted by the Commission: (i) preventing TSPs from taking on new customers and restricting TSPs from changing or upgrading services to their existing customers and (ii) reducing the time period in which escalating restrictions come into force. In the incremental approach, the first restriction would normally occur 15 days after the date of this decision, and the second restriction, 30 days after, but in this case, they will be applied at the same time.

61. In light of the above, the Commission **approves in part** RCCI's request that it be granted timely access under reasonable terms and conditions to 70 Yorkville Avenue for the purposes of installing, operating, repairing, maintaining, and replacing transmission facilities and ancillary telecommunications equipment. Rather than approve RCCI's request for an immediate order under section 42 of the Act, the Commission is enforcing the MDU access condition pursuant to section 24 of the Act by imposing conditions on the LECs and carrier ISPs currently serving 70 Yorkville Avenue. The Commission considers that it is unnecessary to address Lixco's submission with respect to the Commission's jurisdiction under that statutory provision because the Commission is not issuing an order under section 42 of the Act at this time.
62. Pursuant to subparagraph 37(1)(b), the Commission **directs** RCCI to file a report with the Commission within **24 hours** of having been granted access under reasonable terms and conditions to 70 Yorkville Avenue. RCCI must, at the same time, serve the report on all parties to this proceeding, including Bell Canada, Distributel, and any other LECs and carrier ISPs providing services at 70 Yorkville Avenue.
63. Unless RCCI reports that it has been granted access to 70 Yorkville Avenue under reasonable terms and conditions, the Commission will consider that it has not been provided access. Pursuant to section 24 of the Act, at **30 days** following the date of this decision, any LECs and carrier ISPs, including Bell Canada and Distributel, which are already providing services to residential, retail, and commercial occupants of 70 Yorkville Avenue via copper wire and fibre, are not permitted to
  - provide services to any new occupants;
  - provide services to any current occupants who are not an existing customer of the service provider; and
  - modify or upgrade services being provided to any occupants (excluding requests from occupants to cancel any services provided by the LEC or carrier ISP).
64. These cumulative conditions will remain in force, and parties should understand them as being in force, until the Commission's receipt of the report from RCCI that access has been granted under reasonable terms and conditions. Upon the Commission's receipt of such report from RCCI, these conditions will be considered lifted.

65. If at **45 days** following the date of this decision, RCCI has not reported that it has received access under reasonable terms and conditions, the Commission will consider all regulatory options available to it, such as imposing requirements under sections 24 and 42 of the Act, including an order restricting any LECs and carrier ISPs from being permitted to provide any telecommunications services to occupants of 70 Yorkville Avenue.
66. In addition to RCCI's report that access has been granted, the Commission **directs** RCCI to inform the Commission of the state of its negotiations, with reports to be filed at **30 days** and **45 days** following the date of this decision.
67. The Commission also **directs** all LECs and carrier ISPs serving occupants of 70 Yorkville Avenue, including Bell Canada and Distributel, to provide their customers in the building with a copy of this decision by mail, to be posted within **five days** following the date of this decision.
68. Parties are reminded that if they believe that building access negotiations are not resulting in reasonable terms and conditions between parties, they can file a request for staff-assisted dispute resolution with the Commission.

## **Conclusion**

69. The Commission finds that RCCI is being denied access to 70 Yorkville Avenue under reasonable terms and conditions, contrary to the requirements of the MDU access framework.
70. In this case, timely access under reasonable terms and conditions—such that the MDU access framework is satisfied—consists of, at a minimum, immediate access by RCCI to 70 Yorkville Avenue for the purposes of installing, operating, repairing, maintaining, and replacing transmission facilities and ancillary telecommunications equipment. This includes access to the areas where RCCI's telecommunications facilities are installed and any areas to which access is necessary to carry out the installing, operating, repairing, maintaining, and replacing, as the case may be.
71. The Commission **approves in part** RCCI's request that it be granted timely access under reasonable terms and conditions to 70 Yorkville Avenue for the purposes of installing, operating, repairing, maintaining, and replacing transmission facilities and ancillary telecommunications equipment.
72. Pursuant to subparagraph 37(1)(b), the Commission **directs** RCCI to file a report with the Commission within **24 hours** of having been granted access under reasonable terms and conditions to 70 Yorkville Avenue. RCCI must, at the same time, serve the report on all parties to this proceeding, including Bell Canada, Distributel, and any other LECs and carrier ISPs providing services at 70 Yorkville Avenue.
73. Unless RCCI reports that it has been granted access to 70 Yorkville Avenue under reasonable terms and conditions, the Commission will consider that it has not been provided access. Pursuant to section 24 of the Act, at **30 days** following the date of

this decision, any LECs and carrier ISPs, including Bell Canada and Distributel, which are already providing services to residential, retail, and commercial occupants of 70 Yorkville Avenue via copper wire and fibre, are not permitted to

- provide services to any new occupants;
- provide services to any current occupants who are not an existing customer of the service provider; and
- modify or upgrade services being provided to any occupants (excluding requests from occupants to cancel any services provided by the LEC or carrier ISP).

74. These cumulative conditions will remain in force, and parties should understand them as being in force, until the Commission's receipt of the report from RCCI that access has been granted under reasonable terms and conditions. Upon the Commission's receipt of such report from RCCI, these conditions will be considered lifted.

75. If at **45 days** following the date of this decision, RCCI has not reported that it has received access under reasonable terms and conditions, the Commission will consider all regulatory options available to it, such as imposing requirements under sections 24 and 42 of the Act, including an order restricting any LECs and carrier ISPs from being permitted to provide any telecommunications services to occupants of 70 Yorkville Avenue.

76. In addition to RCCI's report that access has been granted, the Commission **directs** RCCI to inform the Commission of the state of its negotiations, with reports to be filed at **30 days** and **45 days** following the date of this decision.

77. The Commission also **directs** all LECs and carrier ISPs serving occupants of 70 Yorkville Avenue, including Bell Canada and Distributel, to provide their customers in the building with a copy of this decision by mail, to be posted within **five days** following the date of this decision.

## **Policy Directions**

78. The Commission is required, in exercising its powers and performing its duties under the Act, to implement the policy objectives set out in section 7 of the Act, in accordance with the Policy Directions. The Commission considers that its determinations in this decision are consistent with the Policy Directions for the reasons set out below.

79. The Commission considers that its determinations in this decision advance the policy objectives set out in paragraphs 7(b), (c), (f), and (h) of the Act.<sup>4</sup> In the Commission's

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<sup>4</sup> The cited policy objectives are: 7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;

view, its determinations will enable end-users in MDUs to have a choice of TSP and will foster greater competition in the offering of telecommunications services in MDUs. It will also allow for the restoration of the currently degraded services.

80. In making these determinations, the Commission also considered the governing principles of Telecom Decision 2003-45, which include maximizing the choice of TSPs for end-users in MDUs.
81. The Commission further considers that if RCCI continues to be denied timely access under reasonable terms and conditions to 70 Yorkville Avenue, it will be necessary for the Commission to exercise additional powers in order to provide end-users with the ability to subscribe to RCCI's offered services.
82. The Commission therefore considers that, in accordance with subparagraphs 1(a)(ii) and 1(b)(iv) of the 2006 Policy Direction and subparagraphs 1(a)(i), (iv), and (v) of the 2019 Policy Direction, its determinations in this decision (i) are efficient and proportionate to their purpose and interfere with competitive market forces to the minimum extent necessary to meet the policy objectives noted above; (ii) ensure technological and competitive neutrality; (iii) encourage all forms of competition; and (iv) enhance and protect the rights of consumers in their relationships with TSPs.

Secretary General

### **Related documents**

- *Rogers Communications Canada Inc. – Request for non-discriminatory and timely access to the Telegraph Square multi-dwelling unit development and to future developments by IronGate Developments Inc.*, Telecom Decision CRTC 2022-5, 14 January 2022
- *Access to in-building wire in multi-dwelling units*, Telecom Regulatory Policy CRTC 2021-239, 27 July 2021
- *Beanfield Technologies Inc. – Application for timely access on reasonable terms and conditions to multi-dwelling units located in Toronto, Ontario*, Telecom Decision CRTC 2016-324, 15 August 2016
- *Bell Canada - Application for timely access on reasonable terms to Edenshaw Homes Limited's Chaz Yorkville multi-dwelling unit project*, Telecom Decision CRTC 2015-148, 16 April 2015

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7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and 7(h) to respond to the economic and social requirements of users of telecommunications services.

- *Bell Canada – Request for access to Plaza Corporation’s York Harbour Club multi-dwelling unit building project*, Telecom Decision CRTC 2014-42, 5 February 2014
- *Provision of telecommunications services to customers in multi-dwelling units*, Telecom Decision CRTC 2003-45, 30 June 2003