



Broadcasting Regulatory Policy CRTC 2011-774

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Access to inside wire in commercial and institutional properties

The Commission finds that it is appropriate to amend the Broadcasting Distribution Regulations (the Regulations) to permit access by subscribers and competing broadcasting distribution undertakings to inside wire in commercial and institutional properties. Given the changes to the Regulations that came into effect on 1 September 2011, the Commission considers that only minor further amendments to the definition of “demarcation point” are required to give full effect to its determinations in this policy. Accordingly, the Commission will issue shortly a notice of consultation calling for comments on amendments to the Regulations to this effect.

The Commission directs all licensees to negotiate appropriate terms and conditions, including a just and reasonable rate, for the use by competitors of the inside wire such licensees own in commercial and institutional properties. If parties cannot come to an agreement, either party may apply to the Commission for dispute resolution.

Introduction

1. In Broadcasting Notice of Consultation 2011-299, the Commission called for comments on a request by Bell TV (Bell) to amend the *Broadcasting Distribution Regulations* (the Regulations) so that a licensee that owns inside wire in commercial or institutional properties would be required to allow subscribers and competing broadcasting distribution undertakings (BDUs) to use that inside wire on request.
2. Section 10 of the Regulations stipulates that a licensee that owns inside wire shall, on request, permit the inside wire to be used by a subscriber or another licensee and that the licensee that owns the inside wire may charge a just and reasonable fee for the use of the wire. In Broadcasting Public Notice 2005-83, which concerned a similar application by Bell, the Commission determined that section 10 of the Regulations did not apply to properties such as hotels, hospitals, nursing homes and other commercial or institutional premises that are used to house transient residents.
3. Bell proposed various amendments to the Regulations to achieve the desired outcome, including changing the definition of a “demarcation point” or a “customer” to make it clear that section 10 of the Regulations applies to BDU-owned inside wire located in commercial and institutional properties.
4. The Commission received interventions in support of Bell’s proposal from Hilton Worldwide, MTS Allstream, Saskatchewan Telecommunications and TekSavvy

Solutions Inc. (TekSavvy), as well as interventions in opposition from Quebecor Media Inc. on behalf of itself and Videotron G.P. (Quebecor et al.) and Rogers Communications Partnership on behalf of itself, Cogeco Cable Inc. and Shaw Communications Inc. (Rogers et al.). The complete record for this proceeding can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

5. After reviewing the public record for this proceeding, the Commission considers that it must address the following issues:
 - Is it appropriate to amend the Regulations to permit access to inside wire in commercial and institutional properties?
 - What would be a reasonable compensation for the use of commercial or institutional inside wire?

Is it appropriate to amend the Regulations to permit access to inside wire in commercial and institutional properties?

Positions of parties

6. Bell provided a study it sponsored showing that the commercial and institutional sector has grown by 80% in terms of units and 68% in terms of dollar value since the Commission last considered this issue. According to Bell, subscribers found in these properties are more likely than before to purchase a bundle of services fulfilling both their telecommunications and broadcasting needs from one service supplier, with those services being provided over the same inside wire. Bell submitted that allowing this market segment to choose among different competitive service providers would bring about innovation, superior service and lower prices and would be of significant benefit to consumers of broadcasting services in such properties. If a BDU has already installed inside wire, Bell submitted that access to that wire was necessary to facilitate a competitive alternative, in particular when contracts with a building owner are up for renegotiation, since building owners regard the need to rewire a property as an obstacle when deciding whether to change service suppliers. Finally, Bell submitted that transient residents in commercial and institutional properties such as hotels, hospitals and campuses would also benefit from having the owners of these establishments choose an appropriate service provider on their behalf.
7. TekSavvy submitted that approving Bell's request would constitute a natural extension of the Commission's efforts to promote competitive and end-user access to inside wire, while Hilton Worldwide included a letter from the Hotel Association of Canada which supported any regulations that would allow their members more supplier choice.
8. Quebecor et al. submitted that there were no new significant factors to justify changing the decision taken by the Commission in Broadcasting Public Notice 2006-68. It also argued that any unjust treatment can be challenged using the undue preference provisions in the Regulations.

9. Rogers et al. submitted that the proposed amendments to the Regulations were unnecessary as any BDU can already compete to service commercial properties at the time of initial construction and on the expiry of any existing service agreement provided it is willing to make the necessary investment in wiring. It also submitted that amending the Regulations as requested by Bell would violate the principles of regulatory symmetry. Specifically, Rogers et al. argued that approving the request would expand the concept of inside wire for subscribers of broadcasting services and competing BDUs beyond what is permitted under the existing telecommunications rules. Finally, according to Rogers et al., in commercial and institutional properties, the choice of BDU is made by the owner or manager of the property and thus Bell's proposal will do nothing to enhance end-user choice in the reception of programming services.

Commission's analysis and decision

10. In Broadcasting Public Notice 2006-68, the Commission determined that mandating access by subscribers and competing BDUs to inside wire in commercial and institutional properties would not significantly contribute to the competitive health of the broadcasting distribution market or advance end-user choice. For those reasons, the Commission concluded that its intervention to regulate competitive access to wiring in commercial and institutional properties was not warranted at that time.
11. The Commission considers that there have been significant developments in technology and changes in the market since it last examined this issue. In particular, both broadcasting and telecommunications services can more readily be provided over the same wire and customers are more likely today to purchase bundles of these services from one service provider. While the Commission considers that there is ample evidence on the record that service suppliers are competing for customers in commercial and institutional properties, it is of the view that the possibility of business disruptions associated with having to change inside wire can be a significant impediment to a customer's deciding to change service providers. The Commission notes that reusing the same inside wire would be more efficient and would result in fewer disruptions. Accordingly, the Commission considers that approving Bell's request would make it easier for customers to change service providers and would improve the state of competition in the market.
12. Regarding the issue of symmetry, the Commission notes that the regulatory framework for telecommunications does not make a distinction between residential and commercial or institutional properties. Telecommunications service providers are required to make the twisted pair copper wire they own available to other service providers under specific terms and conditions, regardless of the property type. Accordingly, the Commission considers that requiring BDUs that own inside wire in commercial or institutional properties to make this wire available to competitors would result in more rather than less symmetrical regulation.
13. Finally, the Commission is of the view that the transient nature of individuals using residential-like commercial properties such as hotels, hospitals and campuses makes it

impractical to allow each individual to choose a different service provider. However, it considers that just as condominium owners benefit from having their condominium board buy services on their behalf, so too will transient residents in commercial and institutional properties likely benefit from having the owners of those properties choose the BDU that best meets their economic and service needs.

14. In light of all of the above, the Commission finds that it would be appropriate to amend the Regulations to permit access by subscribers and competing BDUs to inside wire in commercial and institutional properties.
15. With respect to what amendments are required to the Regulations, the Commission notes that in Broadcasting Public Notice 2005-83, it found that while section 10(1) of the Regulations did not on its face distinguish between types of properties, the definitions set out in section 1 of the Regulations did not encompass non-residential properties.
16. The Commission notes that effective 1 September 2011, as announced in Broadcasting Regulatory Policy 2011-455, a number of amendments were made to the Regulations, including amendments to the definitions set out in section 1. The Commission notes in particular that the definitions of “demarcation point” and “inside wire” were expanded to refer not only to where a subscriber resides but also to a “subscriber’s residence and other premises.” The Commission considers that “other premises” encompasses the types of non-residential properties identified by Bell in its application.
17. Given the changes to the Regulations that came into effect on 1 September 2011, the Commission considers that only minor further amendments to the definition of “demarcation point” are required to give full effect to its determinations in this policy. Accordingly, the Commission will issue shortly a notice of consultation calling for comments on amendments to the Regulations to this effect.

What would be a reasonable compensation for the use of commercial or institutional inside wire?

Positions of parties

18. Bell argued that given that commercial properties were generally built and wired like residential multiple-unit dwellings, the cost of wiring a commercial property was no greater than that of wiring a residential multiple-unit dwelling and the Commission-approved rate of \$0.52 per subscriber per month for a multiple-unit dwelling should also apply to commercial properties.
19. Rogers et al. submitted that a BDU that made a business decision not to invest in wiring in a commercial property should not be entitled to a “free ride” on the investment of another competing service provider. It added that the fee established by the Commission for multiple-unit dwellings was never intended to cover the costs of

wiring that was not dedicated to an individual suite, nor did it cover the current costs of installing coaxial or other smart wiring platforms.

Commission's analysis and decision

20. The Commission notes that unlike inside wire in multiple-unit dwellings, the structure of wiring in commercial and institutional properties can vary significantly from one property to another. In some situations, such as in a hotel or hospital, the inside wire may be disposed similarly to a residential multi-unit dwelling, whereas in other situations it may be significantly different. Consequently, the Commission considers that the \$0.52 per subscriber per month established for inside wire located in multi-unit dwellings may not always be appropriate for commercial and institutional properties.
21. The Commission notes that there is evidence on the record that parties have successfully negotiated terms and conditions for access to other BDUs' inside wire. The Commission is of the view that because of the varied nature of inside wire in commercial and institutional properties, it would be most appropriate that a just and reasonable rate for the use of that inside wire be determined through negotiations between parties.
22. In light of the above, the Commission hereby directs all licensees to negotiate appropriate terms and conditions, including a just and reasonable rate, for the use by competitors of the inside wire such licensees own in commercial and institutional properties. If the inside wire configuration resembles that in a multi-unit dwelling, the Commission would expect that the established \$0.52 per subscriber per month rate would be reasonable. If parties cannot come to an agreement, either party may apply to the Commission for dispute resolution.

Secretary General

Related documents

- *Amendments to the Broadcasting Distribution Regulations and other Commission Regulations*, Broadcasting Regulatory Policy CRTC 2011-455, 29 July 2011
- *Call for comments on access to inside wire in commercial and institutional properties*, Broadcasting Notice of Consultation CRTC 2011-299, 5 May 2011
- *Competitive access to inside wire in commercial and institutional properties*, Broadcasting Public Notice CRTC 2006-68, 29 May 2006
- *Call for comments on possible regulatory amendments that would expand competitive access to inside wire*, Broadcasting Public Notice CRTC 2005-83, 15 August 2005