



## Telecom Order CRTC 2005-242

Ottawa, 22 June 2005

### TELUS Communications Inc.

Reference: 8340-T69-200402925

#### Fibre sale agreement

1. The Commission received an application by TELUS Communications (Québec) Inc. (TCQ)<sup>1</sup> dated 25 March 2004, requesting approval of an optical fibre agreement (the Agreement) between TCQ and LondonConnect Inc. (LondonConnect), which was stated to be effective 1 July 2003.
2. The Agreement provided for a fixed sale price for six optical fibre strands over a distance of forty-nine kilometres.
3. The Agreement also stipulated that LondonConnect would subscribe to two services offered by TCQ: a fibre easement service, which included the costs of leasing support structures owned by TCQ and by non-affiliated companies, and a fibre support and maintenance service. Both services would be subject to a 20-year contract period.
4. In support of its application, TCQ provided cost justification to demonstrate that the sale price for the optical fibre was compensatory.
5. The Commission received no comments with respect to the application.

#### Background

6. In *Xit Télécom v. TELUS Québec - Provision of fibre optic private networks*, Telecom Decision CRTC 2003-58, 22 August 2003 (Decision 2003-58), the Commission directed TCQ to file proposed intra-exchange and inter-exchange dark fibre tariffs within 20 days of the date of the Decision. The Commission also directed TCQ to apply the terms and conditions of the General Tariffs, when approved, to the provision of existing dark fibre facilities in its customer-specific special facilities tariffs for dark fibre projects. The Commission considered that these General Tariffs would be subject to the availability of existing unused and unallocated facilities. The Commission also stated that, where facilities were not available and construction would have 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.

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<sup>1</sup> In *General tariff for intra-exchange and inter-exchange optical fibre service in Quebec*, Telecom Order CRTC 2004-438, 23 December 2004 (Order 2004-438), the Commission approved TCQ's GT item 2.07, Intra-exchange Optical Fibre Service and item 3.09, Inter-exchange Optical Fibre Service.

7. 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), the Commission approved TCQ's General Tariff item 2.07, Intra-exchange Optical Fibre Service, and item 3.09, Inter-exchange Optical Fibre Service.

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

8. The Commission notes that the Agreement pertains to the provision by TCQ of an optical fibre service, a fibre easement service, and a fibre support and maintenance service to LondonConnect. The Commission considers that these services contemplated by the Agreement are telecommunications services within the meaning of the *Telecommunications Act* (the Act) which pursuant to subsection 25(1)<sup>2</sup> of the Act, are subject to the filing with, and approval by, the Commission, of tariffs as distinct from the approval of an agreement.
9. With respect to the price calculated for the optical fibre strands, the Commission notes that the effective price set out in the Agreement is not lower than the price that would result if TCQ's approved optical fibre GT<sup>3</sup> were applied to the equivalent amount of fibre. Given this, the Commission considers that it would be appropriate to ratify, pursuant to subsection 25(4)<sup>4</sup> of the Act, the charging of the sale price associated with the sale of the optical fibres referred to in the Agreement.
10. The Commission notes that the support type structures services identified in the Agreement (i.e., fibre easement service and the maintenance and support structure service) are not clearly defined. The Commission notes these services appear similar in nature to be those offered under TCQ's General Tariff items 2.07, Intra-exchange Optical Fibre Service, 3.09, Inter-exchange Optical Fibre Service, and 4.12, Support Structure Services. In this respect, the Commission considers that TCQ should demonstrate that the rates identified in the Agreement are consistent with these General Tariff rates, to the extent that the General Tariff rates are applicable. Conversely, if the GT rates are not applicable in the circumstance, TCQ is to file, within 30 days, proposed tariffs pertaining to such services, including an imputation test and a clear description for each service to be tariffed.

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<sup>2</sup> "No Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission that specifies the rate or the maximum or minimum rate, or both, to be charged for the service." [S.25(1)]

<sup>3</sup> Effective 1 July 2004, TELUS Communications Inc., has assumed all rights, entitlements, liabilities, and obligations relating to the provision of telecommunications services in the territories previously served by TCQ.

<sup>4</sup> "Notwithstanding subsection (1), the Commission may ratify the charging of a rate by a Canadian carrier otherwise than in accordance with a tariff approved by the Commission if the Commission is satisfied that the rate (a) was charged because of an error or other circumstance that warrants the ratification; or (b) was imposed in conformity with the laws of a province before the operations of the carrier were regulated under any Act of Parliament." [S.25(4)]

11. In light of the above, the Commission ratifies, pursuant to subsection 25(4) of the Act, the charging of the rate for the optical fibre service to LondonConnect.

Secretary General

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