



Telecom Decision CRTC 2005-1

Ottawa, 7 January 2005

Vidéotron ltée's request to review and vary Orders 2003-236, 2003-404 and 2003-475

Reference: 8662-V3-200318263

*In this Decision, the Commission **approves, with changes**, an application by Vidéotron ltée to review and vary Le Téléphone de St-Liboire de Bagot Inc. – Use of carrier facilities, Telecom Order CRTC 2003-236, 10 June 2003, Le Téléphone de St-Éphrem inc. – Use of carrier facilities, Telecom Order CRTC 2003-404, 2 October 2003 and Téléphone Guèvremont inc. – Use of carrier facilities, Telecom Order CRTC 2003-475, 26 November 2003. Specifically, the Commission finds that the annual pole rental rate approved for Le Téléphone de St-Liboire de Bagot Inc., Le Téléphone de St-Éphrem inc. and Téléphone Guèvremont inc. should be reduced from \$15.45 to \$13.20.*

The application

1. The Commission received an application from Vidéotron ltée (Vidéotron), dated 4 December 2003, filed under section 62 of the *Telecommunications Act* (the Act), Part VII of the *CRTC Telecommunications Rules of Procedure and Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998 (Public Notice 98-6), requesting that the Commission review and vary *Le Téléphone de St-Liboire de Bagot Inc. – Use of carrier facilities*, Telecom Order CRTC 2003-236, 10 June 2003 (Order 2003-236), *Le Téléphone de St-Éphrem inc. – Use of carrier facilities*, Telecom Order CRTC 2003-404, 2 October 2003 (Order 2003-404) and *Téléphone Guèvremont inc. – Use of carrier facilities*, Telecom Order CRTC 2003-475, 26 November 2003 (Order 2003-475). Vidéotron requested that the Commission order Le Téléphone St-Liboire de Bagot Inc. (St-Liboire), Le Téléphone de St-Éphrem inc. (St-Éphrem) and Téléphone Guèvremont inc. (Guèvremont), (collectively, the Companies) to reduce their annual pole rental charge from \$15.45 to \$9.60.

Process

2. The Commission received comments from the Canadian Cable Television Association, now the Canadian Cable Telecommunications Association (CCTA) dated 5 January 2004 and from St-Liboire dated 8 March 2004. On 22 April 2004, Vidéotron filed reply comments.

Preliminary matter

3. The Commission notes that the CCTA failed to copy its intervention on the parties, adverse in interest, that will be affected by the outcome of this proceeding, namely St-Liboire, St-Éphrem and Guèvremont. Accordingly, the Commission did not consider CCTA's submission.

Background

4. In Telecom Order CRTC 95-191, 22 February 1995 (Order 95-191), the Commission approved Amtelecom Inc.'s annual pole rental rate of \$13.20.
5. In *Access to telephone company support structures*, Telecom Decision CRTC 95-13, 22 June 1995 (Decision 95-13), the Commission established uniform rates for the use of poles, strand and conduit of the large incumbent local exchange carriers (ILECs).¹ These rates included a monthly charge of \$0.80 for pole rental, or \$9.60 annually.
6. In *Regulatory framework for the small incumbent telephone companies*, Decision CRTC 2001-756, 14 December 2001 (Decision 2001-756), the Commission established the regulatory framework applicable to the small ILECs. The Commission assigned the small ILECs' services into four service baskets to which different pricing rules applied. In particular, the Commission assigned competitor access tariffs such as pole rental to the fourth basket. The Commission determined that rates for services in the fourth basket would generally be permitted to increase up to any already approved rate for the same service and that tariff applications should reference when and where the Commission had approved that rate. The Commission also determined that, for rate increases that would go beyond an already approved rate, an economic study must accompany the application.
7. In Orders 2003-236, 2003-404 and 2003-475, the Commission approved an annual pole rental charge of \$15.45 for the Companies.

Position of parties

Vidéotron's comments

8. Vidéotron submitted that there was substantial doubt as to the correctness of Orders 2003-236, 2003-404 and 2003-475. In Vidéotron's view, in making its determinations, the Commission had failed to consider the directions for setting pole rental rates which had been made in Decision 2001-756.
9. Vidéotron submitted that in Decision 2001-756, the Commission determined that:
 - a) rates in the fourth basket would generally be permitted to increase to any already approved rate for the same service and that tariff applications should reference when and where the Commission approved the rate; and
 - b) for rate increases that go beyond an already approved rate, an economic study must accompany the application.

¹ The rates established in Decision 95-13 applied to AGT Limited, BC TEL, Bell Canada, The Island Telephone Company Limited, Maritime Tel & Tel Limited, The New Brunswick Telephone Company Limited, Newfoundland Telephone Company Limited and Northwestel Inc.

10. Vidéotron submitted that the annual rate of \$15.45 for pole rental approved by the Commission in Orders 2003-236, 2003-404 and 2003-475 was not previously approved by the Commission for the same service. Vidéotron further submitted that the only rate for the same service that was previously approved by the Commission was \$9.60 per year, approved in *Rates set for access to telephone companies' support structures*, Order CRTC 2000-13, 18 January 2000.
11. Vidéotron submitted that as the annual rate of \$15.45 represented an increase from the approved rate of \$9.60 for the same service, the Companies were required, following the directions made by the Commission in Decision 2001-756, to file an economic study to justify the proposed rate. Vidéotron noted that the Companies had not done so. Vidéotron submitted that in approving the Companies' proposed tariffs for pole rental without the Companies having provided an economic study to support their applications, the Commission had approved a tariff in a manner inconsistent with its directions in Decision 2001-756.
12. Vidéotron stated that in Orders 2003-236, 2003-404 and 2003-475, the Commission indicated that no comments had been received on the Companies' applications. Vidéotron noted that St-Liboire's application for an annual rate of \$15.45 for pole rental constituted the first application made by a small ILEC for a rate of this magnitude, and was filed only with the Commission. Vidéotron submitted that, considering the precedent created by the approval of St-Liboire's annual rate of \$15.45 for pole rental, and its potential impact on the lessees of the small ILECs' poles, St-Liboire's application should have been given a wider distribution and not have been confined to the Commission's website.
13. Vidéotron submitted that the approval of St-Liboire's application in Order 2003-236 established a precedent. Vidéotron indicated that according to Decision 2001-756, as soon as the Commission approves a small ILEC's rate increase for one of the services in the fourth service basket, the approved rate becomes a benchmark that other small ILECs can use to easily obtain a rate increase by simply filing a tariff notice with the Commission.
14. Vidéotron requested that the Commission:
 - a) cancel immediately the application of the relevant tariff items² for annual pole rental for each of the Companies and order that the annual rate for the pole rental be modified from \$15.45 to \$9.60; and
 - b) require that St-Liboire, St-Éphrem and Guèvremont, and all other small ILECs, justify all future requests for a rate increase for access to support structures, according to the requirements outlined in Decision 2001-756.

Other parties' comments

15. St-Liboire submitted that the Commission should deny Vidéotron's application.

² Relevant General Tariff items are: 2.8.2 for St-Liboire, 2.13.2 for St-Éphrem and 2.8.2 for Guèvremont.

16. St-Liboire was of the view that Order 2003-236 was in accordance with Decision 2001-756 and noted that the rate of \$15.45 per year for renting space on a pole was the same rate it paid to Hydro-Québec for the same service.
17. St-Liboire submitted that its Tariff Notice 30 was given vast distribution by being posted on the Commission's website.
18. St-Liboire noted that Vidéotron does not serve any customers in St-Liboire's serving territory.

Vidéotron's reply comments

19. Vidéotron submitted that St-Liboire's statement that its proposed rate was the same as the rate it paid to Hydro-Québec was a clear indication that the Commission's decision was erroneous.
20. Vidéotron stated that, although St-Liboire's Tariff Notice 30 was posted on the Commission's website, interested parties may still ask the Commission to review and vary the decision approving Tariff Notice 30, in accordance with the guidelines set out in Public Notice 98-6.
21. Vidéotron submitted that the fact that it does not serve any customers in St-Liboire's serving territory does not invalidate its interest in having Orders 2003-236, 2003-404 and 2003-475 varied. Vidéotron argued that at stake was an unacceptable and unjustifiable precedent, the consequence of which was to make the tariff increase available to all small ILECs.

Commission's analysis and determination

22. In Public Notice 98-6, the Commission stated that in order to exercise its discretion pursuant to section 62 of the Act, applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to:
 - i) an error in law or in fact;
 - ii) a fundamental change in circumstances or facts since the decision;
 - iii) a failure to consider a basic principle which had been raised in the original proceeding; or
 - iv) a new principle which has arisen as a result of the decision.
23. In Order 2003-236, in approving the pole rental rates for St-Liboire, the Commission stated that:

"the proposed rates were previously approved by the Commission for the same services provided by other companies and, therefore, are in accordance with Decision 2001-756."
24. The Commission acknowledges that in assessing St-Liboire's application, it incorrectly found that the proposed pole rental rate was at the same level as previously approved for the same service provided by another company.

25. Accordingly, the Commission concludes that, consistent with Public Notice 98-6, there is substantial doubt as to the correctness of Order 2003-236.
26. In regard to St-Éphrem and Guèvremont, the Commission notes that it had approved the pole rental rate for these companies based on the rate previously approved for the same service provided by another company, namely, St-Liboire. Accordingly, the Commission concludes that there is also a substantial doubt as to the correctness of Orders 2003-404 and 2003-475.
27. The Commission notes that, in Order 95-191, it had approved an annual pole rental rate of \$13.20 for Amtelecom. The Commission is of the view that had St-Liboire proposed a pole rental rate of \$13.20 per year, quoting Amtelecom's rate in support of its request, the Commission would have approved that application as it would have met the requirements set out in Decision 2001-756. In light of the above, the Commission is of the view that the annual rate of \$13.20 for pole rental is appropriate for the Companies as that rate is consistent with the determinations made by the Commission in Decision 2001-756.
28. The Commission notes that in its review and vary application, Vidéotron requested that the Commission cancel immediately the application of the relevant tariff items for pole rental for each of the three Companies and order that the annual rate for pole rental be fixed at \$9.60. The Commission is of the view that any reduction of the pole rental rate should be made on a going forward basis.
29. In light of the foregoing, the Commission finds it appropriate to vary Orders 2003-236, 2003-404 and 2003-475, and directs St-Liboire, St-Éphrem and Guèvremont to file for approval a pole rental rate of \$13.20 per year, within 30 days of the date of this Decision.

Secretary General

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