



## Telecom Order CRTC 2004-438

Ottawa, 23 December 2004

### TELUS Communications Inc.

Reference: TCQ Tariff Notices 362 and 362A

### General tariff for intra-exchange and inter-exchange optical fibre service in Quebec

#### Background

1. In *Xit Télécom v. TELUS Québec – Provision of fibre optic private networks*, Telecom Decision CRTC 2003-58, 22 August 2003 (Decision 2003-58), the Commission directed TELUS Communications (Québec) Inc. (TCQ)<sup>1</sup> to file proposed general tariffs (GTs) for intra-exchange and inter-exchange dark fibre. The Commission considered that these GTs should be subject to the availability of existing unused and unallocated facilities. The Commission further directed TCQ to apply the terms and conditions of the GTs to the provision of existing dark fibre facilities, in its customer-specific special facilities tariffs (SFTs), for dark fibre projects. The Commission also stated that where facilities were not available and construction had to be undertaken to provide service to a particular customer, the rates for dark fibre facilities should not be less than the GT rates.

#### The application process

2. The Commission received an application by TCQ, dated 17 October 2003 and amended on 27 November 2003, requesting approval of the company's proposed GT item 2.07, Intra-exchange Optical Fibre Service and item 3.09, Inter-exchange Optical Fibre Service.
3. TCQ provided an economic study, including imputation test results, in support of its proposed intra-exchange and inter-exchange dark fibre service.
4. The Commission received comments from 4089316 Canada Inc., operating as Xit télécom, on behalf of itself and Télécommunications Xittel inc. (collectively, Xit) dated 17 November 2003. Reply comments were filed by TCQ on 27 November 2003. Further comments were filed by Xit and TCQ on 29 December 2003 and 8 January 2004, respectively.

#### Position of parties

5. TCQ indicated that its proposed intra-exchange service provided single-mode, unlit optical fibre facilities on non-continuous property within an exchange, while its proposed inter-exchange service provided for single-mode, unlit optical fibre facilities between two rate centres of the company's exchanges which did not have Extended Area Service with each other. TCQ noted that these optical fibre services would be provided where suitable existing facilities were available, as determined by the company.

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<sup>1</sup> Effective 1 July 2004, TELUS Communications Inc. has assumed all rights, entitlements, liabilities and obligations relating to the provision of telecommunications services in the territories previously serviced by TCQ.

6. Xit submitted, among other things, that the rates initially proposed under Tariff Notice (TN) 362 were anti-competitive and that the Commission should ensure that such rates recover all relevant costs, particularly with respect to the matter of support structures. Xit submitted that the Phase II costs used to derive the proposed rates should be increased by a factor of eight to ensure that the rates were not anti-competitive. Xit further submitted that the sole motivation behind the rates proposed in TN 362 was to ensure that the Villages branchés program<sup>2</sup> SFTs proposed by the company would receive Commission approval.
7. Xit requested that the Commission direct TCQ to state which engineering services would be provided under the tariff.
8. With respect to the revised rates proposed in TN 362A, Xit submitted that the margin proposed, which Xit estimated was approximately 1,000%, was too high. Xit requested that additional process be established to permit interrogatories and comments prior to the finalization of the rates. In the meantime, Xit submitted that the proposed rates could be approved on an interim basis if the margin were adjusted to approximately 800%.
9. Xit submitted that the Commission should make the offer or provision by TCQ of any service involving dark fibre, regardless of whether the service is forborne or non-forborne, subject to a condition that the service reflects the same margin that is reflected in the dark fibre general tariff.
10. In its reply comments, TCQ argued, among other things, that Xit's submissions addressed issues outside of the proceeding to consider TNs 362 and 362A and should be disregarded.
11. In its reply of 8 January 2004, TCQ submitted that the filing of a general tariff for unused fibre, and its application in the case of SFTs was a sufficient safeguard with respect to issues of unjust discrimination. However, TCQ argued that the application of the general tariff approach was not appropriate in the context of the Villages branchés program because the company would be unable to compete against other service providers that were not subject to such regulatory constraints.

### **Commission analysis and determination**

12. The Commission notes that in *Implementation of price regulation for Télébec and TELUS Québec*, Telecom Decision CRTC 2002-43, 31 July 2002, the Commission established the price regulation regime that is now applicable to Société en commandite Télébec and TCQ. In that Decision, the Commission directed TCQ to submit a proposed price cap classification with tariff applications for new services. Further, in *Société en commandite Télébec and TELUS Communications (Québec) Inc. 2002 annual price cap filings*, Telecom Decision CRTC 2003-57, 22 August 2003, the Commission concluded that TCQ should file cost studies and imputation test results or alternate costing support when filing tariff applications to introduce a new service or to propose implicit or explicit rate reductions to an existing service.
13. Based on the record of this proceeding, the Commission finds that the revised proposed intra-exchange and inter-exchange services satisfy the imputation test.

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<sup>2</sup> The Villages branchés program of Quebec commenced in late 2001 with the objective of linking the province's schools, public libraries and other municipal entities via a high-speed, technologically advanced telecommunications network.

14. The Commission notes that, although TCQ did not propose a classification for its dark fibre service, the dark fibre services of other incumbent local exchange carriers (ILECs) are assigned to the Other Capped Services basket. The Commission also notes that the terms and conditions of TCQ's dark fibre GT service are similar to those of the other ILECs. Accordingly, the Commission finds it appropriate to assign TCQ's intra-exchange and inter-exchange optical fibre services to the Other Capped Services basket.
15. In light of the above, the Commission **approves** TCQ's application. The revisions take effect as of the date of this Order.

Secretary General

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