



Telecom Decision CRTC 2011-561

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Cable carriers' application to review and vary Telecom Decision 2010-900 regarding pole rates

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In this decision, the Commission denies the application from the cable carriers to review and vary its determinations in Telecom Decision 2010-900 with regard to pole rates.

Introduction

1. On 30 March 2011, Bragg Communications Inc., the Canadian Cable Systems Alliance, Cogeco Cable Inc., Quebecor Media Inc. on behalf of its affiliate Videotron G.P., Rogers Communications Inc., and Shaw Communications Inc. (Shaw) [collectively, the cable carriers] filed an application requesting that the Commission review and vary Telecom Decision 2010-900 with regard to the pole rates¹ set out in that decision.
2. The cable carriers submitted that there is substantial doubt as to the correctness of the pole rates set out in Telecom Decision 2010-900, by reason of the following errors of fact, law, and principle:
 - Telecom Decision 2010-900 resulted from a breach of procedural fairness by reason of the fact that the following determinations were outside the scope established for the proceeding initiated by Telecom Notice of Consultation 2009-432 (the proceeding):
 - i) the determination to apply incumbent local exchange carrier (ILEC)-specific pole utilization factors other than the common pole utilization factor applied in Telecom Decision 95-13; and
 - ii) the determination to allocate to non-ILEC attachers² 100 percent of embedded pole costs attributable to them.
 - Telecom Decision 2010-900 resulted in rates for access to ILEC poles that are not just and reasonable, as required by section 27 of the *Telecommunications Act*, in light of the fact that the pole utilization factors established in that decision

¹ Third parties are provided access to incumbent local exchange carriers' (ILECs) support structures (poles, strand, and conduit) under the terms of wholesale service tariffs. Such access enables third parties to provide competitive retail services. The term "pole rates" refers to the rates charged by ILECs for third-party access to their poles.

² Non-ILEC attachers were referred to as third-party attachers in Telecom Decision 2010-900.

- i) were based on unreliable estimates of non-ILEC and ILEC cables on a pole, which are contradicted by the results of a study commissioned by Shaw; and
 - ii) failed to take into account the ILECs' ability to reserve space on poles and their priority access to poles, as well as the practical capacity of poles and the ILECs' ability to earn extra revenues from that capacity.
3. The cable carriers requested that the Commission vary Telecom Decision 2010-900 by approving pole rates based on a common pole utilization factor of 25 percent, and that these rates be made effective as of the date that the previously prevailing rates were made interim, namely 21 July 2009.
4. The Canadian Network Operators Consortium Inc. supported the cable carriers' application. Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies), MTS Allstream Inc. (MTS Allstream), and TELUS Communications Company (TCC) provided comments opposing the application.
5. The public record of this proceeding, which closed on 9 May 2011, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.
6. The Commission has identified the following issues to be addressed in this decision:
 - I. Did Telecom Decision 2010-900 result from a breach of procedural fairness?
 - II. Are the pole rates approved in Telecom Decision 2010-900 just and reasonable?
- I. Did Telecom Decision 2010-900 result from a breach of procedural fairness?**
7. In support of their position that Telecom Decision 2010-900 resulted from a breach of procedural fairness, the cable carriers referenced Telecom Notice of Consultation 2009-432, wherein the Commission stated that the pricing approach adopted in Telecom Decision 95-13 would apply to the review of the ILECs' support structure rates announced in that notice. In this regard, the cable carriers argued that the Commission's determinations in Telecom Decision 2010-900 with respect to the revised pole rates departed from the Telecom Decision 95-13 methodology in two ways.
8. First, the cable carriers submitted that the Commission had based the pole rates approved in Telecom Decision 2010-900 on ILEC-specific pole utilization factors, whereas Telecom Decision 95-13 had approved pole rates on the basis of a pole utilization factor common to all ILECs. Second, the cable carriers argued that the contribution that non-ILEC attachers were required to make to the ILEC embedded costs for poles, pursuant to Telecom Decision 2010-900, was equal to the embedded costs attributable to non-ILEC attachers; however, in Telecom Decision 95-13, the contribution was less than those embedded costs.

9. The Bell companies submitted that Telecom Decision 95-13 did not establish any specific costing methodology and, on that basis, the Commission's approach to setting pole rates in Telecom Decision 2010-900 was consistent with Telecom Decision 95-13. The Bell companies further submitted that it is inherent in all rate reviews that as costs change, so do the inputs used to calculate costs and thus to calculate rates (e.g. the information used by the Commission to develop ILEC-specific pole utilization factors).
10. TCC submitted that the Commission is entitled to adopt any reasonable rate-setting methodology and is not bound by historical methodologies.
11. Finally, the Bell companies and TCC submitted that the Commission, in Telecom Decision 2010-900, had employed a consistent methodology for all ILECs but, consistent with the expressed intent of Telecom Notice of Consultation 2009-432, allowed for ILEC-specific rates based on ILEC-specific inputs.

Commission's analysis and determinations

12. The Commission notes its statement in Telecom Notice of Consultation 2009-432 that its review of the pole rates would rely on the pricing methodology set out in Telecom Decision 95-13, but that the revised rates would be based on ILEC-specific cost information. The specific scope of that pricing methodology is expressly described in paragraph 20 of the notice as follows:

The pricing approach ... requires that ILEC support structure service rates must, at a minimum, exceed the ILEC's causally attributable prospective incremental costs and make a reasonable and appropriate contribution to the associated fixed structure costs.

13. The Commission considers that the use of ILEC-specific pole utilization factors to set the pole rates is consistent with the scope of its commitment to the Telecom Decision 95-13 pricing methodology. The Commission also considers that its commitment to setting pole rates based on a reasonable and appropriate contribution by non-ILEC attachers to ILEC fixed structure costs does not require it to use the same level of contribution that was set in Telecom Decision 95-13. For these reasons, the Commission determines that the pole rates set out in Telecom Decision 2010-900 do not result from a breach of procedural fairness.

II. Are the pole rates approved in Telecom Decision 2010-900 just and reasonable?

14. The cable carriers submitted that, should the Commission disagree with their submissions regarding procedural fairness, the pole rates approved in Telecom Decision 2010-900 should nonetheless be varied, as they are not just and reasonable. In their view, the rates were based, in part, on information regarding the use of cables by ILEC and non-ILEC attachers, information which is fundamentally flawed and, in any event, is contradicted by survey information developed by Shaw.

15. In this regard, the cable carriers referenced the fact that, in Telecom Decision 2010-900, the Commission adopted common utilization factors with respect to both strand and conduit, a decision that was reached due to the absence of accurate ILEC-specific utilization data. The cable carriers argued that the adoption of ILEC-specific pole utilization factors as opposed to a common utilization factor was without rational basis, as the pole utilization estimates were less reliable than the ILECs' strand utilization estimates and, in some instances, were based on strand-related data. According to the cable carriers, the 25 percent pole utilization factor adopted in Telecom Decision 95-13 remains appropriate, as it is consistent with the approach taken for strand and conduit utilization and provides an appropriate recognition of the ILECs' priority access to poles, their ability to reserve spare capacity, and their ability to earn more revenue for their poles given the practical capacity of a pole to carry additional cables.
16. Furthermore, the cable carriers argued that it is not just and reasonable for non-ILEC attachers to pay all the embedded costs attributable to them, given that the previous pole rates were based on a contribution ceiling that was lower than the total costs attributable to non-ILEC attachers.
17. The Bell companies, MTS Allstream, and TCC submitted that the pole utilization factors employed by the Commission in their respective serving territories were based on information provided on the record of the proceeding. According to these parties, the variances in the pole utilization factors of different ILECs simply reflect this information. Moreover, they argued that the information provided by the ILECs demonstrates significant growth in the number of pole attachments by non-ILEC attachers, which both warrants ILEC-specific pole utilization factors and supports the utilization factors adopted in Telecom Decision 2010-900.
18. These parties further submitted that the survey information provided by Shaw is not a reliable basis for disputing the information provided by the ILECs on the record of the proceeding. They argued that the Shaw survey was limited to a small sample of poles in TCC's incumbent operating territory in British Columbia and that the results of the survey relied on a number of assumptions for which no supporting rationale was provided.
19. TCC argued that the Shaw survey results cannot be considered representative of TCC's poles in both British Columbia and Alberta, and thus should not be used to draw conclusions with respect to the validity of TCC's pole utilization factor. Similarly, the Bell companies questioned why the results of Shaw's survey should apply to them.
20. The Bell companies and MTS Allstream further argued that Shaw's survey results, which indicate that non-ILEC attacher cables represent 33 percent of actual total cables on poles with attachments, do not support the use of the pole utilization factor proposed by the cable carriers.
21. With respect to priority access and the ability to reserve spare capacity, TCC argued that these considerations were accounted for through the Commission's reliance on embedded costs as opposed to the cost of replacing existing poles with new ones.

TCC further argued that the matter of priority access is irrelevant in practice, as it had fulfilled over 90 percent of cable carriers' requests for access to its support structures in 2010.

Commission's analysis and determinations

22. The Commission notes that the pole utilization factors adopted in Telecom Decision 2010-900 were calculated based on information provided for each ILEC territory by the ILECs that were parties to that proceeding. While information on the number of cables owned by non-ILEC attachers and ILECs on the same poles was not directly available, the Commission collected information that could be used to reasonably infer the number of cables owned by both ILECs and non-ILEC attachers, by ILEC serving territory. No party challenged the validity of the information provided by the ILECs in the proceeding, nor did any party provide alternative information during the course of that proceeding that would cast doubt on the reliability of the data retained.
23. The Commission considers that its use of a common utilization factor for all ILECs for strand and conduit does not invalidate the use of ILEC-specific information with regard to pole utilization. The Commission notes that the record of the proceeding indicated that the utilization of strand and conduit does not materially differ between ILECs' operating territories; therefore, the Commission considers that the adoption of common utilization factors for such structures was reasonable. The Commission further considers that, as regards poles, the record contained sufficient evidence to demonstrate that the pole utilization factors were different between ILECs and that it was appropriate to make use of that information.
24. The Commission notes that Shaw's survey result of a pole utilization rate of 33 percent was derived using the assumption that non-ILEC attachers that are not also cable carriers have one cable per pole. The Commission also notes that the cable carriers provided no evidence to support this assumption and, accordingly, considers that the results set out in the Shaw survey cannot be validated. In addition, the Commission notes that the cable carriers did not provide evidence that the Shaw survey results are representative of the population in any ILEC serving territory.
25. In light of the above, the Commission considers that the cable carriers have not demonstrated that there is substantial doubt as to the reliability of the pole utilization factors used to determine the pole rates approved in Telecom Decision 2010-900.
26. With regard to ILECs' priority access, as the Commission determined in Telecom Decision 2010-900, pole rates have been set, in part, on the basis of a reasonable and appropriate contribution to ILEC embedded costs, in recognition of the priority access that ILECs have to these structures.
27. Regarding the issue of reserving spare capacity, the Commission notes that, while the cable carriers argued that their access to support structures is impaired on these grounds, they did not provide evidence of such impairment, nor did they contest

TCC's claim that 90 percent of requests for pole attachments were fulfilled in 2010. The Commission further notes that very few complaints by competitors regarding access to poles have been addressed to the Commission.

28. With respect to the ability of ILECs to generate additional revenue by leasing spare capacity on their poles, the Commission considers that the capacity of a pole to carry cables is not an appropriate basis for the development of a pole utilization factor. In this regard, the Commission notes that capacity varies with the type of pole. Further, the Commission considers that establishing the pole rates on the basis of speculation about other sources of revenue would lead to undue complexity and contention in the rate-setting process.
29. With regard to the level of embedded costs that should be recovered from non-ILEC attachers, the Commission notes that in Telecom Decision 95-13, it based its adjustment to the level of embedded costs recovered from such attachers on the variations in ownership arrangements regarding poles and the impact that these variations would have on the different ILECs' embedded costs per pole. As noted in Telecom Decision 2010-900, these variations were taken into account in the development of the communications factors used, in part, to set the rates for pole attachments. Having accounted for these variations in the development of ILEC-specific pole utilization factors, the Commission does not consider it necessary or appropriate to make further adjustments to the level of embedded costs recoverable from non-ILEC attachers.

Conclusion

30. Based on its consideration of the issues discussed above, the Commission concludes that the evidence submitted by the cable carriers does not raise substantial doubt as to the correctness of the pole rates set out in Telecom Decision 2010-900. Accordingly, the Commission **denies** the cable carriers' application to review and vary Telecom Decision 2010-900 in this regard.

Secretary General

Related documents

- *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
- *Call for comments – Review of the large incumbent local exchange carriers' support structure service rates*, Telecom Notice of Consultation CRTC 2009-432, 21 July 2009, as amended by Telecom Notice of Consultation CRTC 2009-432-1, 20 August 2009
- *Access to telephone company support structures*, Telecom Decision CRTC 95-13, 22 June 1995