



Telecom Notice of Consultation CRTC 2022-268

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Call for comments - Imposition of orders on Lixo Investments Limited for failure to comply with a Commission decision and requests regarding access to the multi-dwelling unit at 70 Yorkville Avenue, Toronto, Ontario

Deadline for submission of interventions: 17 October 2022

Summary

In Telecom Decision 2022-148, the Commission found that Rogers Communications Canada Inc. (RCCI) was being denied access under reasonable terms and conditions to 70 Yorkville Avenue, Toronto, Ontario (70 Yorkville Avenue), a multi-dwelling unit (MDU) owned by Lixo Investments Limited (Lixo).

Pursuant to its powers under section 24 of the *Telecommunications Act*, the Commission enforced the MDU access condition. Consequently, at 30 and 45 days following the publication of Telecom Decision 2022-148, increasingly stringent regulatory measures came into effect, which were only to be lifted if RCCI were to report that it had been granted access to 70 Yorkville Avenue. Given that RCCI has not reported having been granted access under reasonable terms and conditions, the above-noted measures remain in place.

As such, the Commission is seeking input on the enforcement actions to address RCCI's continued denial of access to the MDU at 70 Yorkville Avenue, and hereby invites interested persons to comment on whether it is appropriate to restrict telecommunications service providers from providing services and to direct Lixo to grant RCCI access to 70 Yorkville Avenue, by way of orders.

Background

Multi-dwelling unit access condition and issuance of orders

1. In Telecom Decision 2003-45, the Commission established the conditions and principles for the provision of telecommunications services to customers located in multi-dwelling units (MDUs), including guidelines to assist building owners and local exchange carriers (LECs) in negotiating just and expedient conditions of access to MDUs. The Commission set out the MDU access framework, in which it

emphasized the importance of facilitating competition and specified that end-users should have the right to access the telecommunications service provider (TSP) of their choice, regardless of the type of dwelling. Specifically, the Commission established the MDU access condition, through which it requires that the provision of telecommunications service by a LEC in an MDU be 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.

2. In Telecom Regulatory Policy 2021-239, the Commission extended the MDU access condition and associated obligations to all Internet service providers (ISPs) that provide services to end-users in MDUs.
3. In Telecom Decision 2003-45 and Telecom Regulatory Policy 2021-239, the Commission indicated that it would take further action as appropriate to ensure that all LECs are able to provide telecommunications services in an MDU. In particular, the Commission specified that it would be prepared, in appropriate circumstances, to issue an order under section 42 of the *Telecommunications Act* (the Act), subject to such conditions as to compensation or otherwise as the Commission determines to be just and expedient, to address situations where a LEC is prevented by another person from providing telecommunications services in an MDU. For example, depending on the circumstances of the case, the Commission considered that it could impose an order under section 42 of the Act to permit a LEC to construct, install, operate, or use telecommunications facilities in an MDU, or require a building owner to provide telecommunications facilities to a LEC.

Proceeding leading to Telecom Decision 2022-148 and subsequent reports

4. On 6 May 2021, the Commission received a Part 1 application submitted by Rogers Communications Canada Inc. (RCCI), in which RCCI requested access to 70 Yorkville Avenue, Toronto, Ontario (70 Yorkville Avenue), an MDU owned by Lixio Investments Limited (Lixio) in order to perform installation, maintenance, and repair work on RCCI's transmission facilities in the building. RCCI submitted that it had attempted to engage directly with Lixio over many months and received no response. RCCI argued that the inability to access 70 Yorkville Avenue was having a negative impact on the quality of telecommunications services provided to 10 RCCI customers in the MDU and was affecting services to over 300 RCCI customers in surrounding properties.
5. On 8 June 2022, the Commission issued Telecom Decision 2022-148, in which it determined that RCCI was being denied access to 70 Yorkville Avenue under reasonable terms and conditions, contrary to the MDU access framework set out in Telecom Decision 2003-45. Further, the Commission approved in part RCCI's request that it be granted timely access under reasonable terms and conditions to 70 Yorkville Avenue for the purposes of installing, operating, repairing, maintaining, and replacing transmission facilities and ancillary telecommunications equipment.

6. Pursuant to its powers under section 24 of the Act, the Commission enforced the MDU access condition. Consequently, at 30 and 45 days following the publication of Telecom Decision 2022-148, increasingly stringent regulatory measures came into effect, which were only to be lifted if RCCI were to report that it had been granted access to 70 Yorkville Avenue.
7. In particular, unless RCCI reported that it had been granted access to 70 Yorkville Avenue, at 30 days following the date of publication of Telecom Decision 2022-148, any LECs and carrier ISPs already providing services to residential, retail, and commercial occupants of 70 Yorkville Avenue via copper wire and fibre were not permitted to
 - provide services to any new occupants;
 - provide services to any current occupants who are not an existing customer of the service provider; and
 - modify or upgrade services being provided to any occupants (excluding requests from occupants to cancel any services provided by the LEC or carrier ISP).
8. The Commission also noted that if, at 45 days following the date of publication of Telecom Decision 2022-148, RCCI had not reported that it had received access under reasonable terms and conditions, the Commission would consider all regulatory options available to it, such as imposing requirements under sections 24 and 42 of the Act, including an order restricting any LECs and carrier ISPs from being permitted to provide any telecommunications services to occupants of 70 Yorkville Avenue.
9. On 8 July 2022, 30 days after the publication of Telecom Decision 2022-148, RCCI reported that it remained unable to access 70 Yorkville Avenue. As a result, all LECs and carrier ISPs serving residential, retail, and commercial occupants of the building were no longer permitted to provide copper wire and fibre services to any new occupants or any current occupants of the building who were not existing customers of the service provider. Additionally, all LECs and carrier ISPs serving the building were no longer permitted to modify or upgrade copper wire and fibre services being provided to any residential, retail, and commercial occupants of the building.
10. On 22 July 2022, 45 days after the publication of Telecom Decision 2022-148, RCCI filed a report with the Commission, in which it submitted that it continued to be denied access to 70 Yorkville Avenue.
11. Given that RCCI has not reported having been granted access under reasonable terms and conditions, the above-noted conditions remain in place.
12. In the report it filed 45 days after the publication of Telecom Decision 2022-148, RCCI argued that for it to obtain access to 70 Yorkville Avenue quickly to repair a technical issue, the Commission should first issue an order that no LEC, carrier ISP,

or other telecommunications service provider be permitted to provide telecommunications services to Lixo or any of its affiliates or related parties at 70 Yorkville Avenue, effective immediately.

13. RCCI also submitted that the Commission should issue a request for information (RFI) requiring Lixo to disclose the service provider serving it at 70 Yorkville Avenue and that the Commission should confirm whether said service provider was complying with the above-noted order under section 42 of the Act, if such an order was issued. RCCI proposed that if Lixo failed to provide the Commission with this information within five business days, the Commission should impose an administrative monetary penalty (AMP) on Lixo. Finally, RCCI submitted that, following Lixo's loss of telecommunications services, if Lixo continues to be in non-compliance with Telecom Decision 2022-148, the Commission should issue an order under section 42 of the Act, requiring Lixo to grant RCCI access to 70 Yorkville Avenue within nine business days and to report to all parties when this access has been granted. RCCI argued that should Lixo fail to respect the second order, the Commission should impose a second AMP on Lixo.
14. RCCI encouraged the Commission to file Telecom Decision 2022-148 and subsequent decisions with the Federal Court or a superior court of the province, pursuant to subsection 63(1) of the Act.¹ RCCI argued that were the Commission to do so, its decisions could be made orders of the court and enforced in the same manner as orders of the court. Therefore, RCCI added, if Lixo were to continue to deny RCCI access to the MDU, Lixo could be found to be in contempt of a court order.
15. In its reply to the report RCCI filed 45 days after the publication of Telecom Decision 2022-148, Bell Canada supported the approach suggested by RCCI (i.e., that the Commission impose orders on Lixo).
16. Distributel Communications Limited also supported the approach suggested by RCCI in its 45-day status report (i.e., that the Commission focus the remedial measures on Lixo).
17. On 10 August 2022, the Commission issued an RFI to Lixo, pursuant to subsection 37(2) of the Act,² to obtain Lixo's response to RCCI's report filed 45 days after the publication of Telecom Decision 2022-148, and other information relevant to the dispute.

¹ Subsection 63(1) of the Act states: A decision of the Commission may be made an order of the Federal Court or of a superior court of a province and may be enforced in the same manner as an order of that court as if it had been an order of that court on the date of the decision.

² Subsection 37(2) of the Act states: Where the Commission believes that a person other than a Canadian carrier is in possession of information that the Commission considers necessary for the administration of this Act or any special Act, the Commission may require that person to submit the information to the Commission in periodic reports or in such other form and manner as the Commission specifies, unless the information is a confidence of the executive council of a province.

Call for comments

18. In light of the above, the Commission initiates a proceeding and invites interested persons to comment on whether it is appropriate to impose enforcement actions to address RCCI's continued denial of access to 70 Yorkville Avenue by Lixo.
19. The Commission hereby invites parties to comment on the specific questions outlined below.

Matters relating to the MDU access condition and the issuance of orders

Q1. Should the Commission restrict all TSPs from offering any telecommunications services to the building occupants of 70 Yorkville Avenue, including copper wire, fibre, and wireless services?

Q2. Should the Commission issue an order pursuant to section 42 of the Act restricting TSPs from providing telecommunications services to Lixo or any of its affiliates or related parties at 70 Yorkville Avenue?

Q3. Should the Commission issue an order pursuant to section 42 of the Act directing Lixo to grant RCCI access to 70 Yorkville Avenue, consistent with the MDU access condition as set out in Telecom Decision 2003-45 and Telecom Regulatory Policy 2021-239?

Q4. Should the Commission file any order that may arise as a result of this proceeding with the Federal Court, pursuant to section 63 of the Act?

Q5. What other enforcement action, if any, should the Commission consider to ensure compliance with Telecom Decision 2022-148?

Procedure

20. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to this proceeding. The Rules of Procedure set out, among other things, the rules for the content, format, filing, and service of interventions, answers, replies, and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website at www.crtc.gc.ca, under "[Statutes and regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
21. Lixo is made party to this proceeding and may file interventions with the Commission by **17 October 2022**.

22. Interested persons who wish to become parties to this proceeding must file an intervention with the Commission regarding the above-noted issues by **24 October 2022**. The intervention must be filed in accordance with section 26 of the Rules of Procedure.
23. Parties are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position. Information on how to file this type of submission, known as a joint supporting intervention, as well as a [template](#) for the accompanying cover letter to be filed by parties, can be found in Telecom Information Bulletin 2011-693.
24. All documents required to be served on parties to the proceeding must be served using the contact information contained in the interventions.
25. Lixò may file a reply to interventions with the Commission by **31 October 2022**.
26. The Commission encourages interested persons and parties to monitor the record of this proceeding, available on the Commission's website at www.crtc.gc.ca, for additional information that they may find useful when preparing their submissions.
27. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
28. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that enable text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.
29. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax to
819-994-0218

30. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing, or where required, service of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed or served. The Commission advises parties who file or serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
31. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
32. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

Important notice

33. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, fax, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This includes all personal information, such as full names, email addresses, postal/street addresses, and telephone and fax numbers.
34. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
35. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
36. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

37. Links to interventions, replies, and answers filed for this proceeding, as well as other documents referred to in this notice, are available on the Commission's "[Consultations and hearings : have your say](#)" page.
38. Documents are available upon request during normal business hours by contacting:

Documentation Centre
Examinationroom@crtc.gc.ca
Tel.: 819-997-4389
Fax: 819-994-0218

Client Services
Toll-free telephone: 1-877-249-2782
Toll-free TTY: 1-877-909-2782

Secretary General

Related documents

- *Rogers Communications Canada Inc. – Application for non-discriminatory and timely access under reasonable terms and conditions to the multi-dwelling unit at 70 Yorkville Avenue, Toronto, Ontario*, Telecom Decision CRTC 2022-148, 8 June 2022.
- *Access to in-building wire in multi-dwelling units*, Telecom Regulatory Policy CRTC 2021-239, 27 July 2021
- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Guidelines regarding the general administrative monetary penalties regime under the Telecommunications Act, Compliance and Enforcement and Telecom Information Bulletin* CRTC 2015-111, 27 March 2015
- *Filing of joint supporting interventions*, Telecom Information Bulletin CRTC 2011-693, 8 November 2011
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Provision of telecommunications services to customers in multi-dwelling units*, Telecom Decision CRTC 2003-45, 30 June 2003