



Telecom Decision CRTC 2008-40

Ottawa, 16 May 2008

TELUS Communications Company (TCC) seeking payment of unauthorized attachment charges from Shaw Cablesystems Limited (Shaw) relating to Shaw-owned facilities and equipment attached to TCC's support structures

Reference: 8690-T66-200714049

In this Decision, the Commission determines that TCC did not provide Shaw with sufficient specific evidence of which Shaw facilities are alleged to be unauthorized attachments to TCC's support structures. Accordingly, the Commission denies TCC's application for an order directing Shaw to pay unauthorized attachment charges in the amount of \$2,415,205 (excluding late payment charges).

Introduction

1. On 4 October 2007, TELUS Communications Company (TCC) filed with the Commission an application pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure* seeking an order directing Shaw Cablesystems Limited¹ (Shaw) to pay monthly and non-recurring charges, including unauthorized attachment charges, relating to Shaw-owned facilities and equipment that have been found to be attached to TCC's support structures as a result of an audit. TCC also requested an order directing Shaw to repair or remove its non-conforming attachments identified by TCC to Shaw.
2. On 3 March 2008, the Commission advised the parties that it would adjudicate this matter in accordance with the expedited process established in Telecom Circular 2004-2.
3. A panel of three Commissioners heard the matter on 9 May 2008.
4. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Issues

5. The issue to be resolved in this proceeding is whether TCC has established that Shaw is liable to pay unauthorized attachment charges in accordance with the Support Structure Service Tariff (the Tariff).²

¹ Shaw Cablesystems Limited is a subsidiary of Shaw Communications Inc.

² General Tariff CRTC 21461, Item 404 - Support Structure Service.

Positions of parties

TCC

6. TCC stated that in 2006, it initiated an audit of equipment/facilities in and on its support structures in 12 regions in British Columbia in which Shaw operates as a Licensee as defined in the Tariff. TCC stated that the audit was conducted by an independent contractor that counted each pole and measured the underground conduit and aerial strand route meterages of all Shaw's attachments to TCC's support structures.
7. After comparing the results of the audit to its billing records, TCC took the view that Shaw had a number of facilities occupying TCC's support structures for which it was not being billed and for which it had not obtained authorization.
8. TCC stated that for each audited region it determined the difference between the number of rental units³ found in the audit and the number of rental units contained in its billing records. TCC stated that it revised its monthly rental charges for the 12 regions to reflect this difference. TCC also calculated an unauthorized attachment charge for each rental unit category pursuant to Tariff item 404.4.1.a. Where the audit disclosed more rental units than were contained in TCC's billing records, TCC stated that an unauthorized attachment charge of \$100 per rental unit was applied.
9. TCC stated that it calculated the total unauthorized attachment charges for each of the 12 regions and issued invoices to Shaw in the amount of \$2,415,205 (excluding late payment charges).
10. TCC stated that for any attachment work performed for a Licensee by TCC (or its predecessor BC Tel), or by contractors on TCC's behalf, authorization by TCC (or its predecessor BC Tel) was and is a prerequisite, meaning no network job order is created, no work crew would be assigned and no billing could be triggered without an authorization.
11. TCC stated that its detailed quarterly invoices, which show the numbers of rental units being billed as well as additions and deletions from the previous quarter, should have alerted Shaw that there were large discrepancies between what it was being billed and what it should have been paying based on the attachments actually placed by Shaw on TCC structures.
12. While TCC accepted that there may be errors in its records, in its view, this did not explain Shaw's inability to produce permits for attachments which Shaw claims are authorized.
13. TCC submitted that the Tariff requirements are clear that the intended user of a support structure must apply for a permit and that an unauthorized attachment charge applies when it is determined that equipment has been placed without a permit.

³ There are three categories of support structure attachments for which monthly rental charges apply: pole, strand and conduit. The Support Structure Service Tariff sets out the rental unit for each category: see Tariff item 404.4.2.

14. Also as a result of the audit, TCC stated that it provided Shaw, in March 2008, with a list of Shaw-owned attachments that TCC claims are not in conformity with applicable safety and construction standards.

Shaw

15. Shaw submitted that with respect to unauthorized attachment charges, while Tariff Item 404.4.1.a requires TCC to specify which Shaw facilities are alleged to be attached to TCC support structures without authorization, TCC has not provided such information. Instead, TCC has used a discrepancy between the attachments recorded in its billing system and the attachments counted during the audit and attributed, without foundation, the entire discrepancy to unauthorized Shaw attachments.
16. Shaw stated that it does not dispute the revised monthly rental charges invoiced to Shaw resulting from TCC's audit, and is also willing to rectify any facilities that it installed which do not conform to applicable safety standards or TCC's technical standards and practices.

Commission's analysis and determinations

17. The Commission notes that Shaw has paid and continues to pay the invoices issued by TCC with respect to the monthly recurring charges relating to Shaw-owned facilities and equipment that have been found to be attached to TCC's support structures as a result of the audit. The Commission further notes that Shaw has stated that it is willing to rectify any facilities that Shaw installed which do not conform to applicable safety standards or TCC's technical standards and practices once it has had an opportunity to conduct field inspections. Accordingly, the Commission does not consider it necessary at this time to make an order directing Shaw to repair or remove any non-conforming attachments that have been identified to it by TCC.
18. As such, the Commission considers that the only issue to be addressed is TCC's request relating to unauthorized attachment charges.

Unauthorized attachment charges

19. The Commission's framework for regulation of support structures is the result of a series of related decisions.⁴ In those decisions, the Commission has recognized the public interest in the sharing and joint-use of support structures, regardless of their ownership.
20. As part of the framework for the regulation of support structures, the Commission has mandated the specific terms and conditions on which access to support structures are granted. The terms and conditions include an unauthorized attachment charge as a means to discourage unauthorized placements of facilities on support structures.
21. The Commission notes that TCC's Tariff and Support Structure License Agreements made between TCC and Shaw set out the specific terms and conditions, including monthly rental charges and non-recurring charges, including the unauthorized attachment charge, under which TCC provides Shaw access to TCC's support structures.

⁴ Telecom Orders 96-1484 and 2000-13, Telecom Decisions 95-13 and 95-15.

22. The Commission notes that after comparing the results of the audit to its billing records, TCC took the view that Shaw had a number of facilities occupying TCC's support structures for which Shaw was not being billed and for which Shaw had not obtained authorization. The Commission notes that TCC applied the unauthorized attachment charge of \$100 per rental unit to the difference between its audit results and its billing records.
23. The Commission notes that an unauthorized attachment charge does not apply to attachments for which a Permit has been issued. In addition, the Tariff provides that the unauthorized attachment charge does not apply, and TCC will issue a Permit, where Shaw can substantiate that a monthly rental was applied with respect to an attachment or where Shaw can substantiate that TCC or its predecessor approved the attachment of Shaw's facility but did not issue a Permit.
24. The Commission considers that in order for Shaw to establish that the facilities in question have been authorized, either by a Permit or through some other form of authorization, Shaw must know which facilities are alleged to be unauthorized. In the Commission's view, TCC has not identified which attachments in a particular area are alleged to be unauthorized. The Commission considers that TCC has merely established that there is a discrepancy between its billing records and the amount of facilities found in the audit.
25. The Commission considers that TCC must identify the attachments which it alleges to be unauthorized with sufficient specificity to enable a Licensee to seek within its files and establish that it obtained a permit or some other form of authorization with respect to the attachment(s) in question.
26. In light of the above, the Commission finds that based on the record, TCC has not provided sufficient specific evidence to allow Shaw to dispute TCC's claim that Shaw has facilities on TCC support structures which are unauthorized. Therefore, the Commission **denies** TCC's application for an order directing Shaw to pay unauthorized attachment charges, in the amount of \$2,415,205 (excluding late payment charges).

Secretary General

Related documents

- *Expedited procedure for resolving competitive issues*, Telecom Circular CRTC 2004-2, 10 February 2004
- *Rates set for access to telephone companies' support structures*, Order CRTC 2000-13, 18 January 2000
- *IN THE MATTER OF the implementation of Access to Telephone Company Support Structures*, Telecom Decision CRTC 95-13, 22 June 1995
(*Decision 95-13*), Telecom Order CRTC 96-1484, 18 December 1996

- *BC Tel – Access to Support Structures*, Telecom Decision CRTC 95-15, 9 August 1995
- *Access to Telephone Company Support Structures*, Telecom Decision CRTC 95-13, 22 June 1995

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>