



Telecom Order CRTC 2024-122

PDF version

Ottawa, 5 June 2024

Public record: Tariff Notice 576

TELUS Communications Inc. – Tariff Notice 576 – Amendment to Support Structure Service

Summary

In Telecom Decision 2022-311, the Commission directed TELUS Communications Inc. (TCI) to file new tariff pages so that carriers with lines attached to TCI's poles (attaching carriers) would be fairly compensated for costs incurred when those poles need to be relocated.

TCI filed Tariff Notice (TN) 576 in response to Telecom Decision 2022-311. The Commission considers that the amended tariff pages are not consistent with the intent of its direction. Without a proposed rate or mechanism of compensation on which the public can comment, the Commission lacks the information needed to make its determinations.

The Commission therefore directs TCI to file a proposal for compensation of attaching carriers, with supporting rationale for the mechanism and/or rate proposed. TCI is to file its proposal within **30 days** of the publication of this order.

The Commission also directs TCI to serve copies of its proposal to the parties specified in paragraph 46 e) of this order.

Furthermore, to facilitate a timely resolution, the Commission approves on an interim basis the formula for compensation found in paragraph 46 b) of this order. Using this formula, a portion of the compensation TCI receives for the relocation of its poles will go to attaching carriers.

The Commission will address the issue of retroactivity in a final order.

Background

1. In Telecom Decision 2022-311, the Commission addressed an application from Rogers Communications Canada Inc. (RCCI) and Shaw Cablesystems G.P. (Shaw) in which they requested compensation for the forced relocation of their transmission lines along highways in British Columbia.
2. RCCI and Shaw attach transmission lines to support structures (poles) in British Columbia that are owned by TELUS Communications Inc. (TCI). When British Columbia's Ministry of Transportation and Infrastructure (MOTI) requires

TCI to relocate poles, TCI receives compensation from MOTI, due to a legacy agreement and to TCI's ownership of the poles. Neither RCCI nor Shaw receives such compensation. They viewed this as unfair and negatively impacting competition.

3. RCCI and Shaw sought a direction from the Commission requiring MOTI to enter into agreements with each of them that would provide for such compensation. In the alternative, they sought a direction requiring TCI to compensate them when their transmission lines attached to TCI's poles need to be relocated.
4. In response, the Commission directed TCI to file new tariff pages with proposed wording that would allow for fair compensation of the third-party carriers that attach their transmission lines to TCI's poles (attaching carriers)¹ when their facilities must be relocated at the request of MOTI.
5. However, until the required tariff pages would be approved, the Commission directed MOTI to compensate the applicants at a rate no less favourable than TCI's when MOTI requires them to relocate their transmission lines, and to enter into agreements with other carriers.

Application

6. In response to the Commission's direction in Telecom Decision 2022-311, TCI filed Tariff Notice (TN) 576, dated 16 January 2023, in which the company proposed an amendment to item 404.2.8 of its General Tariff, Support Structure Service.
7. TCI submitted that the amendment would allow for an attaching carrier, when required by a third party to relocate transmission lines, to negotiate fair compensation with the third party on terms that would be acceptable to both. TCI added that, as a pole owner, it is unable to quantify what fair relocation terms might be. Allowing the attaching carrier and the party requesting the relocation to enter into their own agreement would ensure that attaching carriers are positioned to negotiate fair compensation.
8. TCI submitted that the proposed additional paragraph neither purports to bind third-party property owners,² such as MOTI, to the terms and conditions of TCI's tariff nor places an obligation on TCI to act on behalf of attaching carriers to ensure that they are compensated by property owners for relocation costs.
9. TCI added that negotiations between an attaching carrier and the party requesting the relocation may not always be successful. TCI submitted that the Commission has jurisdiction to resolve such matters pursuant to the *Telecommunications Act* (the Act) and that this would ensure that principles that the Commission has already established with regard to relocations are upheld and applied consistently.

¹ "Attaching carriers" are called "Licensees" in TCI's tariff.

² In its application, TCI used the term "property owner" in reference to a third party that requires relocation of poles, but later in the proceeding agreed to substitute the term "public authority". Consequently, both terms are found in this order.

10. TCI requested an effective date of 15 February 2023.
11. The Commission received interventions from MOTI and jointly from RCCI and Shaw. RCCI acquired Shaw during this proceeding and subsequent submissions were made in the name of RCCI.

Positions of parties

RCCI and Shaw

12. RCCI and Shaw submitted that attaching carriers do not require permission from TCI to negotiate relocation cost sharing with a public authority. All carriers have a qualified right of access to highways and other public places, and can seek relief from the Commission if they are unable to come to agreement with a public authority on the terms of access. RCCI and Shaw stated that those rights are not dependent on permission or procedures included in TCI's tariff. In fact, they were the basis for their joint application that resulted in Telecom Decision 2022-311.
13. RCCI and Shaw added that TCI's wording mandates unnecessary timelines for bringing disputes to the Commission, and would enhance TCI's right to force relocations pending resolution of a dispute.
14. The support structure licence agreement between TCI and the attaching carrier obligates the attaching carrier to remove its facilities within the period specified by TCI or a third party, provided that the period shall not be less than 90 days where the decision lies with TCI. According to RCCI, to the extent that this provision supersedes the 180-day requirement in TCI's tariff, it establishes a minimum notice period for relocating facilities, but it does not establish a period for negotiating with public authorities on relocation cost sharing.
15. Finally, RCCI submitted that it would be a simple matter for TCI to inform the public authority of the presence of attaching carriers and coordinate with attaching carriers to ensure they are aware of and included in relocation discussions and processes.
16. However, in spite of these criticisms, RCCI and Shaw were of the view that a relocation cost agreement between an attaching carrier and a public authority is preferable to making the pole owner responsible for transferring fair relocation compensation to the attaching carrier.
17. Accordingly, RCCI and Shaw proposed revised tariff wording stating that a relocation would not be allowed until the attaching carrier and the public authority concerned agree on compensation, or until the Commission directs TCI to proceed with the relocation pending a determination on cost sharing.
18. RCCI and Shaw also proposed alternative wording whereby TCI would attempt to obtain compensation for attaching carriers, but, if unable to do so, would pay the attaching carrier a share of the compensation it received.

19. In particular, in their alternative wording RCCI and Shaw proposed a formula for compensation that would essentially result in TCI sharing compensation equally with attaching carriers. They submitted that this mechanism is fair, simple to apply, and addresses TCI's comments on administrative burden and complexity.

MOTI

20. MOTI submitted that TN 576 shifts the responsibility to provide fair compensation for attaching carriers from TCI to the third party requiring the relocation of transmission lines, which would be outside the authority of the Act. According to MOTI, the Commission's expectation in Telecom Decision 2022-311 was that TCI would provide such compensation. Furthermore, MOTI noted that the Commission's directions to TCI in that decision were limited to relocations required by MOTI, whereas TN 576 refers to relocations required by any property owner.

21. MOTI also submitted that TCI's proposal would impose obligations on attaching carriers that would impact all property owners and their freedom to negotiate, and would unreasonably limit access to currently available dispute resolution mechanisms. Moreover, TN 576 could be interpreted to apply in circumstances where TCI itself was not entitled to receive compensation. According to MOTI, there should be no expectation of, or requirement for, an agreement between a property owner and an attaching carrier.

22. MOTI added that it would have to incur significant expense to make changes to implement and maintain the systems needed to identify which attaching carriers on which TCI poles could be affected by a relocation, and to provide for compensation and verification for payment and auditing purposes. Furthermore, MOTI stated that it could be difficult to know whether an attaching carrier actually incurred a claimed expense in relocating its own facilities pursuant to an agreement between a property owner and an attaching carrier, or whether those facilities were relocated on behalf of the attaching carrier by TCI or, possibly, a joint owner of the pole.

23. MOTI submitted that TCI could determine a rate by applying its usual costing methodology, for example, setting a rate for moving attachments by using the rate it would charge an attaching carrier when removing facilities on the attaching carrier's behalf, based on expenses incurred under item 404.2.15 or 404.2.13 of TCI's General Tariff.

24. MOTI saw no reason to require disclosure of attaching carriers to MOTI as a term of the tariff, because, in its view, Telecom Decision 2022-311 requires TCI to provide compensation to attaching carriers. MOTI also stated that if TCI's cost structure for relocations is affected by complying with Telecom Decision 2022-311, TCI should address that through its agreement with MOTI.

Procedural issue

25. MOTI also stated its concern regarding a procedural matter, namely that a Group B tariff filing process does not provide sufficient notice to municipalities, other public authorities, or property owners that may be affected by an application. MOTI noted that there is no indication that any participant in the proceeding that led to Telecom Decision 2022-311, or anyone external to TCI, was provided a copy of TN 576.

TCI's reply

26. TCI submitted that its proposal in TN 576 reflects the Commission's findings that TCI is afforded the right to negotiate relocation terms with MOTI that it deems appropriate for itself, and that attaching carriers are free to do the same. The amendment does not put an obligation on MOTI. TCI's tariff is an agreement between TCI and attaching carriers, and therefore cannot be binding for MOTI.
27. TCI submitted that the wording proposed by RCCI and Shaw has differences from its own proposal that could result in negative outcomes for all parties. First, if timelines are removed, existing support structure and deployment challenges would be exacerbated because parties might intentionally delay relocations. Second, the alternative wording introduces the concept of TCI acting as an agent for attaching carriers, which would contradict policy objectives, disregard the methodology that establishes support structure tariff rates, and disregard the Commission's jurisdiction and its powers to settle disputes between public authorities and attaching carriers.
28. TCI stated that it is not able to assume the role of an agent through its tariff, or through contract law, because it does not have the power to bind public authorities. According to TCI, amending the tariff to allow for compensation when the relocation is specifically requested by MOTI would also conflict with the general application, purpose, and structure of the tariff.
29. Moreover, TCI submitted that its tariff contains no contractual or other legal obligations for third parties whose property or other rights may be implicated. It also submitted that the Commission's authority under section 24 and subsection 25(1) of the Act does not extend to other parties who may be affected by agreements between TCI and its customers formed under the tariff.
30. TCI indicated that it owns or co-owns support structures on the lands of various property owners, but that it only has compensation agreements with some of them. In some cases, it may not recover any costs associated with a relocation. In areas where it does not have such agreements, it is responsible for its own moving costs. TCI submitted that in such cases it would have to absorb costs for both itself and attaching carriers, making transmission facility relocation economically nonviable.
31. TCI stated that the compensation it receives for relocation is deducted from the embedded costs used to calculate the pole rate, so the benefit from that compensation is already shared between TCI and attaching carriers through a reduced tariff rate. Sharing it directly would result in TCI under-recuperating its costs.

32. Regarding RCCI's objection to the inclusion of a period for negotiating a relocation cost agreement in the tariff, TCI indicated that it could consider adopting RCCI's proposed language if attaching carriers relocate their equipment in accordance with any deadline imposed on TCI and in accordance with the tariff or the support structure license agreement, regardless of whether an agreement between the attaching carrier and the public authority has been reached.
33. TCI considered that the suggestion from RCCI and Shaw to replace "property owner" with "public authority" in the proposed tariff pages is appropriate.

Commission's analysis

Telecom Decision 2022-311

34. The Commission's determinations in Telecom Decision 2022-311 were intended to remedy an inequitable situation created by a lack of negotiation on the part of MOTI and the failure of TCI to provide for the sharing of compensation with attaching carriers. They were also intended to reduce TCI's incumbency advantage and promote competitive neutrality. The Commission considered that regulatory intervention was required to ensure that the policy objectives of the Act were met.
35. The Commission considered that the issue of compensation of attaching carriers would best be addressed through TCI's support structure tariff, because TCI controls access to its poles. The Commission's direction to TCI to file tariffs that provide for such compensation was intended to give TCI the chance to propose a solution to compensate attaching carriers, and to give parties the opportunity to comment on those details and provide the Commission with a complete record on which to determine the most just and reasonable mechanism for the compensation of attaching carriers.
36. The Commission considers that TCI has filed tariff pages that are not consistent with that intent. They do not propose any form of compensation for attaching carriers. Instead, they give permission to attaching carriers to negotiate compensation directly from the public authority, which attaching carriers are already permitted to do.
37. Accordingly, the Commission considers that it would be appropriate to clarify its previous direction to TCI to file revised tariff pages and specify that the company is to file a proposal for compensation of attaching carriers as well as a supporting rationale for the proposed mechanism and/or rate of compensation.

Setting an interim rate

38. Because TCI did not supply a detailed compensation formula, submissions in this proceeding focused on the method by which the attaching carriers should seek and obtain compensation, rather than discussing the specifics of compensation. This has resulted in a record that does not provide the information needed for the Commission to establish, on a final basis, a formula for the compensation of attaching carriers for the relocation of transmission lines, or to determine amounts of compensation.

39. To facilitate a timely resolution, the Commission considers that it would be appropriate to approve a mechanism for compensation on an interim basis. The Commission notes that its interim power allows it to make a determination where the record lacks sufficient information to set out final rates. This approach would address the situation while the Commission develops the record and completes a full analysis of the issues. Furthermore, an interim determination would allow the Commission to make a decision on retroactivity of a final mechanism and/or rate in its final determinations.
40. In the past, the Commission has used various approaches when implementing interim rates to encourage timely resolution between parties or to facilitate competition while the Commission reviews and assesses appropriate rates. With the formula that RCCI and Shaw proposed in their alternative wording, the share payable to an attaching carrier would be equal to the total compensation that TCI receives from the public authority for relocating lines attached to TCI's poles divided by n , where n is equal to 1 plus the number of attaching carriers. While TCI has raised issues regarding its use, it did not propose an alternative formula that would address those issues. The Commission is of the view that, under the circumstances, RCCI and Shaw's formula is reasonable.
41. Accordingly, the Commission considers that it would be appropriate to use this compensation formula on an interim basis until such time as the Commission has approved revised tariff pages. The Commission notes that upon approval of this interim formula, the direction to MOTI in Telecom Decision 2022-311 to enter into agreements with TCI's attaching carriers would no longer be in effect.

Procedural and other issues

42. Regarding the procedural matter raised by MOTI, the Commission is of the view that TCI followed the requirements for filing Group B applications set out in Telecom Information Bulletin 2010-455-1. TCI was not required to provide copies to participants in the proceeding that led to Telecom Decision 2022-311, or to any other party. The Commission notes that Group B tariff applications appear on its website and that any interested person can intervene. Also, potential interveners could have been aware that TCI would be filing a tariff application because of the Commission's direction to the company in Telecom Decision 2022-311.
43. However, the Commission considers that the outcome of the current proceeding may be of interest to other public authorities or property owners. In order to engage interested parties, TCI should serve copies of its proposal for the compensation of attaching carriers on interveners in the proceeding that led to Telecom Decision 2022-311;³ all provincial and territorial associations representing municipalities where TCI has poles; and Indigenous communities on lands where TCI has poles.

³ Intervenors in the proceeding that led to Telecom Decision 2022-311 were Christopher Logan, Bell Canada, Bragg Communications Inc., and Quebecor Media Inc.

44. Regarding the suggestion by RCCI and Shaw to replace the term “property owner” with “public authority”, the Commission considers that “public authority” is the more appropriate term and should be used in the amended tariff pages.
45. Regarding disclosure of the identity of attaching carriers to the public authority that requires a relocation, the Commission considers that, for the purpose of compensation, there is no need for such disclosure, because compensation of attaching carriers is TCI’s responsibility.

Conclusion

46. In light of all of the above, the Commission

(a) clarifies that TCI’s amended tariff pages should include a form of compensation (i.e., a mechanism and/or a rate) to attaching carriers for relocation costs;

(b) **approves on an interim basis** the following wording for item 404.2.8 of TCI’s General Tariff (added text in italics):

8. Nothing contained in this Tariff Item limits, restricts or prohibits the Company from honoring existing or entering into future joint-use or joint ownership agreements regarding Support Structures used or offered under this Tariff Item and the SSA, provided that the existing rights of a Licensee shall not be prejudiced by a joint use or joint-ownership agreement entered into by the Company after the Licensee has been granted access to Support Structures. The one exception to this provision is a circumstance in which the Company is forced to move a Support Structure by a property owner *or a public authority*, in which case a Licensee must move its Facilities at its own expense.

*Notwithstanding the above, effective **5 June 2024**, in the event that the Company is being compensated by a public authority requesting a relocation for the relocation of the Company’s Facilities, and the Licensee is not, the Company shall compensate the Licensee for a fair portion of the Licensee’s relocation costs, in order that neither the Company nor the Licensee is advantaged over the other. The share payable to a Licensee should be equal to the total relocation costs received by the Company from the public authority for relocating facilities supported by the structure to be relocated divided by n , where n is equal to 1 plus the total number of Licensees with Facilities supported by the structure to be relocated.*

(c) recognizes that the compensation formula approved here on an interim basis may not be the most appropriate in every circumstance;

(d) **directs** TCI to file, within **30 days** of the publication of this order, its proposal for the compensation of attaching carriers, with supporting rationale for the mechanism and/or rate proposed;

(e) **directs** TCI to serve copies of its proposal for the compensation of attaching carriers on interveners in the proceeding that led to Telecom Decision 2022-311; all provincial and territorial associations representing municipalities where TCI has poles; and Indigenous communities on lands where TCI has poles; and

(f) will address the issue of retroactivity in a future final order.

Secretary General

Related documents

- *Rogers Communications Canada Inc. and Shaw Cablesystems G.P. – Application regarding compensation for transmission line relocation in British Columbia*, Telecom Decision CRTC 2022-311, 15 November 2022
- *Approval processes for tariff applications and intercarrier agreements*, Telecom Information Bulletin CRTC 2010-455-1, 19 February 2016