



Telecom Order CRTC 2012-139

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Ottawa, 7 March 2012

Bell Canada and Télébec, Limited Partnership – Changes to Support Structure Tariffs

File numbers: Bell Canada Tariff Notices 918 and 918A (NST)
Télébec Tariff Notices 434 and 434A

In this order, the Commission directs Bell Canada and Télébec to (a) re-issue tariff pages to Bell Canada's National Services Tariff and Télébec's General Tariff with the removal of the changes that were made on 14 July 2011 related to permits deemed to be issued by the companies for new subscriber drop wire(s) and (b) to file, for approval, proposed revisions to the tariff pages that would trigger the commencement of monthly charges for use of service poles, effective 4 July 2011. Further, the Commission denies Bell Canada's and Télébec's proposed unauthorized attachment charges for service poles, and approves the proposed correction to the French version of the companies' Support Structure Tariffs with respect to the time period to report the placement of one or more additional subscriber drop wire(s).

Background

1. In Telecom Decision 2010-900, the Commission approved revised rates for the wholesale support structure services of certain of the incumbent local exchange carriers (ILECs).¹ At that time, the Commission noted that the ILECs' support structure tariffs effectively provided that an ILEC's service pole rate was zero.² The Commission used the term "service poles" in the decision to refer to poles where the only third-party attachment is a drop wire to the subscriber's premises.
2. In Telecom Decision 2010-900, the Commission established a follow-up proceeding to determine a revised service pole rate and seek parties' comments on its preliminary view that each ILEC's service pole rate should be the same as its revised pole rate.
3. In Telecom Decision 2011-406, the Commission confirmed its preliminary view and approved a service pole rate for each ILEC that is equal to each company's respective pole rate approved in Telecom Decision 2010-900.

¹ Bell Canada et al., MTS Allstream, and TELUS Communications Company.

² At that time, an ILEC could not charge a pole rate to a third party if the third-party's only attachment to the pole was a subscriber drop wire.

4. Following the release of Telecom Decision 2011-406, Bell Aliant Regional Communications, Limited Partnership, Bell Canada and Télébec, Limited Partnership (Télébec) (collectively, Bell Canada et al.) issued tariff pages on 14 July 2011 making changes³ to their respective Support Structure Tariffs intended to implement the approved rate for service poles.
5. After the above-noted tariff pages were issued, the Commission received applications by Bell Canada et al., dated 16 August 2011, in which these companies proposed revisions to the Support Structure Service in Bell Canada's National Services Tariff (NST), item 901 and Télébec's General Tariff, Chapter 10.3. Bell Canada et al. stated that the proposed revisions, as set out in Bell Canada Tariff Notice 918 (TN 918) and Télébec Tariff Notice 434 (TN 434), are intended to give full effect to Telecom Decision 2011-406 concerning the charging for the use of service poles. On 17 October 2011, the above-noted companies filed Bell Canada TN 918A and Télébec TN 434A.
6. The Commission received comments from Bragg Communications Inc., carrying on business as EastLink, the Canadian Cable Systems Alliance, Cogeco Cable Inc., Rogers Communications Partnership, Shaw Communications Inc., and Quebecor Media Inc., on behalf of its affiliate Videotron G.P. (collectively, the Cable carriers). Comments were also filed by Télécommunications Xittel Inc. on behalf of the members of Regroupement québécois des utilisateurs de structures de soutènement (Regroupement).⁴
7. The public record of this proceeding, which closed on 16 November 2011, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file numbers provided above.
8. The Commission has identified the following issues to be addressed in this order:
 - I. Is the implementation of service pole rates through the deemed issuance of a Permit for subscriber drop wires appropriate?
 - II. Is it appropriate to approve the proposed revisions for an unauthorized attachment charge and negotiated notification arrangements?
 - III. Is it appropriate to approve the proposed revision to correct the error in the French version of the Support Structure Tariffs?

³ See Bell Canada's National Services Tariff, items 901.4(o) and 901.5(b) and Télébec's General Tariff, Chapter 10.3, Articles 10.3.4(15) and 10.3.5(2).

⁴ The members of the Regroupement are Association des Compagnies de téléphone du Québec inc.; Connexion Fibre Picanoc Inc.; Réseau du Haut Richelieu Inc.; Société de Réseaux Dédiés privés de Télécommunication inc.; and Télécommunications Xittel Inc.

I. Is the implementation of service pole rates through the deemed issuance of a Permit for subscriber drop wires appropriate?

9. In Bell Canada et al.'s Support Structure Tariffs, monthly charges for the use of the poles, other than service poles, are triggered on the date that a Permit is issued. Bell Canada et al. adapted the existing wording in order to trigger the monthly charge for service poles by noting that a Permit will have been "deemed" to have been issued for existing service poles effective 4 July 2011 or, for new subscriber drop wire(s), the date of receipt of notification by the Licensee.
10. The Cable carriers noted that a Permit is a defined term in the Support Structure Tariffs which refers to an approved application to use a support structure. The Cable carriers submitted that the notion of approval has no relevance to subscriber drop wires on service poles and that this implementation was not approved in Telecom Decision 2011-406.
11. Bell Canada et al. submitted that the Cable carriers had incorrectly read this provision to infer that a formal approval process for subscriber drop wires would be required. Bell Canada et al. submitted that they chose those words to trigger the commencement of charges in conformity with the existing language in the Support Structure Tariffs which indicates that charges commence on the date when the Permit is issued.

Commission's analysis and determinations

12. The Commission notes that, while it approved the rate that would apply to service poles in Telecom Decision 2011-406, it did not address the wording changes that Bell Canada et al. subsequently made to certain paragraphs of their Support Structure Tariffs, namely the wording associated with the deemed issuance of a Permit for subscriber drop wires.
13. The Commission considers that the deemed issuance of a Permit incorrectly implies that an approval process is required by a Licensee to attach subscriber drop wires to service poles. In the Commission's view, it is possible for Bell Canada et al. to trigger the commencement of the monthly rate for use of service poles without the use of wording associated with the deemed issuance of a Permit in its tariff pages.
14. Accordingly, the Commission finds that the 14 July 2011 changes to Bell Canada's NST, item 901.4(o), and Télébec's General Tariff, Chapter 10.3, Article 10.3.4(15) are inappropriate.

II. Is it appropriate to approve the proposed revisions for an unauthorized attachment charge and negotiated notification arrangements?

15. In Bell Canada et al.'s Support Structure Tariffs, an unauthorized attachment charge applies where a Licensee has installed a Facility, except a subscriber drop wire, on or in Support Structures, for which a Permit has not previously been issued.

16. Bell Canada et al. stated that they have proposed to extend the existing tariff provision in respect of unauthorized attachments to also apply to situations involving service poles as an incentive for a Licensee to report its use of service poles accurately and in a timely manner. Bell Canada et al. also stated that the proposed revisions reflect the possibility of negotiated arrangements for the charging of service poles, as contemplated in Telecom Decision 2011-406. Bell Canada et al. stated that, for the sake of clarity, they propose to explicitly allow for such arrangements in their tariffs.
17. The Cable carriers and Regroupement submitted that the intent of Telecom Decision 2011-406 is that ILECs would work together with Licensees to determine the number of billable service poles. They submitted that the effect of the proposed tariff changes is to force Licensees to accede to whatever terms Bell Canada et al. demand, and to bear all costs of identifying existing usage of service poles or face punitive sanctions, if there are no negotiations.
18. Regroupement submitted that it was inappropriate to apply unauthorized attachment charges to service poles in current use, as if such attachments to service poles were illegal to begin with. The Cable carriers submitted that if unauthorized attachment charges are applied to service poles at all, they should be limited to service pole attachments made subsequent to a Commission decision in this proceeding for which the Licensee did not notify the ILEC within 30 days of placement.
19. The Cable carriers added that Licensees do not have records that track their use of service poles as it has not been necessary to maintain records of these facilities in the past.
20. In reply, Bell Canada et al. stated that their preference is to enter into negotiated agreements with Licensees. Bell Canada et al. noted, however, that their proposal recognizes that some Licensees may have the records for an explicit billing approach.
21. Bell Canada et al. stated that the onus is on the Licensee to ensure its usage of service poles is reported accurately.

Commission's analysis and determinations

22. The Commission notes that, prior to Telecom Decision 2011-406, Licensees were not required to pay for the use of a service pole. Further, while the Support Structure Tariffs provided for the required notification by the Licensee of the placement of its subscriber drop wires on service poles, neither the ILECs nor the Licensees had the incentive to maintain records in the past.
23. The Commission notes, however, that with approval of the rate for the use of a service pole effective 4 July 2011 as set in Telecom Decision 2011-406, accurate notification and records by the Licensee of the placement of its subscriber drop wires on service poles is paramount. In this regard, the Commission notes that Bell Canada et al.'s Support Structure Tariffs state that the Licensee is to notify the ILEC of the placement of one or more subscriber drop wire(s).

24. The Commission notes Bell Canada et al.'s position that, absent the proposed unauthorized attachment charge, there is no incentive for Licensees to report their use of service poles accurately. The Commission notes that the number and location of service poles in place prior to 4 July 2011 have yet to be determined. In the Commission's view, it would be difficult to impose a penalty on a going-forward basis, without knowledge of the use of service poles prior to 4 July 2011. In the Commission's view, while a penalty would act as an incentive for Licensees to report their use of service poles accurately, Bell Canada et al.'s approach is premature.
25. In addition, the Commission notes that Bell Canada et al. proposed other revisions such as negotiated arrangements and a short implementation period for the initial reporting of service poles. The Commission considers that it would not be appropriate to approve the other proposed revisions as they are linked to the proposed unauthorized attachment charges and the deemed issuance of a Permit as discussed in the above section.
26. Accordingly, the Commission finds that it would not be appropriate to approve the proposed revisions in Bell Canada TN 918 and Télébec TN 434 for an unauthorized attachment charge and negotiated notification arrangements at this time.

III. Is it appropriate to approve the proposed revision to correct the error in the French version of the Support Structure Tariffs?

27. The Commission notes that Bell Canada et al. have proposed an amendment to align the French version with the English version to provide that notification of the attachment of a subscriber drop wire to a service pole is to be made 30 days after such placement. The Commission concludes that the amendment to align the French and English versions of Bell Canada et al.'s Support Structure Tariffs is appropriate.

Conclusions

28. In light of the above, the Commission directs Bell Canada et al. to remove the wording changes that were made on 14 July 2011 to Bell Canada's NST, item 901.4(o), and Télébec's General Tariff, Chapter 10.3, Article 10.3.4(15), and to re-issue the tariff pages without the 14 July 2011 changes.
29. The Commission also directs Bell Canada et al. to file for approval proposed revisions which will trigger the commencement of monthly charges for use of service poles effective 4 July 2011.
30. The Commission also **denies** Bell Canada TN 918 and Télébec TN 434, and **approves** Bell Canada TN 918A and Télébec TN 434A.

Secretary General

Related documents

- *Follow-up to Telecom Decision 2010-900 - Service pole rate and markup issues*, Telecom Decision CRTC 2011-406, 4 July 2011
- *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