



## Telecom Decision CRTC 2015-374

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### **Shaw Cablesystems G.P. – Application requesting relief with regard to charges for access to TELUS Communications Company's service poles**

*The Commission directs TCC to immediately withdraw all uncorrected invoices previously issued to Shaw for service pole charges. The Commission also directs TCC to provide Shaw with the requested detailed service pole information within 30 days of the date of this decision in the manner specified in this decision. In addition, the Commission directs TCC to issue revised invoices to Shaw no earlier than 60 days from the date of this decision in order to provide Shaw with sufficient time to review the census results.*

#### **Application**

1. The Commission received an application from Shaw Cablesystems G.P. (Shaw), dated 19 November 2014, in which the company requested relief from alleged overbilling by TELUS Communications Company (TCC) of charges for service poles<sup>1</sup> in British Columbia.
2. Specifically, Shaw requested that the Commission direct TCC to
  - withdraw all invoices previously issued to Shaw for service poles in British Columbia;
  - provide revised census results to Shaw in a machine-readable format, depicting totals by service area/cities/towns and the data collectively for each billable service pole; and
  - provide Shaw with a reasonable period of time to validate TCC's revised census results.
3. The Commission received an intervention regarding Shaw's application from TCC. The public record of the proceeding, which closed on 16 April 2015, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the file number provided above.

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<sup>1</sup> A "service pole" is a pole owned by an incumbent local exchange carrier (ILEC) on which the only licensee attachment is a drop wire to the subscriber's premises. Licensees are cable television undertakings or Canadian carriers that attach their facilities, such as wires, onto ILECs' poles to serve their own end-users. Service poles are distinct from main poles, which are used to carry other attachment strands and facilities.

## **Background**

4. In Telecom Decision 95-13, the Commission set out a framework for licensing access to the support structures<sup>2</sup> of Island Telecom Inc., Maritime Tel & Tel Limited, The New Brunswick Telephone Company, Limited, and NewTel Communications Inc. (now, collectively, Bell Aliant Regional Communications, Limited Partnership (Bell Aliant)); Bell Canada; Northwestel Inc.; and BC TEL and TELUS Communications Inc. (now, collectively, TCC).
5. In Telecom Decision 2010-900, the Commission approved revised rates for the support structure services of some of the incumbent local exchange carriers (ILECs), including TCC.<sup>3</sup> In doing so, it determined that the ILECs should be able to charge separately for service poles.
6. In Telecom Decision 2011-406, the Commission approved pole rates for some ILECs, including TCC.<sup>4</sup> The Commission approved a service pole-specific rate for each ILEC equivalent to their pole rate, and required that the ILECs determine the number of billable service poles for each licensee. The Commission also noted that the ILECs lacked the records required to accurately bill a service pole-specific rate, and considered that there were alternative approaches to determine the number of billable service poles for each licensee.
7. Starting in June 2013, TCC initiated a third-party census in British Columbia to determine the number and location of all billable service poles in that province, as well as to determine which licensees were attached to which poles. Further, as the census progressed, TCC began sending invoices to licensees, including Shaw.
8. In Telecom Decision 2014-265, in response to an application by Shaw, the Commission determined that the census conducted by TCC to determine the number of service poles in its British Columbia operating territory was valid, in that it provided the appropriate basis of a service pole record. The Commission also granted Shaw a period of six months from the date of the decision or from the date that TCC provided Shaw with the census results specific to Shaw, whichever was latest, to validate TCC's census results (the six-month validation period).
9. In Telecom Decision 2014-645, in response to an application by Raftview Communications Ltd. (Raftview), the Commission found that TCC was precluded by its Support Structure Service tariff from charging licensees for service poles it does not own, unless the company has an agreement through which it has the right to provide licensees with access to those poles.

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<sup>2</sup> “Support structures” are supporting structures (e.g. poles, strand, and conduit) that an ILEC either owns or has the right to provide access to.

<sup>3</sup> Bell Aliant, Bell Canada, and Téléc, Limited Partnership (Téléc) [collectively, Bell Canada et al.]; MTS Allstream Inc., and TCC

<sup>4</sup> Bell Canada et al., MTS Allstream Inc., and TCC

Accordingly, the Commission directed TCC to withdraw all invoices to Raftview and/or provide refunds to Raftview, and to apply the findings in the decision to any other similarly placed licensees.

## **Issues**

10. The Commission has identified the following issues to be addressed in this decision:

- Should TCC withdraw all invoices for service pole charges previously issued to Shaw?
- What census information should TCC provide to Shaw?
- What period of time should Shaw be provided with to validate TCC's revised census results?

### **Should TCC withdraw all invoices for service pole charges previously issued to Shaw?**

11. Shaw requested that TCC be directed to withdraw all invoices previously issued to Shaw for service pole charges. Shaw claimed that TCC had invoiced it for a large number of service poles<sup>5</sup> that TCC was no longer claiming were billable, but that, to date, it had not withdrawn those invoices.
12. Shaw was of the view that it had not avoided or delayed making payments to TCC for service pole charges, noting that, notwithstanding its concerns and dispute issues with TCC's invoicing for service poles, it had already made substantial payments to TCC totalling over two million dollars for service pole charges.

### **Commission's analysis and determinations**

13. While Shaw has been invoiced for a certain number of service poles by TCC, Shaw and TCC now consider the appropriate service pole count to be significantly lower. Further, in TCC's reply, TCC revised its count, reducing the billable service poles for Shaw on the basis of discussions with Shaw and other licensees, an internal review, and the Commission's determination in Telecom Decision 2014-645 that TCC cannot charge licencees for service poles it does not own unless the company has an agreement through which it has the right to provide licensees with access to those poles.
14. TCC did not dispute Shaw's request that the Commission direct TCC to withdraw all invoices previously issued to Shaw for service poles in British Columbia.
15. Further, the Commission notes that, in Telecom Decision 2014-645, it directed TCC to, among other things, withdraw all service pole invoices to Raftview and to apply the findings in that decision to any other similarly placed licensees. As such, any

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<sup>5</sup> Specific numbers concerning the number of service poles at issue in Shaw's application were provided to the Commission in confidence during the course of this proceeding.

uncorrected invoices previously issued by TCC to Shaw are not accurate and, further, should have been withdrawn pursuant to Telecom Decision 2014-645.

16. Accordingly, the Commission **directs** TCC to immediately withdraw all uncorrected invoices previously issued to Shaw for service pole charges.

#### **What census information should TCC provide to Shaw?**

17. Shaw requested that TCC be directed to provide it with the following information in machine-readable format, so that it can verify TCC's revised census results:

- the name of the licensee;
- the service area/city/town;
- the X,Y Global Positioning System (GPS) coordinates;
- pole tag information;
- ownership of the service pole, whether TCC owned, jointly-owned, or owned by BC Hydro;
- a digital photograph (JPEG) of the pole tag; and
- a digital photograph (JPEG) of the pole.

18. Shaw argued that TCC had used the pole identification and ownership information, including photographs (the detailed service pole information), that it collected in its service pole census to determine whether service poles were billable. Shaw considered that it and other licensees were paying for the cost of the census and were therefore entitled to that information. Shaw further considered that the information would help licensees to ensure that TCC's revised census results were accurate and complete.

19. Shaw argued that while GPS data was relevant information to verify the location of a service pole, it was one of a series of data points necessary to verify whether a pole was a billable service pole to a given licensee. Shaw considered that the pole identification tag number and associated photograph would establish whether TCC owned or exercised control over a service pole, and that a photograph of the pole itself would confirm whether a drop wire was attached to the pole, whether the drop wire belonged to Shaw, and whether the drop wire was the only third-party attachment on that pole.

20. While acknowledging that its third-party contractor that conducted the service pole census physically visited service poles in British Columbia, recording GPS coordinates and taking photographs of each service pole and pole tag, where available, TCC considered that Shaw was requesting information well beyond what is provided by other ILECs to their licensees. TCC argued that the large cable operators

in Canada have previously told the Commission that the most important piece of information required when validating a service pole count is the GPS coordinates.<sup>6</sup>

21. TCC argued that licensees only need GPS coordinates and basic geographic information, such as the municipality, in order to verify TCC's revised census results. In this regard, TCC noted that a spreadsheet with GPS coordinates and licensee names could be imported to produce service pole location pictures using Google Earth.

#### **Commission's analysis and determinations**

22. TCC has used the detailed service pole information collected in its third-party service pole census to determine whether a service pole is billable, for example validating certain service poles that Shaw has disputed being attached to.
23. In addition, in Telecom Order 2013-114, the Commission stated that a third-party census benefited both licensees and Bell Canada et al.,<sup>7</sup> as it provided a detailed and accurate record of the use of service poles.
24. Accordingly, the Commission considers that TCC's argument that the detailed service pole information is not required by Shaw to determine whether a service pole is billable is inconsistent with the fact that TCC used that same information to determine whether a service pole is billable. Further, the fact that TCC is proposing to recover a portion of the total cost of the census, including the detailed service pole information, from licensees such as Shaw, reinforces the importance of that information in determining whether a given service pole is billable.
25. In light of the above, the Commission **directs** TCC to provide Shaw with the requested detailed service pole information within **30 days** of the date of this decision. Further, TCC is **directed** to provide that information in a format that is machine-readable and easily searchable by Shaw, with a common naming convention that allows Shaw to, for example, easily search for data associated with a specific service pole.<sup>8</sup>
26. The Commission expects that to the extent that ILECs have collected certain types of pole identification and ownership information, whether that includes GPS coordinates, photographs, or any other data type, that information should generally be provided to other similarly placed licensees upon request for the applicable service poles in order to facilitate the validation of service pole census results.

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<sup>6</sup> TCC was referring to comments made by the large cable operators, including Shaw, in the proceeding leading to Telecom Order 2013-114.

<sup>7</sup> In that proceeding, Bell Canada et al. was comprised of Bell Aliant, Bell Canada, and Télébec.

<sup>8</sup> For example, naming the JPEGs of service poles by their GPS coordinates.

**What period of time should Shaw be provided with to validate TCC's revised census results?**

27. Shaw requested that, consistent with Telecom Decision 2014-265, TCC should not issue revised invoices for service pole charges until TCC has provided Shaw with the detailed service pole information and Shaw has had a reasonable opportunity to use that information to validate TCC's revised census results.
28. Shaw noted that, in Telecom Decision 2014-265, the Commission stated that the company should be given a period of six months from the date that TCC provided it with census results specific to Shaw to validate the census results. Shaw considered that it only received TCC's revised census results on 6 March 2015, which disclosed that a significant number of service poles from the original results were no longer billable. Shaw considered that it was only reasonable that it should be provided with additional time to verify TCC's revised service pole count, arguing that this would be in keeping with the underlying intent of the verification process.
29. TCC submitted that Shaw had ample time to complete its validation work, and yet only submitted a trickle of detailed service pole disputes. TCC also argued that Shaw's request for additional validation time was another attempt to delay resolution of this matter that had been before the Commission for more than two years.

**Commission's analysis and determinations**

30. Although the most recent version of the census results was provided in March 2015, both parties have had considerable time to assess several versions of the census results over the past two years, with the exception of Shaw's access to the detailed service pole information. Based on the information provided on the record of this proceeding, Shaw and TCC appear to be very close in their estimated count of the number of billable service poles.
31. However, considering the large number of service poles at issue in this proceeding, there is likely to be some margin of error with regard to which specific poles are billable once Shaw has completed a review of the revised census results. Item 120.1 of TCC's Terms of Service allows TCC's customers to dispute recurring charges within one year of the date of an itemized statement. Shaw would therefore have at least one year from the date a revised invoice is provided to dispute any billable service poles, for service pole usage charges or for unreported attachments. That amount of time, in combination with the detailed service pole information made available to Shaw pursuant to the Commission's determination earlier in this decision, will be sufficient for Shaw to complete a final verification of TCC's revised census results.
32. The Commission considers that it would be unreasonable, at this point, to restrict TCC's ability to collect revenues owed to it for service poles until such point that both parties agree on the exact location and billable nature of each service pole under dispute in this proceeding.

33. Based on all of the above, the Commission **directs** TCC to issue revised invoices to Shaw no earlier than **60 days** from the date of this decision in order to provide Shaw with sufficient time to review the census results. Further, the Commission notes that Shaw can dispute any service pole or unreported attachment charges within one year after the date that an invoice is issued pursuant to the dispute process in TCC's Terms of Service.

Secretary General

### **Related documents**

- *Raftview Communications Ltd. – Request for relief from alleged inappropriate charges by TELUS Communications Company for privately owned service poles*, Telecom Decision CRTC 2014-645, 12 December 2014
- *Shaw Cablesystems G.P. – Request for relief with regard to TELUS Communications Company's service pole census*, Telecom Decision CRTC 2014-265, 22 May 2014
- *Bell Aliant Regional Communications, Limited Partnership; Bell Canada; and Télécédex, Limited Partnership*, Telecom Order CRTC 2013-114, 11 March 2013
- *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
- *Access to telephone company support structures*, Telecom Decision CRTC 95-13, 22 June 1995