



Telecom Order CRTC 2004-440

Ottawa, 23 December 2004

TELUS Communications Inc.

Reference: TCQ Tariff Notice 354

Optical fibre network service

1. The Commission received an application by TELUS Communications (Québec) Inc. (TCQ),¹ dated 17 July 2003, proposing revisions to its Special Facilities Tariff (SFT) in order to introduce item 4.01, Optical Fibre Network service. Specifically, the company requested approval of 25 SFT arrangements associated with its optical fibre network service. TCQ further requested, pursuant to subsection 25(4) of the *Telecommunications Act* (the Act), Commission ratification for charging for this service prior to the date of Commission's approval of Tariff Notice (TN) 354.
2. TCQ stated that:
 - following *Regulatory safeguards with respect to incumbent affiliates, bundling by Bell Canada and related matters*, Telecom Decision CRTC 2002-76, 12 December 2002, the company identified that it had been providing local optical fibre services within its serving territory without a tariff;
 - the filing of the proposed tariffs as SFTs was an intermediate measure pending the filing of a general tariff which the company stated that it expected to be filing shortly;
 - the proposed tariffs were generally based on the company's costs for construction of optical fibre networks, respected the tariffing principles of the company, and reflected the company's cost of capital, market conditions, and profit margins;
 - in some cases, the SFTs involved optical fibre facilities that were already in place, in which case the proposed rates were based on the market value of the service provided; and
 - since the monthly tariffs submitted did not exceed \$2,000, it was not providing cost studies for any of the arrangements, except one – for which it was providing costing justification in confidence. The company submitted that this conformed with the Commission's determinations in *Inquiry into Telecommunications Carriers' costing and accounting procedures* –

¹ Effective 1 July 2004, TELUS Communications Inc. (TCI) has assumed all rights, entitlements, liabilities, and obligations relating to the provision of telecommunications services in the territories previously served by TCQ.

Phase II: Information requirements for new service tariffs filings, Telecom Decision CRTC 79-16, 28 August 1979 (Decision 79-16), as amended by Telecom Order CRTC 90-779, 24 July 1990 (Order 90-779).

3. At the end of the existing contracts, the last of which would end in 2008, the company proposed to migrate its local optical fibre customers to the approved General Tariff, unless their specific circumstances justified a special assembly tariff.
4. TCQ proposed that the Commission ratify, pursuant to subsection 25(4) of the Act, the tariff for providing these SFTs prior to the Commission's approval of this TN.

Process

5. The Commission received comments from 4089316 Canada Inc., operating as Xit télécom, on behalf of itself and Télécommunications Xittel inc. (collectively, Xit), dated 11 August 2003, and reply comments from TCQ dated 21 August 2003. TCQ filed additional submissions on 30 October 2003 in response to a Commission letter dated 5 September 2003.

Background

6. In Decision 79-16, the Commission prescribed a number of directives regarding the information to be submitted in support of approval of tariff pages. Among other things, the Commission determined that an economic evaluation study should accompany each application for approval of tariff pages regarding a new service, unless an exemption is granted by the Commission. The Commission stated that it would generally provide an exemption for a new service that was expected to have ten or fewer subscribers and a total monthly charge to the subscriber of less than \$1,000, or the equivalent thereof. In Order 90-779, the Commission decided to increase the maximum monthly charge from \$1,000 to \$2,000.

Xit's comments

7. Xit objected to TCQ's reliance on Decision 79-16 and Order 90-779 as justification for not filing economic studies for optical fibre arrangements when the proposed monthly charge is less than \$2,000. Xit stated that these decisions were issued before competition was permitted in TCQ's serving territory. Xit argued, among other things, that TCQ did not provide any evidence to demonstrate that the proposed rates exceeded the company's costs. Xit submitted that to address concerns about below cost pricing, TCQ should be required to file the recurring costs with respect to each arrangement annually.
8. Xit requested that the Commission suspend the approval of the SFTs until it had disposed of its Part VII application of 2 April 2003 where it had requested that the Commission direct TCQ to file, on an expedited basis, general tariffs for intra-exchange and inter-exchange dark fibre.

TCQ's reply comments

9. TCQ submitted that TN 354 was the first step in the company's measures to bring itself into compliance with the regulatory rules regarding the provision of optical fibre.

10. With respect to Xit's request regarding the filing of costs, TCQ reaffirmed its submission that TN 354 complied with Decision 79-16 and Order 90-779.

TCQ's comments of 30 October 2003

11. TCQ submitted that given that most of the contracts pertaining to the arrangements subject to TN 354 were executed and operational prior to the release of *Xit Télécom v. TELUS Québec – Provision of fibre optic private networks*, Telecom Decision CRTC 2003-58, 22 August 2003, (Decision 2003-58), and that they met all the necessary conditions for approval of customer-specific arrangements, it would be unfair to the customers in question to change the terms of their contracts prior to the expiry of their contracts.

Commission's analysis and determination

12. The Commission notes that in Decision 2003-58, it directed TCQ to file proposed general tariffs for intra-exchange and inter-exchange dark fibre. The Commission considered that these general tariffs should be subject to the availability of existing unused and unallocated facilities. The Commission further directed TCQ to apply the terms and conditions of the general tariffs to the provision of existing dark fibre facilities, in its customer-specific SFTs, for dark fibre projects. The Commission also stated that where facilities were not available and construction had to be undertaken to provide service to a particular customer, the rates for dark fibre facilities should not be less than the General Tariff rates.
13. The Commission notes that it approved TCQ's proposed General Tariff for intra-exchange optical fibre service and inter-exchange optical fibre service in *TELUS Communications Inc. – General tariff for intra-exchange and inter-exchange optical fibre service in Quebec*, Telecom Order CRTC 2004-438, 23 December 2004 (Order 2004-438).
14. The Commission also notes that in *TELUS Communications Inc. – Introduction of a non-mandated co-location service in Alberta and British Columbia*, Telecom Order CRTC 2004-294, 30 August 2004 (Order 2004-294), it approved TCI's proposal to introduce General Tariff item 405, Business Co-location Service in Alberta and British Columbia. The Commission directed TCI to migrate all customers of non-mandated co-location services, including existing SFT customers of non-mandated co-location arrangements, to the General Tariff for non-mandated co-location, effective the date of that Order. However, the Commission considered that TCI should give 60 days notice to the remaining SFT customers and migrate them to the General Tariff within 90 days of the date of the order.
15. The Commission notes TCQ's request to migrate these customers only once their contracts have expired. The Commission considers that such a request is inconsistent with the Commission's direction in Decision 2003-58 that TCQ apply the terms and conditions of the general tariffs to the provision of existing dark fibre facilities, in its customer-specific SFTs, for dark fibre projects. Because of concerns with respect to, among other things, unjust discrimination, the Commission is not persuaded by TCQ's submission that the company should be relieved from the requirement to apply the above direction with respect to customers of the arrangements subject to TN 354 prior to the expiry of their contracts.

16. Accordingly, the Commission considers that the customers of the arrangements subject to TN 354 should be migrated to the General Tariffs for intra-exchange and inter-exchange optical fibre. The Commission is of the view, however, that these customers should be provided with notice and migration terms similar to those specified in Order 2004-294.
17. Accordingly, the Commission considers that TCQ should give 60 days notice to the customers in question prior to migrating them to the new General Tariff rates. The migration is to occur within 90 days of this Order.
18. The Commission considers that the application of the General Tariffs with respect to the arrangements subject to TN 354 addresses the submissions of Xit with respect to costing matters.
19. In light of the above, the Commission:
 - **denies** TCQ's application;
 - directs TCI to give 60 days notice to the customers of the arrangements subject to TN 354 that they will be migrated to the General Tariffs; and
 - directs TCI to migrate its customers of the arrangements subject to TN 354 to the General Tariffs approved under Order 2004-438, no later than 90 days from the date of this Order.

Secretary General

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