



## Telecom Decision CRTC 2022-5

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Ottawa, 14 January 2022

*Public record: 8622-R28-202102862*

### **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.**

The Commission finds that Rogers Communications Canada Inc. (RCCI) was denied timely access under reasonable terms and conditions to Telegraph Square, a multi-dwelling unit (MDU) built by IronGate Developments Inc. (IronGate).

The Commission **approves** RCCI's request for timely access under reasonable terms and conditions to Telegraph Square for purposes of installing, operating, maintaining, and replacing transmission facilities and ancillary telecommunications equipment. The Commission is enforcing the MDU access condition and determines that if access on reasonable terms and conditions is not allowed, increasingly stringent regulatory measures will be applied to facilitate competition and maximize consumer choice. The Commission determines that at a minimum such reasonable terms and conditions include allowing RCCI immediate access to the main terminal room (MTR) and vertical risers connecting the MTR to each end user's unit for the purposes of installing, operating, maintaining, and replacing RCCI's telecommunications facilities, as described in the company's application, and allowing RCCI access to each unit as required for the purpose of installing its fibre.

The Commission **directs** RCCI and IronGate to inform it of the state of their negotiations, with the first three reports to be filed **15, 30, and 45 days** following the date of this decision. All other reports thereafter are to be filed on a monthly basis until RCCI has obtained access to Telegraph Square.

The Commission **denies** RCCI's request for an order granting it timely access under reasonable terms and conditions to IronGate's future developments for the purposes of installing, operating, maintaining, and replacing transmission facilities and ancillary telecommunications equipment. The Commission also **denies** RCCI's request for an order stating that no carriers be permitted to provide services to these future developments unless RCCI has also been granted timely access under reasonable terms and conditions. However, the Commission is prepared to consider all available options should IronGate deny access to its future developments under reasonable terms and conditions on a timely basis, such as an order under section 42 of the *Telecommunications Act* and the imposition of an administrative monetary penalty to encourage further compliance in the event that any such order is not complied with.

## 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 end-user choice as well as the fact that end-users should have the right to access the telecommunications service<sup>1</sup> provider (TSP) of their choice regardless of the type of dwelling.
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 [local exchange carrier] 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).<sup>2</sup>

3. In that same decision, the Commission set out guidelines to assist building owners and LECs in negotiating just and expedient conditions of access to MDUs. These guidelines state, among other things, that LECs should be able to access MDUs during the construction stage.
4. According to Rogers Communications Canada Inc. (RCCI), Stephen Brittain is the president of IronGate Developments Inc. (IronGate) and the property developer who owned and operated both Village View LP (Village View) and IronGate. RCCI submitted that since 2012 it has sought access to several IronGate and Village View MDU developments. RCCI has accessed four of these MDU developments and is seeking access to the fifth MDU development, Telegraph Square.
5. Village View has constructed four buildings on Noel Avenue in Saint John, New Brunswick. IronGate is currently developing Telegraph Square, located at 29 Canterbury Street, in Saint John, New Brunswick.

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<sup>1</sup> Telecommunications services include any service involving the use of telecommunications in whole or in part and which is provided by any person, organization, unit, or legal entity to any other private person, organization, unit, or legal entity.

<sup>2</sup> In Telecom Regulatory Policy 2021-239, the Commission issued a number of determinations regarding access to MDU in-building wiring (IBW). In particular, the Commission determined that a competitor's choice to access end-users by means of reselling or leasing fibre IBW would not be mandated but rather subject to a commercial agreement being reached with the owner of the fibre IBW, without a tariff being required. Under this modification, competitors still have the ability to access the MDU to install their own fibre IBW in an MDU under the MDU access condition. The Commission also extended the modified MDU access condition and associated obligations to all carrier Internet service providers (ISPs). In other words, all carrier ISPs are to have access to copper IBW on the same basis as LECs.

## Application

6. On 6 May 2021, RCCI filed an application requesting that the Commission issue
  - a declaration stating that IronGate is denying access under reasonable terms and conditions to Telegraph Square, contrary to the Commission's MDU access framework;
  - an order that RCCI be granted timely access under reasonable terms and conditions to Telegraph Square and to IronGate's future developments for purposes of installing, operating, maintaining, and replacing transmission facilities and ancillary telecommunications equipment;
  - an order prohibiting other carriers to provide services to Telegraph Square or IronGate's future developments 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.
7. In its application, RCCI submitted that the installation of wiring and other facilities at Telegraph Square had already taken place, or would take place by the beginning of June. As a result, RCCI requested that the Commission issue a determination on an expedited basis.
8. On 11 May 2021, Commission staff issued a [procedural letter](#) providing IronGate and interested persons with ten days to comment on RCCI's application.<sup>3</sup> RCCI was given five days following the initial comment period to file its reply. No interventions were received and IronGate did not respond to RCCI's reply.
9. RCCI identified Bell Canada as the sole-service provider to Telegraph Square. Commission staff sent a [request for information](#) (RFI) to Bell Canada on 11 June 2021, asking for its comments on this proceeding. IronGate and RCCI were given until 30 June 2021 to reply to Bell Canada's RFI response.
10. On 25 June 2021, IronGate contacted Commission staff. During a subsequent telephone discussion with staff, Stephen Brittain stated that IronGate was unaware of the proceeding until Bell Canada emailed IronGate a copy of its RFI response.
11. On 8 July 2021, IronGate was provided with a Commission letter and a copy of the entire record. The Commission established new deadlines for IronGate to respond to

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<sup>3</sup> IronGate was served the application, procedural letter, and request for information at the mailing address provided by RCCI. There was no email address on the record, nor could Commission staff obtain an email address. Additionally, repeated attempts to reach Stephen Brittain at the number provided by IronGate staff were unsuccessful.

RCCI's application and to Bell Canada's response to the RFI. RCCI was allowed additional time to file a reply to IronGate's response.

12. On 20 July 2021, RCCI confirmed that IronGate had not contacted it nor had IronGate replied to RCCI's application as allowed by Commission staff in the letter issued on 8 July 2021. IronGate made no submissions or replies on the record for this proceeding.

## **Issues**

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

- Is RCCI being denied access to Telegraph Square under reasonable terms and conditions?
- If so, what form of access to Telegraph Square 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 to Telegraph Square under reasonable terms and conditions on a timely basis?
- What further action, if any, should the Commission take to help ensure that IronGate provides access under reasonable terms and conditions on a timely basis to future developments for all TSPs?

## **Is RCCI being denied access to Telegraph Square under reasonable terms and conditions?**

### **Positions of parties**

#### **RCCI**

14. RCCI submitted that it is being denied access to Telegraph Square under reasonable terms and conditions. RCCI argued that after it had entered into agreements for access to the first two buildings developed by Village View, Stephen Brittain denied RCCI access to three subsequent properties, including Telegraph Square.
15. RCCI stated that it began requesting access to Village View's third MDU in the summer of 2017, during the construction phase. RCCI added that it was asked to pay \$50,000 for access to the building. RCCI stated that it declined to pay the requested amount and advised Stephen Brittain that in Telecom Decision 2003-45, the Commission determined that it was unacceptable for developers to demand payment of an access fee.
16. RCCI submitted that in June 2018 it contacted Stephen Brittain for access to Village View's fourth MDU. According to RCCI, Stephen Brittain indicated that he no longer wanted to work with RCCI and that he preferred using Bell Canada as the sole-

service provider. RCCI added that it informed Stephen Brittain of the Commission's rules requiring building owners to provide all interested service providers with access to their MDUs.

17. RCCI submitted that buildings one through four were sold after construction was completed and that in fall 2020, IronGate commenced construction on Telegraph Square.
18. RCCI stated that between October 2020 and March 2021, during the construction phase, it repeatedly requested and was denied access to Telegraph Square. RCCI added that it initially approached IronGate in October 2020, to inquire about installing wiring, indicating that it would cover all installation costs. According to RCCI, IronGate refused to provide it with access to Telegraph Square unless RCCI paid a \$100,000 access fee.
19. RCCI submitted that on 24 March 2021 it sent IronGate a letter, outlining the Commission's rules and related decisions, as well as the MDU access framework set out in Telecom Decision 2003-45. RCCI added that in each subsequent Commission decision referenced in the letter, the Commission required the property developers to provide access to their properties under reasonable terms and conditions. In the letter, RCCI stated that in the past, if the developer failed to meet this requirement, the Commission ordered existing service providers to the property to cease providing telecommunications services to MDU residents until the MDU access framework conditions were met.
20. RCCI submitted that it had multiple exchanges with IronGate after it initially reached out about Telegraph Square in October 2020. However, when RCCI requested a response to the 24 March 2021 letter, IronGate stopped responding. RCCI attempted to contact IronGate on three occasions after sending the letter. Due to the lack of response from IronGate, RCCI filed its application for relief from the inability to obtain timely access to Telegraph Square.
21. RCCI argued that, in contradiction of the MDU access framework, IronGate ignored RCCI's repeated requests for access to Telegraph Square under reasonable terms and conditions. Further, RCCI added that it was asked to pay unwarranted access fees.
22. RCCI submitted that if Telegraph Square was to be completed before RCCI was able to enter into an access agreement with IronGate, RCCI would need to seek an agreement with the MDU's strata corporation. As a result, RCCI would only be able to install its facilities several months, if not more, after Bell Canada would have had an opportunity to complete its installations and market its services to the residents as they were moving into the building. RCCI stated that requiring a carrier to incur additional costs to install its facilities and delaying its marketing efforts to the occupants of an MDU has a direct adverse impact on effective competition. RCCI added that this would impact the ultimate cost of services and residents' right to choose from among different service providers on the date of occupancy.

23. RCCI argued that the post-construction installation of telecommunications networks can be more costly for the service provider, making it less economical for a carrier to offer services in the building. RCCI added that in order for competing carriers and building owners to complete the installation of facilities and equipment in an MDU efficiently and cost-effectively for both parties, it is imperative that the parties meet in a timely manner prior to construction to assess, plan, and coordinate the types of facilities to be installed and to put in place the necessary agreements, plans, and municipal consents and permits.
24. RCCI submitted that it remains open to negotiating commercially reasonable access terms to Telegraph Square with IronGate. However, it added that due to IronGate's repeated refusal to respond to RCCI's requests for a meaningful negotiation, regulatory intervention is now required in this case.
25. RCCI submitted that Commission intervention is justified in this case and that the relief RCCI requested complies with the 2006 Policy Direction<sup>4</sup> and would advance the policy objectives set out in section 7 of the Act, specifically,
- providing RCCI and other competing carriers with access to IronGate's MDU developments during the construction stage, thus enhancing the carriers' ability to efficiently deliver innovative and differentiated telecommunications services; and
  - providing end-users in IronGate's MDU developments with the ability to choose their preferred TSPs, thus fostering competition in these MDUs.

#### **Bell Canada's RFI response**

26. Bell Canada submitted that it had no knowledge of the building access negotiations between RCCI and IronGate pertaining to Telegraph Square. Bell Canada submitted that the building access licence that it entered into with IronGate with respect to Telegraph Square is non-exclusive and aligns with the Commission's regulatory framework. According to Bell Canada, the licence does not in any way prohibit or preclude any other service providers, including RCCI, from accessing the property under reasonable terms and conditions on a timely basis to provide their competing telecommunications services to residents.

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

27. RCCI does not have access to Telegraph Square and the record indicates that representatives of IronGate and RCCI have not had any substantive discussions on granting RCCI access since March 2021. In July 2021, IronGate approached Commission staff, submitting that it was willing to negotiate with RCCI and that

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<sup>4</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

IronGate would be reaching out to RCCI to discuss a resolution to this proceeding. However, as of 20 July 2021, RCCI had received no communication from IronGate.

28. By refusing to negotiate or communicate with RCCI, IronGate is denying RCCI access to the MDU, contrary to the MDU access framework's core principles of competition and end-user choice.
29. According to RCCI, IronGate was requiring RCCI to pay a fee before granting it access to Telegraph Square. In Telecom Decision 2003-45, the Commission stated that access fees for the right to enter MDUs that are in the nature of an admission or entry fee (as opposed to other, approved, fees such as for the use of IBW under the control of building owners or for the use of space occupied by telecommunications facilities) are not appropriate. As such, to the extent that IronGate was requiring RCCI to pay an access fee, that behavior would also be contrary to the MDU access framework.
30. The Commission therefore finds that RCCI is being denied access to Telegraph Square under reasonable terms and conditions.

**What form of access to Telegraph Square by RCCI would constitute access under reasonable terms and conditions on a timely basis?**

**Positions of parties**

**Bell Canada's RFI response**

31. Bell Canada submitted that if the Commission granted RCCI's request to limit Bell Canada's access to Telegraph Square, it would be prudent to take an incremental approach in order to mitigate the impact on residents of the MDU.

**RCCI**

32. RCCI submitted that in Telecom Decision 2016-324, a condominium corporation denied the service provider, Beanfield Technologies Inc. (Beanfield), access to several MDUs that had already been constructed. Conversely, in the current situation, IronGate is denying RCCI access to a property that is still under construction. RCCI submitted that it was seeking an expedited order from the Commission requiring IronGate to grant RCCI access to Telegraph Square during the construction phase and to provide more choice to the residents upon occupancy.
33. RCCI submitted that in Telecom Decision 2015-148, the Commission determined that timely access involves physical access to the MDU in a timely manner during the construction phase, not simply the opportunity to negotiate access terms at a suitable time in the construction phase. In that decision, the Commission granted Bell Canada immediate access to the MDU so it could extend its network from the street to the

main terminal room (MTR)<sup>5</sup> and to individual units upon request. The decision was issued before the MDU occupancy dates. As a result, the other service providers were not permitted to provide telecommunications services in the MDU unless the property developer granted access to Bell Canada. In the current situation, since Telegraph Square was still under construction when RCCI submitted its application and occupancy was not expected until fall 2021, RCCI argued that an immediate access order is necessary to fulfill the Commission's policy objectives of competition and end-user choice in MDUs.

34. RCCI also referred to Telecom Decision 2014-42, noting that in that decision the Commission granted Bell Canada immediate access to the MDU's MTR, and to each unit after the occupancy date. The Commission issued this decision before the first MDU occupancy date. As a result, the other service provider, RCCI, was not permitted to provide telecommunications services in the MDU unless the property developer granted Bell Canada access. RCCI submitted that, similarly, in the current situation IronGate has ignored its repeated attempts to negotiate an access agreement under reasonable terms and refused to grant it access to Telegraph Square, which contravenes the Commission's MDU access framework. RCCI argued that an immediate access order is the appropriate relief in this situation.
35. RCCI submitted that since Telegraph Square was under construction and no residents had moved in, Bell Canada's concern about impacting residents in the MDU already being served by other TSPs was irrelevant. No end-users would be impacted by granting RCCI an immediate access order because no residents would be occupying the property yet.

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

36. Given Telegraph Square's anticipated occupancy timeline of fall 2021, the Commission considers that occupants will likely be residing in the building by the time this decision is issued. In Telecom Decision 2007-69, the Commission stated that by not allowing access to certain TSPs during construction, residents were denied the choice of those TSPs for their telecommunications services at the time when they moved into the building.
37. Contrary to the MDU access framework's core principles of competition and end-user choice, by refusing to negotiate or communicate with RCCI, IronGate is denying residents the choice of which TSP they will retain for their telecommunications services at the time they take possession of their units.
38. During a discussion with Commission staff, IronGate indicated its willingness to participate in this proceeding. However, IronGate's subsequent lack of participation, in addition to its lack of engagement in negotiations with RCCI, has delayed this proceeding and may have resulted in RCCI missing the opportunity to gain access to

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<sup>5</sup> The MTR is where TSPs' wires enter a building from the outside, such as from the street.

Telegraph Square during the construction phase. This delay in access may increase the cost, time, and impact for RCCI to install wiring in a completed and occupied MDU property, thus further degrading effective competition between TSPs in Telegraph Square.

39. The Commission considers that RCCI should be allowed access to Telegraph Square as soon as possible, for the following reasons:

- IronGate's refusal to provide RCCI with access is harming the residents' right to choose from among different service providers on the date of occupancy and thereafter, and to realize the full benefits of competition.
- RCCI submitted in its application that it often takes several weeks for the parties to negotiate the terms and conditions for timely access and to settle documents, as well as for the TSPs to obtain municipal consents and permits before installing their facilities and equipment in an MDU.
- RCCI will install its facilities several months after Bell Canada has had an opportunity to complete its installations and after Bell Canada has already marketed its services to the residents, some or many of whom will have likely already moved into Telegraph Square.

40. In addition, based on information contained in RCCI's submission, IronGate's business model has historically involved selling the MDU post-construction. To avoid further delays to RCCI's ability to access Telegraph Square, it is preferable to require access before IronGate has an opportunity to sell the property.

41. In the case of Telegraph Square, timely access under reasonable terms and conditions should consist of immediately allowing RCCI to enter the property for the purpose of installing its communication network facilities in the manner outlined in its application. Specifically, RCCI submitted that installation would require it to pull fibre from the street into the MTR and place equipment in the MTR. RCCI would then run the fibre from the MTR through vertical risers directly to individual end-user units, with termination of the fibre at junction boxes in each end-user's unit.

42. Granting RCCI access to all of the individual units in the MDU will fulfill several of the MDU framework's policy objectives, including ensuring that end-users in a new MDU have the right to access the TSP of their choice regardless of the type of dwelling.

43. The MDU access condition gives LECs and carrier ISPs the choice of how to serve end-users by means of resale, leased facilities, or their own facilities.<sup>6</sup> RCCI's

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<sup>6</sup> As noted previously, the MDU access condition was modified in Telecom Regulatory Policy 2021-239, in which the Commission determined that a competitor's choice to access end-users by means of reselling or leasing fibre IBW would not be mandated but rather subject to a commercial agreement being reached with the owner of the fibre IBW, and without a tariff being required. Under this modification, competitors still

installation approach is commonly used by TSPs to install fibre in MDUs of Telegraph Square's size. The Commission considers this to be a reasonable and appropriate means to access end-users in Telegraph Square. The Commission also considers that the potential disruption to residents would be minimal as the installation of fibre from the MTR directly to the units requires the majority of the work to take place outside of the residents' units. Disruption would mainly be limited to the installation of a junction box within each unit.

44. In light of the above, the Commission is of the view that IronGate's refusal to grant RCCI access to the MDU under reasonable terms and conditions during construction, and its refusal to negotiate with RCCI or participate in this proceeding, are contrary to the MDU access framework's core principles of competition and end-user choice.
45. The Commission finds that timely access under reasonable terms and conditions, such that the MDU access framework is satisfied, consists of, at a minimum,
- allowing RCCI immediate access to the MTR and vertical risers connecting the MTR to each end-user's unit for the purposes of installing, operating, maintaining, and replacing RCCI's telecommunications facilities, as described in the company's application; and
  - allowing RCCI access to each unit as required for the purpose of installing its fibre.

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

**Positions of parties**

**RCCI**

46. RCCI submitted that if it is not granted access to Telegraph Square under reasonable terms and conditions, the Commission should order that no other carriers are permitted to provide services to the Telegraph Square building unless RCCI has also been granted timely access under reasonable terms and conditions.

**Bell Canada's RFI response**

47. Bell Canada suggested an approach similar to the one set out in Telecom Decision 2016-324, in which the prohibition of services to the property escalated at 60, 90, and 120 days, limiting the impact on residents unless or until all other attempts to resolve the dispute had been tried.

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have the ability to access the MDU to install their own fibre IBW in an MDU under the MDU access condition.

### **RCCI's reply to Bell Canada's RFI response**

48. RCCI submitted that Bell Canada's suggestion for a series of escalating access milestones to be met by IronGate, similar to the access order issued in Telecom Decision 2016-324, would not be an appropriate remedy in this situation.
49. RCCI submitted that since Telegraph Square is still under construction, the current situation is not analogous to that in Telecom Decision 2016-324 but more closely resembles that in Telecom Decisions 2014-42 and 2015-148, in which the Commission granted the TSP immediate access to the MDU during construction. RCCI submitted that in those proceedings, like in the current one, a pattern of non-compliance to the MDU access framework and violations of its rules warranted immediate access orders.
50. RCCI submitted that the immediate relief granted in Telecom Decisions 2014-42 and 2015-148 is appropriate and necessary in the current situation, rather than the incremental approach suggested by Bell Canada and set out in Telecom Decision 2016-324.

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

51. In Telecom Decision 2003-45, the Commission stated that it would take such further action as was appropriate, depending on the circumstances of each case, to ensure that all LECs are able to provide telecommunications services in an MDU, in accordance with the MDU access framework.
52. In a number of previous decisions addressing MDU access,<sup>7</sup> the Commission relied on the MDU access condition and found that any LECs already present in the MDUs would not be permitted to provide telecommunications services in these MDUs unless the LEC seeking access was granted access under reasonable terms and conditions on a timely basis, by a specific date. The Commission further noted that should it be necessary, it also has the power to issue an order pursuant to section 42 of the Act.
53. In the present proceeding, the suitable remedy in the event that access continues to be denied should take into account whether Telegraph Square is vacant of MDU occupants at the time the Commission issues this decision. On balance, the Commission considers that the prudent approach is to assume that construction will be complete and that some occupants will likely be residing in Telegraph Square by the time this decision is issued.
54. The Commission has previously taken an incremental approach to access disputes for occupied MDU properties in order to limit the impact on residents in the MDU who are already being served by other service providers. For example, in Telecom Decision 2016-324, the Commission set out escalating prohibitions at 60, 90, and

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<sup>7</sup> See, for example, Telecom Decisions 2014-42, 2015-148, and 2016-324.

120 days after its decision if access requirements had not been met by the property owner. This approach takes into account the fact that residents in the MDU are likely being served by other service providers and is aimed at limiting the impact on the services they are receiving unless and until all other attempts to resolve the access dispute have been tried.

55. In the Commission's view, shorter time periods are required in this case due to (i) RCCI's submission that it has repeatedly attempted to negotiate access to three MDUs; (ii) the procedural delays during the proceeding which increase the likelihood that the building will be occupied by the time this decision is issued; and (iii) the importance of granting Telegraph Square residents a choice of service providers, preferably upon occupancy.
56. The Commission therefore **approves** RCCI's request for access to Telegraph Square under reasonable terms and conditions on a timely basis for purposes of installing, operating, maintaining, and replacing transmission facilities and ancillary telecommunications equipment. As such, unless RCCI is allowed access to Telegraph Square under reasonable terms and conditions, as defined above, the Commission will enforce the MDU access condition pursuant to section 24 of the Act, as follows:
- Within **15 days** following the date of this decision, Bell Canada and any other LEC or carrier ISP already in Telegraph Square will not be permitted to provide services to any new resident of Telegraph Square and will not be permitted to provide services to a current resident that is not an existing customer of the applicable service provider.
  - Within **30 days** following the date of this decision, any LEC or carrier ISP present in Telegraph Square will not be permitted to modify or upgrade the services being provided to a current resident.
  - Within **45 days** following the date of this decision, the Commission will explore all regulatory options available to it, including issuing an order under section 42 of the Act and issuing a decision which could result in all LECs and carrier ISPs present in Telegraph Square not being permitted to provide any services to the residents.
57. The Commission **directs** RCCI and IronGate to inform it of the state of their negotiations, with the first three reports to be filed within **15, 30, and 45 days** following the date of this decision. All other reports thereafter are to be filed on a monthly basis until RCCI has obtained access to Telegraph Square.
58. Although in this case the MDU access condition is being enforced against Bell Canada and any other carriers subject to the MDU access condition that are present in Telegraph Square, building owners are reminded that they are expected to cooperate with carriers to enable them to access end-users in their MDUs in compliance with the MDU access condition. This expectation applies regardless of who owns the building, including subsequent owners in the event of a sale. Building owners are also

reminded that access fees for the right to enter MDUs that are in the nature of an admission or entry fee (as opposed to other approved fees, such as for the use of IBW under the control of building owners or for the use of space occupied by telecommunications facilities, or certain costs associated with installing or upgrading IBW) are not appropriate.

59. The Commission also reminds parties, consistent with previous decisions of this nature, that it can issue an order pursuant to section 42 of the Act, if needed in the future.

**What further action, if any, should the Commission take to help ensure that IronGate provides access under reasonable terms and conditions on a timely basis to future developments for all TSPs?**

**Positions of parties**

**RCCI**

60. RCCI requested an order granting it access to IronGate's future developments under reasonable terms and conditions on a timely basis for the purposes of installing, operating, maintaining, and replacing transmission facilities and ancillary telecommunications equipment. RCCI also requested an order stating that no carriers be permitted to provide services to these future developments unless RCCI has also been granted access under reasonable terms and conditions on a timely basis.

**Bell Canada's RFI response**

61. In its reply to the RFI, Bell Canada submitted that it was unaware of any building access disputes in which the Commission issued an order regarding access to MDUs that do not currently exist or are not yet under construction, where reasonable and timely access had yet to be denied. Bell Canada added that it would be inconsistent with the Commission's practices to make an access order applicable to a theoretical dispute. In Bell Canada's view, the Commission's order should apply solely to Telegraph Square and exclude consideration of any future IronGate MDU developments.

**RCCI's reply to Bell Canada's RFI response**

62. RCCI disagreed with Bell Canada's comments regarding future properties. RCCI submitted that Stephen Brittain's behaviour justifies an access order that would apply not only to Telegraph Square, but also to future IronGate developments. According to RCCI, based on current and past actions it is reasonable to expect this behaviour to continue unless the Commission issues a clear decision that IronGate must respect the MDU access framework conditions for current and future developments. Accordingly, RCCI argued that an access order is necessary, not only for Telegraph Square but also for IronGate's future developments, in order to compel compliance with the MDU access framework.

63. RCCI submitted that it is imperative for Stephen Brittain to enter into negotiations with RCCI well in advance of the construction of future properties, so that the parties can agree on commercially reasonable terms. RCCI requested that, should the Commission determine not to extend the access order beyond Telegraph Square, the Commission, in its decision, make it clear to Stephen Brittain and to all carriers who might enter into access arrangements with IronGate during future developments, or with any other MDU developed by a company controlled by Stephen Brittain, that they will be unable to serve customers in those MDUs if RCCI is not permitted to access them during the construction phase in accordance with the MDU access framework.

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

64. The Commission deals with MDU access disputes on a case-by-case basis. It would not be appropriate for the Commission to issue an order for a potential future MDU access framework violation, even in cases where one party has demonstrated a history of not adhering to the MDU access framework.

65. The Commission therefore **denies** RCCI's request for an order granting it access to IronGate's future developments under reasonable terms and conditions on a timely basis. However, given IronGate's history of refusing to allow access to its MDU developments during the construction phase, and to address RCCI's concerns regarding access to future properties, the Commission is prepared to consider all available options should IronGate deny access to its future developments under reasonable terms and conditions on a timely basis, such as an order under section 42 of the Act and the imposition of an administrative monetary penalty to encourage future compliance in the event that any such order is not complied with.

66. The Commission also therefore **denies** RCCI's request for an order stating that no carriers be permitted to provide services to these future developments unless RCCI has also been granted timely access under reasonable terms and conditions.

### **Conclusion**

67. The Commission finds that RCCI is being denied access to Telegraph Square under reasonable terms and conditions on a timely basis.

68. In this case, access under reasonable terms and conditions on a timely basis, such that the MDU access framework is satisfied, consists of, at a minimum,

- allowing RCCI immediate access to the MTR and vertical risers connecting the MTR to each end-user's unit for the purposes of installing, operating, maintaining, and replacing RCCI's communications facilities, as described in the company's application; and
- allowing RCCI access to each unit as required for the purpose of installing its fibre.

69. The Commission **approves** RCCI's request for access to Telegraph Square under reasonable terms and conditions on a timely basis for the purposes of installing, operating, maintaining, and replacing transmission facilities and ancillary telecommunications equipment. The Commission is enforcing the MDU access condition pursuant to section 24 of the Act, and determines that if access under reasonable terms and conditions is not provided, increasingly stringent regulatory measures will be applied **15, 30, and 45 days** following the date of this decision to facilitate competition and maximize consumer choice.
70. The Commission **directs** RCCI and IronGate to inform it of the state of their negotiations, with the first three reports to be filed within **15, 30, and 45 days** following the date of this decision. All other reports thereafter are to be filed on a monthly basis until RCCI has obtained access to Telegraph Square.
71. The Commission **denies** RCCI's request for an order granting it access to IronGate's future developments under reasonable terms and conditions on a timely basis for the purposes of installing, operating, maintaining, and replacing transmission facilities and ancillary telecommunications equipment. It also **denies** RCCI's request for an order stating that no carriers be permitted to provide services to these future developments unless RCCI has also been access under reasonable terms and conditions on a timely basis.

## **Policy Directions**

72. 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 2006 Policy Directions and the 2019 Policy Directions<sup>8</sup> (collectively, the Policy Directions). The Commission considers that its determinations in this decision are consistent with the Policy Directions for the reasons set out below.
73. The Commission considers that its recommendations in this decision advance the policy objectives set out in paragraphs 7(b), (c), (f), and (h) of the Act.<sup>9</sup> The Commission is of the view that its determinations will enable end-users in Telegraph Square to have a choice of TSP and will foster greater competition in the offering of telecommunications services in MDUs.

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<sup>8</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

<sup>9</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; 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.

74. 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.
75. The Commission further considers that if RCCI continues to be denied timely access under reasonable terms and conditions to Telegraph Square it will be necessary for the Commission to exercise its power under section 24 of the Act, in order to provide end-users with the ability to select the service provider of their choice.
76. 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; (iv) enhance and protect the rights of consumers in their relationships with telecommunications service providers; and (v) reduce barriers to entry into the market and to competition for telecommunications service providers that are new, regional, or smaller than the incumbent national service providers.

Secretary General

### **Related documents**

- *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
- *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
- *Shaw Communications Inc. seeking non-discriminatory access to multi-dwelling units developed by Concord Pacific Group Inc. and enforcement of the undue preference and inside wire obligations on Novus Entertainment Inc.*, Telecom Decision CRTC 2007-69, 10 August 2007
- *Provision of telecommunications services to customers in multi-dwelling units*, Telecom Decision CRTC 2003-45, 30 June 2003