



Telecom Decision CRTC 2008-100

Ottawa, 17 October 2008

Shaw Communications Inc. – Application to revise the monthly rate for TBayTel's partial systems offering

Reference: 8661-S9-200510588

In this Decision, the Commission denies Shaw's application to revise TBayTel's partial systems offering (PSO) rate and makes the PSO rate final, effective the date of this Decision.

Introduction

1. The Commission received an application from Shaw Communications Inc. (Shaw), dated 7 September 2005 (the Part VII application), seeking an order from the Commission mandating a reduction in TBayTel's¹ tariff for the partial systems offering (PSO). Specifically, Shaw requested that the Commission reduce TBayTel's tarified monthly rate for the PSO service from \$0.71 per 30 metres to \$0.18 per 30 metres.
2. Following receipt of Shaw's application, Commission staff assisted Shaw and TBayTel with their negotiations regarding a possible sale of the PSO plant to Shaw, which would have disposed of the Part VII application. However, these efforts were unsuccessful.
3. Negotiations between the companies for a local network interconnection (LNI) arrangement to implement local competition in the Thunder Bay area began in November 2006. In August 2007 Shaw requested that the Commission assist in the LNI negotiations between itself and TBayTel, and the Commission subsequently established a process to address Shaw's concerns. However, because an LNI arrangement between TBayTel and Shaw had to be completed and certain issues related to the PSO tariff had to be resolved expeditiously, the Commission took no further action on the Part VII application. In Telecom Decision 2007-107 the Commission issued its determinations regarding the LNI arrangement between the companies.
4. Following the release of Telecom Decision 2007-107, the Commission, by letter dated 23 November 2007, allowed the parties to refresh the record of the Part VII application with current or additional information.
5. In a letter dated 14 December 2007, the Commission modified TBayTel's PSO service monthly rate as set out in its General Tariff section TB 1200, subsection 2, from final to interim pending the Commission's disposition of the Part VII application.
6. The Commission received comments from TBayTel. The public record of this proceeding, which closed on 30 June 2008, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

¹ TBayTel is wholly owned by the City of Thunder Bay. TBayTel was created by virtue of the Corporation of the City of Thunder Bay By-Law 257-2004, pursuant to the *Municipal Act, 2001*.

Is TBayTel's monthly PSO tariff rate just and reasonable?

Shaw's application

7. Shaw noted that TBayTel's current PSO monthly rate of \$0.71 per 30 metres of cable is based on costing information previously filed by Bell Canada in support of Bell Canada's PSO rate. Shaw submitted that TBayTel's current PSO rate was set to recover its costs for productivity losses, administrative costs, and support structure costs.
8. Shaw submitted that Bell Canada's costing information shows that \$0.53 of the monthly PSO rate covers support structure costs. In Shaw's view, by subtracting \$0.53 for support structure costs from the PSO rate of \$0.71, the remainder, \$0.18, covers TBayTel's productivity loss and administration costs for the service.
9. Shaw noted that the PSO plant is supported by TBayTel poles and Thunder Bay Hydro poles. It also noted that since 2005 Thunder Bay Hydro has required Shaw to pay a pole attachment fee for each Thunder Bay Hydro pole that supports the PSO plant.
10. Shaw noted that subsection 27(1) of the *Telecommunications Act* (the Act) provides that every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable. It submitted, however, that it is not just and reasonable to require Shaw to pay TBayTel, as part of the monthly lease rate for the PSO plant, the support structure costs associated with this plant because Shaw is covering these support structure costs through its payments to Thunder Bay Hydro. Shaw submitted that no services are being provided by TBayTel for which a support structure charge should apply.
11. Shaw submitted that TBayTel has not provided supporting facts or arguments that justify including a rate of \$0.53 per 30 metres of cable for support structure service. Based on the evidence it submitted, Shaw argued that TBayTel's monthly rate for the PSO should be reduced to \$0.18 per 30 metres.

TBayTel's position

12. TBayTel noted that the PSO rate includes a component for support structure costs. TBayTel submitted that this component would represent that portion of TBayTel's support structure costs necessary for provisioning the PSO service to Shaw, whether directly through its own plant facilities or through purchasing arrangements with other companies such as Thunder Bay Hydro.
13. TBayTel submitted that it provides PSO service to Shaw, not to Thunder Bay Hydro. TBayTel argued that it is entitled to recover the costs for providing this service and that this recovery is through the PSO monthly rate.

Commission's analysis and determinations

14. The Commission notes that TBayTel's PSO is supported on strand that is owned by TBayTel. The Commission also notes that the strand that supports the PSO is attached to poles owned by both TBayTel and Thunder Bay Hydro. The Commission further notes that Shaw leases the PSO service on a monthly basis from TBayTel pursuant to TBayTel's General Tariff section TB 1200, subsection 2.
15. In Telecom Decision 2002-44, the Commission approved as just and reasonable TBayTel's current PSO tariffed monthly rate of \$0.71 per 30 metres. The Commission noted in that Decision that TBayTel's proposed monthly rate of \$0.71 per 30 metres of cable was not comparable to the rate of \$1.28 approved by the Commission for Bell Canada's PSO service. However, since the \$0.71 rate was substantially lower than the rate approved for other telephone companies offering the same service, and in particular Bell Canada's approved monthly rate, the Commission did not consider it appropriate to require an economic study in support of the proposed rate. In the Commission's view, such a requirement would have been inconsistent with both the Commission's intent in Telecom Decision 96-6 to limit the filing requirements for small independent telephone companies and with the pricing framework set out in Decision 2001-756.
16. The Commission considers that TBayTel is entitled to be compensated for the costs associated with the support structures it uses to provide the PSO service to Shaw, whether TBayTel provides the service directly through its own plant facilities or through purchasing arrangements with other companies such as Thunder Bay Hydro. The fact that Shaw is paying Thunder Bay Hydro support structure rates for a facility that Shaw does not own is not justification to reduce TBayTel's PSO service rate. The Commission notes that it is not the appropriate body from which to seek relief with respect to the rates charged to Shaw by Thunder Bay Hydro.
17. In light of the above, the Commission continues to consider that TBayTel's PSO service rate is just and reasonable.
18. Accordingly, the Commission **denies** Shaw's application.
19. As noted above, in a letter dated 14 December 2007, the Commission modified TBayTel's PSO service monthly rate as set out in General Tariff section TB 1200, subsection 2, from final to interim effective 14 December 2007. In view of the disposition of Shaw's application, the Commission **approves on a final basis** TBayTel's PSO service monthly rate as set out in General Tariff section TB 1200, subsection 2, effective the date of this Decision.

Secretary General

Related documents

- *TBayTel and Shaw Communications Inc. – Implementation of local competition in Thunder Bay*, Telecom Decision CRTC 2007-107, 16 November 2007
- *Thunder Bay Telephone – Tariffs for partial cable-distribution system and support structure services*, Telecom Decision CRTC 2002-44, 2 August 2002
- *Regulatory framework for the small incumbent telephone companies*, Decision CRTC 2001-756, 14 December 2001
- *Regulatory framework for the independent telephone companies in Quebec and Ontario (except Ontario Northland Transportation Commission, Québec-Téléphone and Télébec ltée)*, Telecom Decision CRTC 96-6, 7 August 1996, as amended by Telecom Decision CRTC 96-6-1, 17 September 1996

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