



Broadcasting and Telecom Decision CRTC 2015-574

PDF version

Ottawa, 22 December 2015

File number: 8622-S9-201508045

Shaw Cablesystems G.P. and Shaw Telecom G.P. – Request for access to multi-dwelling units developed by Concord Pacific Developments Inc.

The Commission finds that Shaw was denied timely access, on reasonable terms and conditions, to two multi-dwelling units (MDUs) built by Concord Pacific Developments Inc. (Concord) called The Monet and The Met. End-users were therefore limited in their choice of local exchange carriers when they occupied their units, contrary to the core principles of facilitating competition and maximizing end-user choice. As well, Novus Entertainment Inc., acting in concert with Concord, conferred upon itself an undue preference and subjected Shaw to an undue disadvantage, contrary to section 9 of the Broadcasting Distribution Regulations and section 27 of the Telecommunications Act.

*It is premature at this time for the Commission to rule on whether Shaw has been denied access to a third MDU to be built by Concord, called The Arc, given that, based on the record of this proceeding, construction has not yet begun. However, this part of the application will remain open, and the Commission **directs** the parties to file regular reports on the status of their negotiations.*

Background

1. In Telecom Decision 2003-45, the Commission established principles for the provision of telecommunications services by local exchange carriers (LECs) to end-users in multi-dwelling units (MDUs). These principles are as follows:
 - LECs must have access to MDUs during the construction phase, in order to have service available upon occupancy, to minimize disruption, and to avoid the additional costs associated with the installation of facilities after completion of the MDU; and
 - LECs must have the ability to access and enter into MDUs to connect and/or install their facilities, as well as repair and maintain them and do whatever else may be required to provide reliable, high-quality service to end-users in MDUs.
2. To ensure that existing and potential end-users in new and existing MDUs have direct access to the LEC of their choice, the Commission, pursuant to its powers under section 24 of the *Telecommunications Act*, established that the provision of telecommunications service by a LEC in an MDU is subject to the condition that all

LECs wishing to serve end-users in that MDU are able to access end-users in that MDU on a timely basis, by means of resale, leased facilities, or their own facilities, at their choice, under reasonable terms and conditions (the MDU access condition).

3. The Commission also required, as a condition of offering or providing telecommunications services in an MDU, that a LEC disclose on its website the details of its access agreements, as follows:
 - all terms and conditions of access agreements concluded with the building owner, including fees, within 30 days of a written agreement being reached, or where no written agreement exists, within 30 days of a request by another LEC; and
 - all terms and conditions of any agreements concluded with the building owner for the installation of telecommunications facilities, within 10 days of a written agreement being reached, or where no written agreement exists, within 10 days of a request by another LEC.
4. Finally, the Commission stated that it expects building owners to cooperate with LECs to enable them to access end-users in their MDUs in satisfaction of the MDU access condition. To this end, the Commission set out guidelines¹ to assist parties in their negotiation of access arrangements on the basis of just and expedient conditions.

Application

5. The Commission received an application from Shaw Cablesystems G.P., on behalf of itself and Shaw Telecom G.P. (collectively, Shaw), dated 30 July 2015, regarding timely access to three MDUs in British Columbia. The three MDUs, i.e. The Monet, The Met, and The Arc, are projects by Concord Pacific Developments Inc. (Concord).
6. Shaw submitted that Novus Entertainment Inc. (Novus) is a competitive local exchange carrier (CLEC) and a broadcasting distribution undertaking (BDU), and that Concord and Novus are related parties, i.e. they are not at arm's length, based on publicly available information.
7. Shaw submitted that Concord and Novus had denied Shaw construction-phase access to The Monet, and that based on their actions to date, they intend on denying Shaw construction-phase access to The Met and The Arc.
8. Shaw requested that the Commission issue the following:
 - an order to abridge the normal times for dealing with its application;

¹ These guidelines take into account the responsibilities of building owners to ensure the safety, security, appearance, and condition of their properties, and the safety and convenience of tenants and other persons, as well as the fees that a building owner could recover.

- an order that as of the date of the Commission’s determinations on Shaw’s application, neither Novus nor any other LEC, telecommunications service provider, or BDU should be permitted to provide telecommunications or broadcasting services in The Monet, The Met, or The Arc unless Shaw has been given timely access under reasonable terms and conditions by means of resale, leased facilities, or Shaw’s own facilities, at Shaw’s choice;
- an order that timely access by Shaw, on reasonable terms and conditions, to The Monet and The Met, for the purposes of installing, operating, maintaining, and replacing transmission facilities and ancillary telecommunications equipment, would consist of access to either (i) the main terminal room, (ii) the vertical conduit, or (iii) horizontal conduits;
- a declaration that Concord and Novus are denying Shaw timely access to The Monet, The Met, and The Arc on reasonable terms and conditions, contrary to the Commission’s MDU access condition;
- a declaration that Novus, acting in concert with Concord, has subjected Shaw to an undue disadvantage and has conferred upon itself an undue preference by securing for itself construction-phase access to both The Monet and The Met, while Shaw has been denied the same access, contrary to paragraph 9 of the *Broadcasting Distribution Regulations* and subsection 27(2) of the *Telecommunications Act*;
- an order prohibiting Concord and Novus from denying Shaw timely access to The Arc, on reasonable terms and conditions, for the purposes of installing, operating, maintaining, and replacing transmission facilities and ancillary telecommunications equipment;
- an order that Novus should not be permitted to (i) enter into a building access agreement with Concord or access The Arc unless Concord has given Shaw the same opportunity, and (ii) extend its network into the main terminal room of The Arc unless Concord has given Shaw the same opportunity, on reasonable terms and conditions; and
- other such relief as the Commission may consider just and reasonable in the circumstances.

9. In reply to Commission interrogatories, Concord stated that strata plans² for The Monet and The Met were registered in the land title offices on 25 June 2015 and 1 June 2015, respectively, and that a property manager had been hired to deal with the owners of the units. For The Met, the first annual general strata council meeting was held on 17 August 2015, during which the strata council was elected. For The Monet,

² In British Columbia, “strata” is the term used for housing in which owners own their individual lots and together own the common property and assets. Under British Columbia’s *Strata Property Act*, a strata plan, which shows the dimensions of the boundaries of the strata lots and common property, must be filed with a land title office.

the first general strata council meeting was scheduled for 31 August 2015, but there was not a quorum, and the meeting was to be rescheduled by the property manager.

10. Concord stated that The Arc was still in the development phase and that construction would begin sometime in 2016. Concord added that no LECs had been granted access to The Arc.
11. Shaw replied that it was unaware of The Met's transfer of ownership to the strata council in June 2015, and of the status with respect to the other MDUs. Shaw stated that in the interest of pursuing healthy and long-lasting relationships with the strata councils and the residents of The Monet and The Met, it would attempt to work with the associated property managers and strata councils to secure access instead of asking the Commission to exercise any enforcement powers with respect to those buildings.
12. Shaw therefore withdrew its request for an order prohibiting Novus or any other LEC, telecommunications service provider, or BDU from providing services in The Monet and The Met, as well as for an order regarding what timely access would consist of with respect to access to The Monet and The Met. Shaw maintained all of its other requests as set out in paragraph 8.
13. The Commission received interventions regarding Shaw's application from Concord, Novus, and TELUS Communications Company (TCC). The public record of this proceeding, which closed on 28 September 2015, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Issues

14. The Commission has identified the following issues to be addressed in this decision:
 - Was Shaw denied timely access to the three MDUs on reasonable terms and conditions, contrary to the Commission's MDU access condition?
 - Has Novus, acting in concert with Concord, conferred upon itself an undue preference and subjected Shaw to an undue disadvantage with respect to The Monet and The Met under the *Broadcasting Distribution Regulations* and the *Telecommunications Act*?
 - What would constitute the appropriate remedy for Shaw if Novus is found to have been in non-compliance with its regulatory obligations?

Was Shaw denied timely access to the three MDUs on reasonable terms and conditions, contrary to the Commission's MDU access condition?

15. Shaw stated that construction of The Monet had begun in the summer of 2013, and that it had requested construction-phase access from Concord in August 2013. Shaw indicated that Concord had advised Shaw that it would have to await the formation of the strata council to obtain access to the building post-construction.

16. Shaw submitted that it first learned of The Met in June 2013, and that it believed that construction of The Met had begun around August 2013. Shaw stated that it had requested access to The Met, but that Concord had never responded.
17. Shaw indicated that in May 2015, it had sent a letter to Concord in which it requested access to both The Monet and the Met, and that Concord had never responded.
18. Shaw stated that Novus was given construction-phase access to The Monet and The Met for the purposes of bringing facilities into the main terminal room and extending its network through pre-wiring of the vertical risers and horizontal conduits in these MDUs.
19. Shaw submitted that it had approached Concord in March 2015 to request a meeting to discuss access to The Arc, and that in June 2015, it had written twice to Concord to request construction-phase access to The Arc. Shaw stated that on 29 June 2015, Concord had advised it that access would be conditional on Shaw agreeing to install filters on its facilities and equipment to prevent the delivery of Internet access and cable television services to building residents unless the strata council chose to give access to Shaw. On 2 July 2015, Shaw contacted Concord to discuss access. On 7 July 2015, Shaw sent a follow-up letter in which it stated that it could not agree to the installation of filters. Shaw received no response from Concord before filing its application with the Commission.
20. Shaw submitted that Concord and Novus, as related entities acting in concert, had denied Shaw construction-phase access to The Monet, The Met, and The Arc, contrary to the core principles of competition, efficient network deployment, and end-user choice of the MDU access framework set out in Telecom Decision 2003-45.
21. In support of its application, Shaw relied on the Commission's determinations in Telecom Decisions 2014-42 and 2015-148, which addressed access by Bell Canada to MDUs in Toronto, Ontario.
22. Novus submitted that there are valid arguments against enforcing the MDU access condition and the guidelines set out in Telecom Decision 2003-45 in cases where the party wishing to enforce them (i) is an incumbent that was previously a monopoly, (ii) is using these policies to get a competitive edge by providing broadcasting services as part of its packages, and (iii) continues to have market dominance for one or more of its services. In this regard, Novus argued that
 - service would be available from a competitor, so building residents would not be without services and would have an opportunity to try another service provider at a highly competitive price; and
 - the Commission should adopt an approach similar to that applied in the Broadcasting context, in which the Commission has acknowledged the increased negotiating power of the vertically integrated broadcasters, and has

imposed different and more rigorous obligations on them to foster competition.

23. Novus submitted that Shaw is an incumbent service provider, and that when a new entrant is given a head start in a new development, competition is enhanced. Novus submitted that it installs facilities after construction in the majority of buildings it serves, and that there is never any disruption, particularly if the building is new. Novus added that it had advised Shaw to seek an access agreement from the strata councils for The Monet and The Met.
24. Novus stated that with respect to The Arc, Concord had requested from Shaw a proposal regarding the installation of Shaw's facilities and compensation to the developer to defray its reasonable costs. Novus stated that it understood that Concord and Shaw had held an initial meeting and that negotiations were under way.
25. TCC confirmed that it is providing home phone, high-speed Internet access, and Optik TV services in The Monet.³ In The Met, TCC's facilities are terminated in the telephone room, but are not currently used to serve any customers. With regard to The Arc, TCC stated that its plans were undetermined. TCC also confirmed that no agreements have been signed between it and Concord with respect to any of the three buildings.
26. In reply, Shaw submitted that Novus fundamentally misunderstood the purpose of the Commission's MDU access framework and the policy objectives that underpin it. Shaw reiterated its submission that the securing of full access rights for Novus for the purposes of installing, maintaining, and operating its communications network, and the denial of such access to Shaw, resulted in a breach of the MDU access condition.

Commission's analysis and determinations

27. In the case of The Monet and The Met, Concord granted access to Novus and TCC during the construction phase. Based on the record of this proceeding, construction of these MDUs is complete, residents have started to occupy the two buildings, and they have the choice of both Novus and TCC in The Monet, and only Novus in The Met.
28. Novus's argument that competition is enhanced when a new entrant is given a head start in a new development is questionable as a matter of policy and is inconsistent with the MDU access framework. The core principles of the MDU access framework are to facilitate competition and maximize end-user choice. Competition is not enhanced by refusing a competitor access to an MDU, whether that competitor is an incumbent or a new entrant. Further, without competitive entry, there would be no end-user choice.
29. In Telecom Decision 2014-42, the Commission addressed a request by Bell Canada for access to an MDU in Toronto, Ontario. Among the submissions considered was the building owners' argument that Bell Canada's access was not being denied but

³ TCC was served with a copy of Shaw's application as a LEC with access to one of the three MDUs.

was merely being delayed by a few months until the Condominium Board, once established, could decide on whether to grant this access. The Commission rejected this argument, finding that it was inconsistent with the MDU access framework's core principles of competition and end-user choice.

30. Consistent with its finding in Telecom Decision 2014-42, the Commission finds that Novus's position that the question of access should be addressed by the MDUs' strata councils and not by Concord/Novus effectively resulted in Shaw having been denied access during the construction phase, since a strata council's establishment is predicated on the construction of the MDU having been complete. Further, Concord/Novus's refusal to grant access to Shaw during the construction phase resulted in an unjustified limitation on choice of LEC for early residents.
31. In light of the above, the Commission finds that Shaw was denied timely access to The Monet and The Met on reasonable terms and conditions, contrary to the MDU access condition.
32. With respect to The Arc, based on the record of this proceeding, construction is slated to begin in 2016. Although Concord offered Shaw conditional access, which Shaw refused, Concord has expressed a willingness to enter into discussions to provide Shaw with construction-phase access. Therefore, it would be premature at this time for the Commission to rule on whether Shaw has been, or is being, denied timely access to The Arc on reasonable terms and conditions, contrary to the MDU access condition.

Has Novus, acting in concert with Concord, conferred upon itself an undue preference and subjected Shaw to an undue disadvantage with respect to The Monet and The Met under the *Broadcasting Distribution Regulations* and the *Telecommunications Act*?

33. Shaw stated that Novus and Concord are related entities, rather than entities operated at arm's length, and that as a result, Novus was able to access The Monet and The Met during the construction phase for the purpose of providing broadcasting distribution and telecommunications services upon building occupancy.
34. Shaw submitted that by denying it construction-phase access to both The Monet and The Met, Novus has conferred upon itself an undue preference and has subjected Shaw to a corresponding undue disadvantage, contrary to section 9 of the *Broadcasting Distribution Regulations* and subsection 27(2) of the *Telecommunications Act*. Shaw argued that the prevention or delay of its access to the MDUs
 - limits or encumbers end-users' choice of suppliers and service offerings;
 - tarnishes Shaw's reputation, since end-users tend to blame Shaw for its lack of service;
 - limits competition (and end-user choice) in the post-construction phase;

- drives up carriers' costs due to post-construction installation (Shaw estimated that the cost of an additional build to accommodate its entrance cable runs from at least \$25,000 to \$60,000, based on average build distances); and
 - deprives end-users of potential cost savings and other efficiencies associated with joint builds during the construction phase.
35. Novus replied that while it was given a preference regarding the Concord developments, the preference was not undue, and that Shaw was not subjected to an undue disadvantage.
36. Novus stated that it installs its facilities in the majority of MDUs it serves after construction and that this was not detrimental to its business. Novus added that the fact that Shaw's facility installation would be delayed in a few MDUs would not have any material impact on Shaw's business.
37. Novus submitted that as a former cable television monopoly, Shaw is still viewed by virtually all developers in Metro Vancouver as a utility company and is therefore invited to the initial planning sessions for each development. However, Novus, as a new entrant, does not have the same status, other than for Concord developments, since Novus and Concord are related.

Commission's analysis and determinations

38. The issues of undue preference and undue disadvantage will be examined separately under the *Broadcasting Distribution Regulations* and the *Telecommunications Act* because the factors examined to determine if there has been an undue preference or an undue disadvantage are different under each.

Broadcasting Distribution Regulations

39. Under paragraph 1(a) of the *Broadcasting Distribution Regulations*, "affiliate" means, in respect of a distribution undertaking, a person that controls the licensee, or that is controlled by the licensee or by a person that controls the licensee.
40. 503161 British Columbia Inc., a company wholly owned by Mr. Terence Hui, is the sole shareholder of Novus, a BDU. According to publicly available information, Mr. Hui is also the President and Chief Executive Officer of Concord. As a result of this corporate structure, Novus and Concord are affiliated and, consistent with previous Commission determinations, the actions of Concord can be attributed to Novus and vice-versa.
41. Based on the above-mentioned ownership structure, Novus and Concord are affiliates for the purpose of the *Broadcasting Distribution Regulations*.
42. Section 9 of the *Broadcasting Distribution Regulations* reads as follows:

9(1) No licensee shall give an undue preference to any person, including itself, or subject any person to an undue disadvantage.

9(2) In any proceedings before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the licensee that gives the preference or subjects the person to the disadvantage.

43. In analyzing a complaint under section 9 of the *Broadcasting Distribution Regulations*, the Commission must determine if a party has given a preference to any person or subjected any person to a disadvantage. If the answer is yes, it must then determine whether any preference or disadvantage conferred is undue.
44. As set out in subsection 9(2) of the *Broadcasting Distribution Regulations*, the burden is on the complainant to establish that a preference or a disadvantage exists. If the complainant can so demonstrate, the burden shifts to the licensee to establish that the preference or disadvantage conferred is not undue.
45. Novus conceded that it was the subject of a preference. As a result of its relationship with Concord, Novus was able to secure access to The Monet and The Met during the construction phase for the purpose of providing broadcasting distribution services. Accordingly, the Commission finds that Novus conferred a preference on itself and that Shaw was subjected to a disadvantage, given that it did not have the same opportunity as Novus.
46. To determine if the above-mentioned preference and disadvantage were undue, the Commission must examine whether Novus's conduct had or is likely to have a material adverse impact on Shaw, the residents of the MDUs in question, or any other person. The Commission must also assess the impact that Novus's conduct had or is likely to have on the achievement of the broadcasting policy objectives set out in the *Broadcasting Act*.
47. Competition among BDUs, along with end-user choice for consumers, contributes to the achievement of a number of objectives of the *Broadcasting Act*. Among other things, competition
 - contributes to service affordability by encouraging BDUs to reduce their rates for end-users;
 - encourages BDUs to offer greater choice in programming services and service packages to enhance the appeal of their services to consumers; and
 - provides incentives for BDUs to pursue more efficient delivery methods and other technological innovations.
48. For the reasons set out below, Novus's conduct with regard to The Monet and The Met during and immediately after the construction phase had a material and adverse effect on competition among BDUs.

49. First, additional costs are associated with post-construction access. A cost increase of the magnitude estimated by Shaw (\$25,000 to \$60,000) could have a material adverse impact on Shaw's or other BDUs' ability to compete in the MDUs. For some BDUs, a cost increase of this magnitude could be a deterrent to even entering the MDU. Further, if other similarly advantaged players in the market were to follow suit, then such behaviour could result in barriers to BDUs offering services in MDUs and/or upward pressure on BDUs' cost structures.
50. Such increases in the costs of service provision would detract from the objective of efficient delivery of programming. Moreover, it is likely that such cost increases would be passed on to end-users. Thus, conduct such as Novus's also has the potential to significantly detract from the attainment of one of the Commission's key objectives in encouraging competition: affordable rates.
51. Because Shaw's access to The Monet and The Met was restricted, residents' choice of service providers was limited. Some residents would necessarily have occupied their units by the time a strata council was established and Shaw started negotiations to obtain an access agreement. Assuming that Shaw's access were approved by the strata councils and obtained shortly following the establishment of the councils, Shaw would likely experience further delays, since it would have to perform the necessary engineering work and install its equipment before being in a position to offer services. These delays could limit Shaw's ability to obtain subscribers, since it was not able to supply its services at the time when residents began occupying their units. Lacking other options, these new residents would likely have subscribed to Novus's or TCC's services in The Monet and to Novus's services in The Met.
52. Novus's argument that Shaw's inability to access the buildings during the construction phase is comparable to Novus's situation in other buildings is irrelevant to the issues being examined. Novus may seek relief from the Commission if it is prevented from getting access to an MDU.
53. The Commission finds that Novus's actions were inconsistent with the objectives of fair and sustainable competition and end-user choice, and thus undermined the attainment of the objectives set out in the *Broadcasting Act*.
54. In light of the above, Novus conferred an undue preference on itself and subjected Shaw to an undue disadvantage, contrary to section 9 of the *Broadcasting Distribution Regulations*.

Telecommunications Act

55. Under subsection 35(3) of the *Telecommunications Act*, "affiliate," in relation to a Canadian carrier, means a person who controls the carrier, or who is controlled by the carrier or by any person who controls the carrier.
56. Based on the ownership structure described in paragraph 40, Novus, a Canadian carrier, and Concord are affiliates for the purpose of the *Telecommunications Act*.

57. Subsections 27(2) and (4) of the *Telecommunications Act* read as follows:

27(2) No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

27(4) The burden of establishing before the Commission that any discrimination is not unjust or that any preference or disadvantage is not undue or unreasonable is on the Canadian carrier that discriminates, gives the preference or subjects the person to the disadvantage.

58. The Commission assesses allegations regarding contraventions of subsection 27(2) of the *Telecommunications Act* on a case-by-case basis, taking into account the circumstances of each case. The Commission must first determine whether there is a preference. If it determines that there is a preference, it must then decide whether the preference is undue or unreasonable.

59. Based on the record of this proceeding, because of its relationship with Concord, Novus was able to secure preferred access during the construction phase of The Monet and The Met. TCC was also given this access with respect to The Monet. Given that the evidence, which was not contested by Novus/Concord, shows that Shaw did not have this same opportunity upon request, Shaw was clearly subjected to a disadvantage. Accordingly, the Commission finds that Novus acted in a way that conferred a preference on itself under section 27 of the *Telecommunications Act*.

60. Pursuant to subsection 27(4) of the *Telecommunications Act*, the burden of establishing that any preference or disadvantage is not undue or unreasonable is on Novus, the Canadian carrier.

61. Novus has not met this burden for the following reasons:

- Shaw was denied construction-phase access to The Monet and The Met, while Novus and TCC were permitted this access. Because access was restricted, residents' choice of LEC was necessarily limited at the time of occupancy.
- It is not necessary that access be provided to every LEC. It is reasonable to limit access to companies that request it and that are able to install their facilities on a timely basis. Moreover, although Concord/Novus were capable of providing construction-phase access to Shaw for The Monet and The Met, they chose to limit this access to Novus and TCC in the case of The Monet, and to Novus only in the case of The Met.
- By deferring the matter of access to the strata councils of The Monet and The Met, Novus has limited Shaw's ability to obtain subscribers, since Shaw was prevented from supplying its services from the time when residents began occupying their units (prior to the formation of the strata councils). Lacking

other options, these residents would likely have subscribed to Novus's or TCC's services in The Monet, and to Novus's services in The Met.

62. In light of the above, the Commission finds that at least until the establishment of the strata councils for The Monet and The Met, the preference conferred on Novus was unjust and undue, and that Shaw was subjected to unjust discrimination, in violation of section 27 of the *Telecommunications Act*.

What would constitute the appropriate remedy for Shaw if Novus is found to be in non-compliance with its regulatory obligations?

The Monet and The Met

63. Shaw has requested that the Commission issue declarations that (1) Novus, acting in concert with Concord, has violated the MDU access condition with respect to The Monet and The Met, and (2) Novus, acting in concert with Concord, has subjected Shaw to an undue disadvantage and has conferred upon itself an undue preference with respect to The Monet and The Met. Shaw also expressed concern that although access to these MDUs had been provided to both Novus and TCC, no agreements had been posted on their websites as required by the Commission in Telecom Decision 2003-45.

Commission's analysis and determinations

64. Based on the Commission's analysis of the first two issues above, the Commission determines that
- Novus was in non-compliance with the MDU access condition established pursuant to section 24 of the *Telecommunications Act* by providing service to end-users in The Monet and The Met while Shaw was denied access to these buildings on reasonable terms and conditions; and
 - Novus conferred upon itself an undue preference and subjected Shaw to an undue disadvantage in contravention of both section 9 of the *Broadcasting Distribution Regulations* and subsection 27(2) of the *Telecommunications Act*.
65. Given that Shaw raised its concern that there had been no disclosure by Novus and TCC regarding the terms of access in the MDUs only in its reply, Novus and TCC did not have an opportunity to dispute this statement. However, since Novus and TCC, as LECs, are subject to the disclosure conditions set out in Telecom Decision 2003-45, the Commission reminds all LECs that they are required to automatically publish any written agreements on their websites, and to publish the details of any unwritten agreements upon request.

The Arc

66. Shaw has requested that the Commission issue a declaration that Novus, acting in concert with Concord, has violated the MDU access condition with respect to

The Arc. Shaw has also requested that the Commission issue orders that (1) neither Novus nor any other LEC be permitted to provide services in The Arc unless Shaw is given timely access to the MDU, on reasonable terms and conditions, (2) Concord and Novus are prohibited from denying Shaw timely access to The Arc, on reasonable terms and conditions, and (3) Novus is not to be permitted to (i) enter into a building access agreement with Concord or access The Arc unless Concord has given Shaw the same opportunity, and (ii) extend its network into the main terminal room of The Arc unless Concord has given Shaw the same opportunity, on reasonable terms and conditions.

Commission's analysis and determinations

67. As noted above, it is premature for the Commission to rule on whether Shaw has been or is being denied access to The Arc. Shaw has not provided any guidance on what it considers would constitute reasonable and timely access in this case. Further, Shaw has not demonstrated that Concord/Novus have failed to grant it access to The Arc on reasonable terms and conditions. Accordingly, there is no evidence upon which the Commission can proceed to make a ruling. Therefore, it is not appropriate for the Commission to grant Shaw's requested relief with respect to The Arc.
68. However, given the findings of non-compliance by Novus in this proceeding, the Commission is concerned that Shaw's access to The Arc may be denied. Therefore, the Commission will remain seized of Shaw's application with respect to The Arc.⁴
69. Accordingly, it would be open to Shaw to come back to the Commission if it considers that Novus is denying Shaw timely access to The Arc on reasonable terms and conditions following their negotiations. If the Commission were to find that Novus was in non-compliance with its regulatory obligations, the Commission would need to consider the appropriate measures to be taken, which include enforcing the MDU access condition, the imposition of administrative monetary penalties under the *Telecommunications Act*, and a mandatory order under the *Broadcasting Act*.
70. Further, the Commission **directs**
- Concord to file with the Commission, by **25 January 2016**, serving a copy on Shaw, the timetable for the various phases of construction of The Arc;
 - Shaw, Novus, and Concord to report to the Commission, by **8 February 2016**, and every 90 days thereafter, on the status of their negotiations regarding Shaw's access to The Arc on reasonable terms and conditions; and
 - Novus to file with the Commission, by **8 February 2016**, a report on the steps it intends to take to ensure that, with respect to The Arc, it will be in compliance with the MDU access condition and the prohibitions against undue preference and undue disadvantage under both the *Broadcasting Distribution Regulations* and the *Telecommunications Act*.

⁴ Shaw's application with respect to The Arc will remain open.

Secretary General

Related documents

- *Bell Canada – Application for timely access on reasonable terms to Edenshaw Homes Limited’s Chaz Yorkville multi-dwelling unit project*, Telecom Decision CRTC 2015-148, 16 April 2015
- *Bell Canada – Request for access to Plaza Corporation’s York Harbour Club multi-dwelling unit building project*, Telecom Decision CRTC 2014-42, 5 February 2014
- *Provision of telecommunications services to customers in multi-dwelling units*, Telecom Decision CRTC 2003-45, 30 June 2003