



Telecom Decision CRTC 2012-30

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Ottawa, 20 January 2012

MTS Allstream Inc. – Application concerning relocation of co-location services in a TELUS Communications Company central office

File number: 8622-M59-201116252

In this decision, the Commission denies MTS Allstream's requests for the Commission to direct TCC to (i) continue to provide co-location services to MTS Allstream and other competitors co-located in a building scheduled for demolition during the relocation period, (ii) waive certain charges, and (iii) compensate MTS Allstream for its relocation costs.

Background

1. On 9 March 2011, TELUS Communications Company (TCC) publicly announced its plan to redevelop a city block in downtown Vancouver, British Columbia, which contains some TCC buildings.
2. On 1 September 2011, TCC provided carriers co-located in a TCC central office located at 720 Seymour Street, including MTS Allstream Inc. (MTS Allstream), with written notice that 720 Seymour Street was to be demolished. TCC notified the affected carriers that they would have to relocate the equipment they use to interconnect with TCC by 1 February 2012 to co-location facilities at 768 Seymour Street.

Introduction

3. The Commission received an application by MTS Allstream, dated 19 December 2011, requesting that the Commission issue an order on an expedited basis directing TCC to continue to provide co-location services to MTS Allstream and other competitors co-located at 720 Seymour Street until those companies have had sufficient time, at least until 30 June 2012,¹ to relocate their equipment and services.
4. MTS Allstream also requested that the Commission direct TCC to (i) waive certain one-time installation charges and incremental monthly recurring charges, (ii) compensate MTS Allstream for all costs incurred for the relocation, and (iii) ensure that the disruption to MTS Allstream's customers' service would be kept to an absolute minimum.
5. The Commission received comments regarding MTS Allstream's application from TCC. The public record of this proceeding, which closed on 17 January 2012, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

¹ In its reply comments dated 11 January 2012, MTS Allstream stated that it was now willing to move this date up to 30 April 2012.

6. The Commission considers that it must address the following issues in its determinations:
 - I. Did TCC provide MTS Allstream with sufficient notice of the relocation of the co-location space?
 - II. Should the Commission direct TCC to waive certain charges and/or direct TCC to pay MTS Allstream's relocation costs?
- I. Did TCC provide MTS Allstream with sufficient notice of the relocation of the co-location space?**
7. MTS Allstream argued that TCC did not provide sufficient notice of the relocation to the co-located carriers. MTS Allstream submitted that the relocation constituted a network change and that, as such, pursuant to TCC's Carrier Access Tariff item 101.2.4 – Network changes, MTS Allstream was entitled to (i) two years notice of the change, or (ii) notice as soon as the decision to proceed had been made. MTS Allstream submitted that, alternatively, pursuant to section 12.09 of the Central Office Licence Agreement Physical Co-location (the Agreement), it was entitled to at least six months notice of a change to TCC's facilities, equipment, or network that would impact MTS Allstream's equipment.
8. TCC argued that it provided sufficient notice of the relocation to the affected carriers. TCC indicated that the Agreement between MTS Allstream and TCC provides the terms and conditions for the relocation of co-location services in TCC's incumbent local exchange territory in British Columbia. TCC noted that, specifically, section 14.06 of the Agreement stipulates that 60 days written notice is required for the relocation of co-located equipment or facilities from one central office to another.
9. TCC noted that it was prepared to make arrangements to allow MTS Allstream to remain in its co-location space until 12 February 2012, but that this would be the last possible date for MTS Allstream to relocate.
10. TCC disputed MTS Allstream's claim that the relocation constituted a network change. TCC argued that it was not making changes to the underlying technology, design, function, operation, or layout of its network. TCC therefore submitted that the relocation did not trigger the notice requirements suggested by MTS Allstream.
11. The Commission considers that TCC's tariffs and associated agreements should be read and interpreted as a unified whole, taking into account all aspects of those tariffs and agreements. Therefore, the Commission considers that if the relocation of any co-located equipment constitutes a network change that triggers either item 101.2.4 of TCC's Carrier Access Tariff or section 12.09 of the Agreement, as suggested by MTS Allstream, it is unclear when, if ever, section 14.06 of the Agreement would apply.
12. Further, the Commission notes that MTS Allstream did not contradict TCC's submission that there was no change to the underlying technology of its network.
13. The Commission therefore determines that, based on the facts of this case, section 14.06 of the Agreement applies to the relocation in question.

14. In light of the above, the Commission **denies** MTS Allstream's request for the Commission to issue an order directing TCC to continue to provide co-location services to MTS Allstream and other competitors co-located at 720 Seymour Street after 1 February 2012.
15. The Commission urges MTS Allstream, with assistance from TCC, to relocate its co-located equipment in the most timely and efficient manner possible in order to meet the deadline provided by TCC. In this regard, the Commission notes that TCC is prepared to allow MTS Allstream to remain in its co-location space until 12 February 2012. The Commission also notes TCC's commitment, under section 14.05 of the Agreement, to use commercially reasonable efforts to assist MTS Allstream in order to minimize any downtime to MTS Allstream's end-customers during the relocation.
16. The Commission notes that the market within which MTS Allstream's end-customers receive services is forborne from regulation and that those end-customers can therefore choose to subscribe to other competitors' services in the event of a service disruption.

II. Should the Commission direct TCC to waive certain charges and/or direct TCC to pay MTS Allstream's relocation costs?

17. MTS Allstream submitted that TCC should (i) not apply any one-time installation charges or incremental monthly recurring charges, and (ii) reimburse the affected co-located carriers for all relocation costs incurred. MTS Allstream argued that TCC's retail customers would not incur costs as a result of TCC's redevelopment project and that it would be discriminatory to expect the affected carriers to do so.
18. TCC submitted that section 14.04 of the Agreement is clear that each party to the Agreement is responsible for paying its own costs for the relocation of co-location equipment and facilities.
19. Regarding the one-time installation charges and monthly recurring charges, TCC submitted that these charges are required under its tariffs, approved under the *Telecommunications Act*, and that there is no basis in the present case for waiving these charges.
20. The Commission determines that section 14.04 of the Agreement applies to the relocation costs at issue in this application. The Commission notes that it is not discriminatory to require MTS Allstream to cover its own costs for the relocation since MTS Allstream agreed to such terms when it signed the Agreement.
21. The Commission notes that TCC has not yet invoiced MTS Allstream for any relocation charges. The Commission considers that once TCC has invoiced MTS Allstream for relocation charges, MTS Allstream can dispute any of those charges using the appropriate billing dispute process.
22. In light of the above, the Commission **denies** MTS Allstream's requests for (i) a waiver of one-time installation and monthly recurring charges, and (ii) compensation for its relocation costs.

Secretary General