



## Telecom Decision CRTC 2014-601

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Ottawa, 20 November 2014

*File number: 8690-E17-201401455*

### **Bragg Communications Incorporated, operating as Eastlink - Dispute over billed charges for Bell Aliant Regional Communications, Limited Partnership's support structures**

*The Commission makes determinations to resolve a billing dispute between Bell Aliant and Eastlink with respect to payments for service poles. The Commission clarifies that a “service pole” is to include all poles on which the only attachment is a wire that provides service to a particular customer. Further, it finds that an error rate should not be applied to the pole census results in Nova Scotia and Prince Edward Island, and that Eastlink should be required to pay census fee charges but not late payment charges where there is a valid dispute.*

#### **Background**

1. A “service pole” refers to a pole owned by an incumbent local exchange carrier (ILEC) on which the only licensee<sup>1</sup> attachment is a drop wire to the subscriber’s premises.
2. In Telecom Decision 2011-406, the Commission approved for each ILEC a service pole rate, effective 4 July 2011. The service pole rate is equivalent to the main pole rate approved in Telecom Decision 2010-900 for each of the following ILECs: Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, and Télébec, Limited Partnership (collectively, Bell Canada et al.); MTS Allstream Inc.;<sup>2</sup> and TELUS Communications Company (TCC).
3. In Telecom Order 2013-114, the Commission approved, with modifications, revisions to Bell Canada et al.’s respective support structure service tariffs. Those revisions involved (a) the implementation of a charge for the use of a service pole, (b) the recovery of a portion of the cost of a service pole census conducted by Bell Aliant in the Atlantic provinces, and (c) the introduction of a charge for the non-reporting of service poles used by licensees (unreported attachment charge).

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<sup>1</sup> Licensees are cable television undertakings or Canadian carriers that attach their facilities, such as wires, onto ILECs’ poles to serve their own end-users.

<sup>2</sup> As of early January 2012, MTS Allstream Inc. became known as two separate entities, namely, MTS Inc. and Allstream Inc.

## **Introduction**

4. The Commission received an application from Bragg Communications Incorporated, operating as Eastlink (Eastlink), dated 17 February 2014, concerning a dispute over charges imposed by Bell Aliant with respect to support structures. Eastlink disputed charges billed by Bell Aliant following its 2012 census of poles in Nova Scotia (N.S.) and Prince Edward Island (P.E.I.). In addition, Eastlink disputed all census fee charges billed by Bell Aliant for service poles in N.S., P.E.I. and Newfoundland and Labrador (N.L.), and the late payment charges imposed by Bell Aliant.

## **Procedural request**

5. By letter dated 25 February 2014, Bell Aliant requested that the Commission suspend consideration of Eastlink's 17 February 2014 application until after the escalating dispute resolution process provided for in section 11 of the Support Structure License Agreement (SSLA) had been exhausted.
6. In a Commission staff letter dated 4 March 2014, Bell Aliant's request was denied. Commission staff noted that the evidence on the file demonstrated that Bell Aliant did request the establishment of a joint committee and that subsequent meetings between senior executives of each company did occur. Given the evidence on the file, Commission staff concluded that the purpose behind section 11 of the SSLA had been fulfilled in that reasonable attempts to negotiate a solution between the parties, including by escalating the dispute to senior management, were taken before a dispute under the SSLA was brought to the Commission.

## **Eastlink's application**

7. Eastlink stated that it received from Bell Aliant invoices dated 24 June 2012 with charges for Eastlink's attachments found on Bell Aliant poles during the census in N.S. and P.E.I. The charges were as follows:
  - unauthorized attachment charges<sup>3</sup> for attachments for which Eastlink did not have permits;
  - 12 months of retroactive monthly charges for the above unauthorized attachments; and
  - monthly charges for service poles, retroactive to 4 July 2011.
8. Eastlink stated that, upon receiving the 24 June 2012 invoices, it disputed all the charges and sought clarification and details from Bell Aliant as to how it arrived at its figures.

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<sup>3</sup> An unauthorized attachment charge is a one-time charge of \$100 that applies if a licensee installed a facility, except a subscriber drop wire, but does not have a permit or is unable to prove that it has been paying monthly rental charges to the ILEC.

9. Eastlink stated that, upon receiving the census data results for three counties in N.S., it conducted its own audit verification of the census data results, and found an error rate of 2.8% regarding the number of its pole attachments. It stated that it then applied the error rate of 2.8% to the rest of the poles billed in N.S. and P.E.I. and made a payment to Bell Aliant on 3 May 2013 for the monthly charges, retroactive from 4 July 2011 to the end of March 2013, for all undisputed service poles in N.S. and P.E.I., and that it continues to pay the monthly charges for those undisputed service poles.
10. Eastlink stated that it also received from Bell Aliant invoices dated 24 December 2013 with census fee charges for Eastlink's shared cost related to the census of service poles in N.S., P.E.I. and N.L., all of which Eastlink disputed.
11. Further, Eastlink indicated that starting in July 2012 it received from Bell Aliant monthly invoices with late payment charges (LPCs) for all the outstanding amounts on the 24 June 2012 invoices. Eastlink also indicated that it received from Bell Aliant monthly invoices with LPCs for all the outstanding amounts on the 24 December 2013 invoices.
12. Eastlink stated that after a lengthy dispute with Bell Aliant over the amounts and types of charges, it filed the current application with the Commission.
13. Eastlink requested
  - an order directing Bell Aliant to withdraw all charges associated with the additional disputed attachments related to service poles;
  - an order directing Bell Aliant to withdraw all charges to Eastlink for unauthorized attachments for mainline poles, including removal of all late payment charges for same;
  - clarification from the Commission regarding its interpretation of subscriber drop wire used to define service poles and an order directing that the definition of "Subscriber Drop Wire" in item 901.2 of the National Services Tariff (NST)<sup>4</sup> be revised to be consistent with industry definitions;
  - an order directing Bell Aliant to remove service pole census charges to Eastlink; and
  - an order directing Bell Aliant to provide monthly detailed billing for its support structure charges to Eastlink.
14. The Commission received an answer from Bell Aliant. The Commission also received responses to requests for information from Commission staff from both companies. The public record of this proceeding, which closed on 21 July 2014, is

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<sup>4</sup> NST item 901 applies to Bell Aliant and Bell Canada.

available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the file number provided above.

## Issues

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

- What is the correct interpretation of the term “service pole”?
- Should the error rate of the sample area apply to the total pole count established by the census for N.S. and P.E.I.?
- Should Eastlink be required to pay the census charges?
- Are Bell Aliant's LPCs valid?
- Should Bell Aliant be directed to provide detailed monthly billing to Eastlink?

### **What is the correct interpretation of the term “service pole”?**

16. Eastlink stated that where it runs a subscriber drop wire from the main distribution feeder (mainline) over multiple poles to a residence and where this drop wire is the only attachment on the poles, Bell Aliant classified (i) only the last pole as a “service pole” and (ii) all other poles between the mainline and the last pole as “mainline poles.” Eastlink argued that this classification is incorrect and that, therefore, it was an error for Bell Aliant to apply the unauthorized attachment charge of \$100 per pole and 12 months of retroactive charges for mainline poles to all poles between the mainline and last poles.
17. Eastlink submitted that Bell Aliant's classification of a service pole means that, where there are multiple poles to a residence, every licensee must apply for a permit to attach a drop wire, except for the last pole. Eastlink submitted that a permit has never been required from Bell Aliant or from any other ILEC for this scenario and that Bell Aliant's support structure service tariff (Bell Aliant's Tariff)<sup>5</sup> provides that a permit is not required for a subscriber drop wire.
18. Eastlink submitted that the poles in question, i.e., the poles between mainline and last poles, should be classified as service poles, in accordance with the definition of service pole in Telecom Decision 2010-900.
19. Bell Aliant stated that where the only licensee attachment is a “subscriber drop wire,” it defines a “service pole” as (i) the pole immediately before a subscriber's premises or (ii) the last pole where there are multiple poles to a subscriber's premises. Bell Aliant stated that in this situation all other poles are classified as “non-service poles.”

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<sup>5</sup> Bell Aliant's Tariff is in Bell Canada's NST item 901. See footnote 4.

20. Bell Aliant argued that its definition of a “service pole” is based on the following:
- The Bell Aliant Tariff definition of a “subscriber drop wire” which was approved in Order 2000-13 after an industry consultation to develop a model support structure tariff

“Subscriber drop wire - The Facility or those Facilities running from a pole or from the last pole in those circumstances where there are multiple poles, as the case may be, to a subscriber’s or multiple subscribers' premises.”;
  - Prior to Telecom Decision 2011-406, the only pole attachment that was not chargeable was a subscriber drop wire;
  - In Telecom Decision 2011-406, the Commission defined a “service pole” to be an ILEC pole where the only non-ILEC attachment is a drop wire to the subscriber's premises (subscriber drop wire); and
  - As a result of Telecom Decision 2011-406, the Bell Aliant Tariff was amended to allow for a charge for subscriber drop wire.
21. Bell Aliant stated that, since the monthly pole rate is the same for attachments to either service poles or non-service poles, the distinction between the two types of poles is only relevant to determine whether other charges are applicable. Bell Aliant stated that the monthly pole rate as well as the unauthorized attachment charge would apply to attachments on non-service poles, and the monthly service pole rate retroactive to 4 July 2011 as well as the one-time service pole census fee charge would apply to attachments on service poles.
22. Bell Aliant argued that this interpretation is consistent with its historical interpretation of its tariff in N.S. Bell Aliant stated that the former Maritime Tel & Tel (MT&T) (now part of Bell Aliant) completed a census of poles in N.S. in 1998-1999, as well as received Commission approval in 1998 for revisions to its support structure service. Bell Aliant stated that these tariff revisions gave MT&T the ability to charge licensees for all attachments to its poles, including subscriber drop wires.
23. Bell Aliant stated that, when Order 2000-13 was issued which exempted subscriber drop wires from pole charges, it sent a letter dated 9 February 2000 to Eastlink advising that the bills would be updated removing any charges for subscriber drop wires on last poles. Bell Aliant noted that based on the forgoing, it had been billing Eastlink for non-last poles in N.S. based on the 1998-1999 census.
24. Bell Aliant indicated that Eastlink was billed the unauthorized attachment charges in the 24 June 2012 invoices because, as a result of the census, Eastlink facilities were found to be attached to non-service poles for which a permit application had not been filed and no permit was issued.

25. Bell Aliant further noted that it has been charging licensees in N.S. for subscriber drop wires on non-last poles where there are multiple poles to a subscriber's premises.
26. Bell Aliant added that, subsequent to issuing the 24 June 2012 invoices and as a result of discussions with Eastlink, it realized that there were errors in the invoices that needed to be corrected. Bell Aliant stated that one error was the 12 months of retroactive monthly charges for the unauthorized attachments, the other error being the misclassification of two types of poles, i.e.,
  - certain poles called “cross-over” poles were misclassified as non-service poles instead of “service poles”;<sup>6</sup> and
  - where multiple poles connect a premises to Bell Aliant’s pole line, all poles were billed as service poles instead of only the last pole being billed as a service pole.<sup>7</sup>
27. Bell Aliant stated that it had discussed these errors with Eastlink but because agreement had not been reached on the entire billing, corrected invoices were not issued.

#### **Commission’s analysis and determinations**

28. The Commission notes that Bell Aliant’s Tariff states that only the wire on the pole immediately before a customer’s premises is considered to be a subscriber drop wire. Accordingly, Bell Aliant’s interpretation of its Tariff is not unreasonable.
29. The Commission is of the view, however, that Bell Aliant’s interpretation is based on the assumption that the last pole is materially different from the poles between the last pole and the mainline. Further, the Commission considers that Bell Aliant’s interpretation has an anti-competitive effect when a licensee is attempting to sign-up a new customer to its services.
30. The Commission notes that, in a situation where the licensee’s drop wire that runs from the mainline is supported on multiple poles to a customer’s premises, the wire that provides service to a particular customer would be treated differently depending on whether it is attached to the last pole or a pole between the mainline and the last pole. In the Commission’s view, there is no practical difference between the last pole, on the one hand, and the poles between the last pole and the mainline, on the other, to the extent that the only attachment on the poles in question is wire that

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<sup>6</sup> A “cross-over” pole is a Bell Aliant pole to which a licensee’s cable is attached when it crosses a street from a power utility’s pole line to Bell Aliant’s pole line in order to reach a subscriber’s premises on the Bell Aliant’s side of the street. To these poles, the unauthorized attachment charges and the erroneous 12 months of retroactive charges were incorrectly billed. When correctly identified, these poles should have been billed the service pole monthly rate retroactive to 4 July 2012.

<sup>7</sup> To these poles, the retroactive monthly charges back to 4 July 2011, and the one-time service pole census charge were incorrectly billed. When correctly identified, these poles should have been billed the one-time “unauthorized attachment charge” only.

provides service to a particular customer. Moreover, this different treatment of the same wire, and in particular the requirement to obtain a permit before connecting a customer, would delay and impede the provision of competitive services, which is contrary to the public interest, i.e., service by a licensee to a new customer could be delayed by the permit process, thus giving Bell Aliant the opportunity to win over the customer.

31. Such a result would not be consistent with the Policy Direction,<sup>8</sup> which requires the Commission, among other things, to ensure that regimes for access to support structures are competitively and technologically neutral. Nor would it be consistent with the policy objectives set out in section 7 of the *Telecommunications Act* (the Act), including paragraphs 7(c) and (f).<sup>9</sup>
32. The Commission considers that, in order to address the practical realities discussed above, there would be merit in clarifying the matter. Specifically, the wording of Bell Aliant's Tariff should be revised to reflect the view that to the extent that the only attachment is a wire that provides service to a particular customer, the poles between the last pole and mainline are "service poles." It is expected that this clarification will remove any doubt as to what constitutes service poles and will assist the parties to resolve the billing issues with respect to such poles. The Commission further notes that this issue is part of an ongoing process to identify and clarify various billing issues associated with the use by Eastlink of Bell Aliant's support structures.
33. The Commission notes that Bell Canada<sup>10</sup> and other ILECs who were not parties to this proceeding have the same or similar definitions of "subscriber drop wire" in their respective support structure service tariffs. As support structures are an area where consistency across the industry is important, the Commission has issued today Telecom Notice of Consultation 2014-604 in which the Commission directs the other ILECs that have support structure service tariffs to show cause why they should not revise the definition of subscriber drop wire consistent with the Commission's determinations in this decision.
34. With respect to Bell Aliant's claim that there are other unauthorized attachment charges for attachments on poles other than the non-last poles, the Commission considers that for these attachments, Bell Aliant must provide enough information for Eastlink to verify the unauthorized attachment charges. The Commission notes that Bell Aliant, in its answer to Eastlink's application, stated that it has begun the

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<sup>8</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

<sup>9</sup> The cited policy objectives of the Act are: 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; and 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.

<sup>10</sup> See footnote 5.

process of identifying the Global Positioning System (GPS) location of non-service poles for which it does not have a record of having issued a permit to Eastlink.

35. Based on the above, the Commission finds that, where there are multiple poles between the mainline and the customer's premises and the only third-party attachment on those poles is a drop wire used to serve that customer premises, all the multiple poles between the mainline and the customer's premises are service poles, not just the last pole.
36. The Commissions **directs** Bell Aliant to
  - issue<sup>11</sup> a revised Tariff setting out the definition of "subscriber drop wire," to read as follows: "The Facility or those Facilities running from a pole or from poles in those circumstances where there are multiple poles between the mainline and a subscriber's premises, as the case may be, to a subscriber's or multiple subscribers' premises." The revised Tariff is to be issued by **8 January 2015**;
  - issue to Eastlink revised 24 June 2012 invoices, within **45 days** of the date of this decision, that take into account the Commission's determination on service poles, as well as corrections of other errors it acknowledged in its submissions during this proceeding (including the correction for cross-over poles Bell Aliant identified and the removal of the 12 months of retroactive charges), with adjustments for any monies paid by Eastlink; and
  - provide Eastlink, within **30 days** of the date of this decision, with sufficient information to verify those poles for which any other unauthorized attachment charges were applied.

**Should the error rate of the sample area apply to the total pole count established by the census for N.S. and P.E.I.?**

37. Eastlink stated that, after receiving the 24 June 2012 invoices from Bell Aliant, it contacted Bell Aliant to seek clarification regarding the charges. It stated that it was not until 6 September 2012 that Bell Aliant agreed to provide Eastlink with a sample of the census data. Eastlink received census data representing almost 20% of N.S. (the sample area).
38. Eastlink stated that it then proceeded to validate the data for the sample area by conducting its own field survey, during which it discovered a number of errors in Bell Aliant's census results. Upon completing its verification of the sample area in February 2013, it determined that the sample area contained an error rate of 2.8% regarding the total number of billable service poles.

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<sup>11</sup> Revised tariff pages can be submitted to the Commission without a description page or a request for approval; a tariff application is not required.

39. Based on what it considered to be an agreement with Bell Aliant to use the sample area as a proxy for N.S. and possibly P.E.I., Eastlink stated that it reduced the total number of poles billed in N.S. and P.E.I. by the error rate in order to establish the number of billable service poles.
40. Eastlink stated that, as a good faith step in recognition that it owed something for service poles, it made a payment to Bell Aliant on 3 May 2013 for the monthly charges, retroactive from 4 July 2011 to the end of March 2013, for all undisputed service poles in N.S. and P.E.I.
41. Eastlink noted that among the errors found during its verification of the sample area were those related to attachments on overhead guy poles because attachments to these poles were not chargeable. Eastlink stated that it had not requested a Commission determination on this issue as it believed it could be resolved through mutual negotiation or future Commission determination, since it was a relatively small portion of the total billed amount in dispute.
42. Bell Aliant submitted that there are no grounds to apply an error rate to its census results. In Bell Aliant's view, the application of an error rate would invalidate the very specific data elements that were collected as part of the census and would undermine the ongoing usefulness of the census data, e.g., it would be impossible on a going-forward basis to be able to associate unauthorized attachments with specific poles as it would not know which poles had been removed from the census as the result of applying the error rate.
43. Bell Aliant stated that it provided Eastlink with a sample of up to 20% of N.S. to allow Eastlink to gain a reasonable level of comfort with the accuracy of the attachment data from the census.
44. With respect to the issue related to overhead guy poles, Bell Aliant submitted that it is the definition of a pole as being either a service pole or non-service pole that matters, regardless of how the pole may otherwise be described. As an example, Bell Aliant stated that a pole may be referred to as a "cross-over" pole or "overhead guy/anchor" pole by licensees but for the purposes of its Tariff, all that matters is whether there is a licensee attachment or not, and, if so, is the licensee attachment a subscriber drop wire or not.

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

45. The Commission considers that the application of an error rate based on a sample area would invalidate the purpose of the census which was to establish a detailed and accurate record of the use of service poles. In the Commission's view, the application of an error rate would undermine the ongoing usefulness of the census data to determine if an unreported attachment charge would apply to a specific service pole because Bell Aliant and Eastlink would not know which poles had been removed from the census as a result of applying the error rate.

46. The Commission considers, however, that although an error rate would not be appropriate for all of N.S. and P.E.I., Eastlink should be given the opportunity to verify and validate the remaining census data for N.S. and P.E.I., as it has only verified the sample area in N.S. In this regard, the Commission notes that, in Telecom Decision 2014-265, it recognized that for a service pole database to be as accurate as possible, licensees should be given the opportunity to verify and validate the census results for without such input, the database could be inaccurate, resulting in erroneous charges to licensees for service pole usage. In that decision, Shaw Cablesystems G.P. (Shaw) was given a period of six months from the date of the decision or from the date that it was provided with the census results by TCC specific to Shaw, whichever was latest, to validate the census results.
47. With respect to the time that Eastlink should be given to verify the census results, the Commission notes that after Bell Aliant issued the 24 December 2013 invoices for the census charges, Bell Aliant provided Eastlink with the service pole data on an unsolicited basis on 11 February 2014. Based on the record, Eastlink has not proceeded to verify this data because, in its view, it has already paid for service poles.
48. The Commission considers that given that Eastlink made a payment on 3 May 2013 for service poles in N.S. and P.E.I., and has been paying the monthly rate for these poles, Bell Aliant would not be prejudiced if Eastlink has a period of six months from the date of the decision to verify the remaining census results for N.S. and P.E.I. Accordingly, the Commission grants Eastlink a six-month period from the date of the decision to verify the census results, during which time it is to continue to pay the monthly rates for service poles based on the 3 May 2013 calculation.
49. With respect to the issue of overhead guy poles, the Commission notes that, in the proceeding that led to Telecom Decision 2011-406, Bell Canada et al. proposed to recover the costs associated with reinforcement poles (i.e. Type B poles), by applying a loading factor to the pole rate. The Commission denied the proposal because only poles that are service poles were within the scope of the proceeding. However, the Commission notes that Telecom Decision 2010-900 is clear that if the licensee is using a pole and the only licensee attachment on that pole is a drop wire, then based on the term “service pole” set out in Telecom Decision 2010-900, that pole is a service pole.
50. The Commission determines that the error rate of the sample area is not to apply to the total pole count established by the census for N.S. and P.E.I.

**Should Eastlink be required to pay the census charges?**

51. Eastlink submitted that it should not be required to pay the Bell Aliant invoices dated 24 December 2013 for census fee charges because it did not receive any meaningful census information which was the basis on which the Commission granted Bell Aliant the right to recover the census costs in Telecom Order 2013-114.

52. With respect to the census in N.S. and P.E.I., Eastlink also argued that, because it had voluntarily paid Bell Aliant in May 2013 for service poles found during the census without receiving the census data and given its experience with the data in the sample area of N.S., it should not have to pay the census charges.
53. With respect to the census in N.L., Eastlink submitted that there is no justification for Bell Aliant to charge Eastlink for a census that was conducted solely for the sale of poles from Newfoundland Power to Bell Aliant. Eastlink stated that it participated in the census by providing training to the auditors on properly identifying Eastlink's attachments.
54. Eastlink submitted that, given its involvement in the N.L. process, it paid the monthly charges based on the results of the census starting from 1 January 2012 subject to some follow-up after the fact to address any inconsistencies once it received more information.
55. Eastlink submitted that, because there were no retroactive charges, identifying service poles was irrelevant. In fact, Eastlink did not concern itself with the distinction between service and mainline poles, since all poles were billed the same amount. Eastlink stated that the total attachment numbers was all that was necessary for billing purposes and this would have been charged to Eastlink regardless of service pole count as a result of Newfoundland Power's transfer of all poles to Bell Aliant.
56. Eastlink submitted that, even if there were errors between definitions of poles in this case, it was not relevant since errors in classification only impact Eastlink where retroactive unauthorized attachment charges are applied for mis-classified mainline poles. Eastlink stated that it never sought nor did it obtain full data for service poles in the format that Bell Aliant promised would be available should they get the right to charge for the census.
57. Eastlink submitted that, for all of these reasons, forcing it to pay service pole census charges for N.L. is entirely inappropriate.
58. Bell Aliant submitted that Eastlink should pay the census fee charges because
  - prior to Telecom Decision 2011-406, while licensees were not required to pay for the use of service poles, they generally would not report their use of service poles, despite being required to do so;
  - with the approval of a service pole rate in Telecom Decision 2011-406, it was necessary to identify the service poles used by licensees; and
  - Telecom Order 2013-114 approved the census charge to recover a portion of the costs of the census.
59. With respect to census fee charges in N.S. and P.E.I., Bell Aliant stated that none of Eastlink's arguments provide any justification as to why it should not pay the

Commission-approved one-time census fee charge for service poles. Bell Aliant submitted that the applicability of its Tariff is not premised upon whether or not a licensee has received or agrees with the results of the census, noting that it has already shared the complete census data for service poles, including the GPS location of each pole, with Eastlink.

60. With respect to the census in N.L., Bell Aliant stated that the fact that Eastlink has since paid its monthly recurring service pole attachment charges has no bearing on the validity of the Commission-approved one-time census fee charge to be recovered from licensees to partially offset the cost of the census related to service poles. Bell Aliant stated that without the census there would be no basis upon which to bill Eastlink and other licensees for their service pole use as they were never required to notify Bell Aliant of pole attachments when the poles belonged to Newfoundland Power. Bell Aliant further stated that the census in Atlantic Canada was for all poles and that the total census expenses paid to third-party contractors were prorated by applying the ratio of service poles to total poles, such that only the expenses incurred to perform a census of service poles was reflected in the \$4.77 rate.<sup>12</sup>

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

61. At the time of the issuance of Telecom Decision 2011-406, in which the Commission approved a service pole rate, neither Bell Aliant, nor any of the other ILECs, had the records of the use of service poles by licensees. Although required by tariffs, licensees did not report the use of service poles to the ILECs. Other than self-reporting by licensees or through a negotiated agreement, the Commission considers that a census is the only method to determine the number of service poles used by licensees.
62. In view of the above, the Commission **directs** Eastlink to pay the currently calculated census fee charges for N.S., P.E.I., and N.L. within **30 days** from the date of this decision.
63. In addition, the Commission determines that if Bell Aliant issues revised 24 December 2013 invoices adjusting the number of service poles as a result of the Commission's determination on what is considered to be a service pole, as set out above, Eastlink should be given a six-month period, from the date of the decision or from the date it receives the census results, whichever is later, to validate the census results for N.L. as it will have for N.S. and P.E.I. Therefore, the Commission **directs** Bell Aliant, if it has not already done so, to provide Eastlink, within **30 days** from the date of this decision, the census data results for N.L. as required by Telecom Order 2013-114. Until each of the six-month periods has passed, Eastlink will not be required to pay additional census fee charges for N.S., P.E.I., and N.L.

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<sup>12</sup> The \$4.77 is the one-time census fee charge approved in Telecom Order 2013-114 that applies upon completion of a service pole census by Bell Aliant in the Atlantic provinces to each service pole to which a licensee has placed one or more additional subscriber drop wire(s).

### **Are Bell Aliant's LPCs valid?**

64. Eastlink indicated that, on 11 July 2012 and 10 January 2014, it gave written notice to Bell Aliant that it was disputing the charges on the 24 June 2012 invoices and the 24 December 2013 invoices, respectively. Eastlink noted that despite these notices, Bell Aliant has imposed LPCs on the disputed amounts and on all the service poles for which Eastlink has already paid.
65. Bell Aliant stated that it has long been industry practice for service providers to impose LPCs for past due amounts owing. Bell Aliant stated that its LPC policy is part of the signed 2009 Master Service Agreement (MSA) between Bell Aliant and Eastlink dated 16 July 2012 which governs the terms and conditions of forborne items like LPCs. Bell Aliant further argued that the Commission has historically treated LPCs on tariffed services as valid charges and, in 2009, the Commission forbore from regulating LPCs associated with tariffed services in Telecom Regulatory Policy 2009-424.
66. Bell Aliant noted that item 901.5(a) of its Tariff is about the reasonableness of the charge. Bell Aliant argued that both the unauthorized attachment charges and the census fee charges are reasonable while Eastlink's reasons for not paying them are not. Bell Aliant stated that the data required to bill for the unauthorized attachment charges and the census fees were collected during the census.
67. Bell Aliant submitted that, contrary to Eastlink's claims, a LPC applies to the outstanding amount owed by Eastlink.
68. In reply, Eastlink submitted that Bell Aliant's claim for LPCs under the MSA is not supportable because the services purchased by Eastlink under the MSA are Bell Aliant's high-speed Internet Protocol (IP) service and not support structure services.
69. Eastlink further submitted that item 901.5(a) of Bell Aliant's Tariff provides that only undisputed charges are payable.
70. Eastlink stated that since Bell Aliant only provided the sample area data in September 2012, it completed the sample area verification in February 2013 and voluntarily paid for the use of service poles in May 2013, based on the data from the sample area.

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

71. The Commission notes that the LPCs imposed by Bell Aliant are not governed by the MSA as the services provided under the MSA are Bell Aliant's high-speed IP services and not support structure services.
72. In Telecom Regulatory Policy 2009-424, the Commission forbore from regulating LPCs but retained its powers under section 24 of the Act in order to impose future conditions as necessary to achieve the policy objectives set out in section 7 of the

Act. The Commission notes that Article 17.2 of Bell Aliant's General Tariff, item 105, Terms of Service, reflects the fact that the Commission forbore from regulating LPCs.

73. The Commission notes however that Article 17.4<sup>13</sup> deals with charges that are past due and, as such, the Commission continues to regulate when disputed charges can be considered late. In this regard, the Commission notes that item 901.5(a) of Bell Aliant's Tariff provides that "in the event of a dispute regarding the reasonableness of any non-recurring charge, the Licensee shall pay the undisputed portion of the charge." Further, disputes are handled through a dispute resolution mechanism under section 11 of the SSLA.
74. With respect to the 24 June 2012 invoices, the Commission notes that Eastlink did make a good faith payment with respect to undisputed charges but there remained the disputed charges. There is no evidence of deliberate delay by Eastlink, and some of the delay is attributable to Bell Aliant's failure to disclose census information in a timely manner. The Commission is of the view that there were charges that remained disputed and therefore the ability to impose LPCs is not triggered.
75. With respect to the 24 December 2013 invoices for census fee charges for N.S. and P.E.I., the charges in these invoices were dependent upon the outcome of the dispute over the number of service poles in the 24 June 2012 invoices. The Commission is of the view that the charges remained disputed because of the untimely provision of census information and therefore the ability to impose LPCs is not triggered.
76. With respect to the 24 December 2013 invoices for census fees for N.L., Eastlink did not provide valid reason for not paying the census fee charges for N.L., as described above. On this basis, the Commission is of the view that the ability to impose LPCs is triggered.
77. Based on the above, the Commission **directs** Bell Aliant to withdraw the LPCs with respect to the 24 June 2012 invoices for N.S. and P.E.I. and the 24 December 2013 invoices for census fee charges for N.S. and P.E.I. Further, the Commission **directs** Eastlink to pay the LPCs on the census fee charges for N.L. within **30 days** from when Eastlink receives the updated relevant information from Bell Aliant, which should be no later than **10 days** from the date of this decision.
78. With respect to LPCs applicable to revised 24 June 2012 and 24 December 2013 invoices, the Commission determines that LPCs cannot be incurred until 30 days after the six-month periods, noted above, have passed.

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<sup>13</sup> 17.4 - No charge disputed by a customer can be considered past due unless Bell Aliant has reasonable grounds for believing that the purpose of the dispute is to evade or delay payment.

## **Should Bell Aliant be directed to provide detailed monthly billing to Eastlink?**

79. Eastlink requested that the Commission order Bell Aliant to provide detailed billing for support structure attachments on a going-forward basis. Eastlink stated that it has consistently received vague and erroneous bills from Bell Aliant associated with charges imposed by Bell Aliant under its Tariff. Eastlink stated that in the case of invoices for support structure services, the invoices provide no meaningful information from which Eastlink is able to validate billing without undue time and resources to decipher the charges.
80. Bell Aliant stated that it was willing to work with Eastlink to determine whether additional billing detail can be provided and to discuss ways to simplify its bills assuming such changes can be reasonably implemented in its systems and do not include GPS details for non-service poles.

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

81. The Commission notes that Bell Aliant has expressed a willingness to work with Eastlink to determine whether additional billing detail can be provided and to discuss ways to simplify its bills.
82. In the Commission's view, it would more appropriate for Eastlink and Bell Aliant to work together to improve the monthly billing format than for the Commission to order a billing format.
83. Therefore, the Commission **directs** Bell Aliant and Eastlink to work together on a monthly billing format that is acceptable for both parties.

Secretary General

### **Related documents**

- *The definition of subscriber drop wire*, Telecom Notice of Consultation CRTC 2014-604, 20 November 2014
- *Shaw Cablesystems G.P. – Request for relief with regard to TELUS Communications Company's service pole census*, Telecom Decision CRTC 2014-265, 22 May 2014
- *Bell Aliant Regional Communications, Limited Partnership; Bell Canada; and Télébec, Limited Partnership – Revisions to support structure service tariffs*, Telecom Order CRTC 2013-114, 11 March 2013
- *Follow-up to Telecom Decision 2010-900 - Service pole rate and markup issues*, Telecom Decision CRTC 2011-406, 4 July 2011

- *Review of the large incumbent local exchange carriers' support structure service rates*, Telecom Decision CRTC 2010-900, 2 December 2010, as amended by Telecom Decision CRTC 2010-900-1, 9 December 2010
- *Revised regulatory requirements for management of customer accounts*, Telecom Regulatory Policy CRTC 2009-424, 17 July 2009
- *Rates set for access to telephone companies' support structures*, Order CRTC 2000-13, 18 January 2000