



Telecom Order CRTC 2005-74

Ottawa, 23 February 2005

TELUS Communications Inc.

Reference: TELUS Québec Tariff Notices 358 and 361

Withdrawal of special facilities tariffs for optical fibre arrangements

1. The Commission received applications by TELUS Communications (Québec) Inc. (TCI),¹ dated 24 July 2003 and 17 October 2003, proposing to introduce Special Facilities Tariff (SFT) item 4.01.49, Optical Fibre Network service, and item 4.01.51, Optical Fibre Network service. Specifically, the company requested approval of two separate private arrangements involving intra-exchange and inter-exchange optical fibre (hereinafter referred to as optical fibre or dark fibre) network facilities.
2. Subsequently, TCI requested the Commission's approval to withdraw Tariff Notices (TNs) 358 and 361 because they no longer accurately described the services to be provided by the company to the customers.

Process

3. On 5 September 2003, the Commission sent a letter to TCI, inviting the company to revise TN 358 in light of the Commission's determinations in *Xit Télécom v. TELUS Québec – Provision of fibre optic private networks*, Telecom Decision CRTC 2003-58, 22 August 2003 (Decision 2003-58). On 30 October 2003, TCI responded to the Commission's 5 September 2003 letter.
4. The Commission received comments regarding TNs 358 and 361 from 4089316 Canada Inc., operating as Xit télécom inc., on behalf of itself and Télécommunications Xittel inc. (collectively, Xit), dated 29 October 2003 and 17 November 2003, and reply comments from TCI, dated 4 November 2003 and 27 November 2003.
5. On 10 September 2004, Xit filed a Part VII application regarding the optical fibre network arrangement contemplated by TN 358, for which the customer was the Commission scolaire de la Côte-du-Sud.
6. In a letter dated 8 October 2004, TCI requested the Commission's approval to withdraw TN 358. TCI also filed an agreement as an attachment in support of its request.
7. The Commission received comments from Xit, opposing TCI's request to withdraw TN 358, dated 1 November 2004 and 15 November 2004, and reply comments from TCI, dated 11 November 2004 and 23 November 2004.

¹ Effective 1 July 2004, TELUS Communications Inc. (TCI) assumed all rights, entitlements, liabilities, and obligations relating to the provision of telecommunications services in the territories previously served by TELUS Communications (Québec) Inc.

8. In a letter dated 26 November 2004, TCI requested the Commission's approval to withdraw TN 361. TCI also filed an agreement as an attachment in support of the letter.

Background

9. In Decision 2003-58, the Commission directed TCI to file proposed general tariffs for intra-exchange and inter-exchange dark fibre. The Commission considered that these general tariffs should be subject to the availability of existing unused and unallocated facilities. The Commission further directed TCI to apply the terms and conditions of the general tariffs in its customer-specific SFTs for dark fibre projects. It 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 general tariff rates.
10. TCI filed proposed general tariffs for intra-exchange and inter-exchange optical fibre under TNs 362 and 362A, which were approved in *General tariff for intra-exchange and inter-exchange optical fibre service in Quebec*, Telecom Order CRTC 2004-438, 23 December 2004.

Positions of parties

11. In its 10 September 2004 Part VII application, Xit submitted, among other things, that the partial assignment of the optical fibre contract from TCI to Électro-Saguenay Ltée (Électro-Saguenay) required the prior approval of the Commission under sections 25 and 29 of the *Telecommunications Act* (the Act), and requested that the Commission address its claims for relief by way of an expedited process.
12. In its letters requesting to withdraw TNs 358 and 361, TCI stated that due to the nature of the projects and the fact that TNs 358, 361, and 362A had not been disposed of, and given that Allstream Corp.'s² application for leave to appeal *Optical fibre service arrangements*, Telecom Decision CRTC 2004-20, 23 March 2004, had been granted by the Federal Court of Appeal, the company had proceeded to identify, at the request of its customers, alternative options in order that the projects could be completed.
13. TCI stated that it had withdrawn from the construction and the ultimate transfer of the optical fibre networks to the customer by way of partial assignments of the contracts in question. TCI also stated that Électro-Saguenay, a third party, would carry out the network construction, and would ultimately transfer the fibre networks in question to the customers. TCI further stated that the contracts setting out the terms and conditions of transfer to Électro-Saguenay had been signed on 14 September 2004 (for TN 358) and 15 November 2004 (for TN 361).
14. TCI stated that contrary to the situations contemplated by TNs 358 and 361, the customers would own the optical fibre networks rather than having a 20-year Indefeasible Right of Use (IRU), and that ownership would be transferred to them by Électro-Saguenay, not TCI.

² Allstream Corp. is now a division of MTS Allstream Inc.

15. Xit opposed TCI's request for approval to withdraw TN 358, submitting, among other things, that TCI was providing service without an approved tariff, contrary to section 25 of the Act, and had failed to file the tripartite agreement between itself, Électro-Saguenay, and the Commission scolaire de la Côte-du-Sud for the Commission's approval, pursuant to section 29 of the Act.

Commission's analysis and determination

16. The Commission notes that the special facilities tariffs filed under TNs 358 and 361 contemplated that the customers would acquire optical fibre from TCI on the basis of an IRU arrangement, to be paid for via a single payment in advance, and that TCI would provide ongoing network maintenance, to be paid for annually. The Commission notes that based on TCI's submissions of 8 October 2004 and 26 November 2004, Électro-Saguenay will now be providing the optical fibre to the customers instead of TCI. The Commission also notes that the provision of such fibre will no longer be subject to IRU arrangements, but is to be sold outright. As a result, the Commission considers that the new arrangements are inconsistent with the services described in TNs 358 and 361.
17. With respect to Xit's submissions regarding the partial assignment of the optical fibre contract for the Commission scolaire de la Côte-du-Sud from TCI to Électro-Saguenay, the Commission notes that an expedited hearing will be held on 25 February 2005 to examine the matter.
18. In light of the above, the Commission **approves** the withdrawal of TNs 358 and 361.

Secretary General

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