



Broadcasting Public Notice CRTC 2006-68

Ottawa, 29 May 2006

Competitive access to inside wire in commercial and institutional properties

In Call for comments on possible regulatory amendments that would expand competitive access to inside wire, Broadcasting Public Notice CRTC 2005-83, 15 August 2005, the Commission requested comments on proposed amendments to the Broadcasting Distribution Regulations that would expand the application of the rules regarding competitive access to inside wire by subscribers and by competing broadcasting distribution undertakings (BDUs) to include wiring owned by licensees in commercial and institutional properties.

Having considered the record of the proceeding, the Commission has determined that mandating access to such wiring in these properties by subscribers and by competing BDUs would not contribute significantly to the competitive health of the broadcasting distribution market or significantly advance end-user choice. For these reasons, the Commission concludes that its intervention to regulate competitive access to wiring in commercial and institutional properties is not warranted at this time.

Background

1. In February 2005, Bell ExpressVu¹ requested the expedited resolution of a dispute regarding access to the coaxial wiring owned by Rogers Cable Communications Inc. (Rogers) in properties that house transient residents, such as hotels, hospitals, nursing homes and other commercial and institutional premises. Bell ExpressVu's complaint rested on section 10 of the *Broadcasting Distribution Regulations* (the Regulations), which requires licensed broadcasting distribution undertakings (BDUs) that own inside wire to permit use of the inside wire by a subscriber or by another BDU.
2. *In Call for comments on possible regulatory amendments that would expand competitive access to inside wire, Broadcasting Public Notice CRTC 2005-83, 15 August 2005 (Public Notice 2005-83), the Commission found that section 10 of the Regulations applied to single and multiple unit dwellings (MUDs) that generally serve as permanent accommodation, but did not apply to the commercial and institutional properties at issue in the Bell ExpressVu complaint, or to certain other properties identified by the Commission, such as office buildings and retail stores (collectively, commercial and*

¹ Bell ExpressVu Inc., (the general partner), and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership

institutional properties). The Commission further noted that the inapplicability of the section 10 requirement to these commercial and institutional properties may be inconsistent with its policy objective of providing for end-user choice and fostering competition among BDUs.

3. Accordingly, the Commission requested that interested parties submit comments, by 26 September 2005, on the merits of expanding the application of section 10 of the Regulations to include residential and non-residential commercial and institutional properties. It also requested responses to the following questions:
 - What amendments to the Regulations would be necessary or appropriate, should the Commission decide to broaden access to inside wire owned by a broadcasting distribution undertaking licensee?
 - What is the size and significance of the potential market for broadcasting distribution services that would be created under such amendments?
 - What demarcation points, or mechanisms for setting such points, would be most appropriate, given the various types of properties that exist?
4. The Commission stated that replies to the comments and proposals filed regarding the above matters were to be submitted on or before 11 October 2005.
5. In response to Public Notice 2005-83, Bell ExpressVu and Bell Canada (collectively, Bell Canada) filed a joint submission, which contained a study of the size of the competitive market in residential commercial and institutional properties. Bell Canada requested that the Commission hold this study in confidence. The Commission determined that, while the detailed results of the study should be held in confidence, information about the methodology and sources used for the study and its general conclusions should be placed on the public record. Bell Canada then submitted a revised version of its submission containing the particular information that the Commission considered should be placed on the public file. In *Call for comments on possible regulatory amendments that would expand the competitive access to inside wire – Request for confidentiality*, Broadcasting Public Notice CRTC 2005-83-1, 19 October 2005, the Commission provided interested parties until 2 November 2005 to submit comments on the revised version of Bell Canada's study.

Parties to the proceeding

6. Eight parties submitted comments in this proceeding. In general, those representing the interests of incumbent BDUs, including the Canadian Cable Telecommunications Association (CCTA), Quebecor Media Inc. (QMI), and Whistler Cable Television Ltd. (Whistler), were opposed to expanding regulated access to include the wiring in commercial and institutional properties. Bell Canada, MTS Allstream Inc. (MTS), Saskatchewan Telecommunications (SaskTel), and TELUS Communications Inc. (TELUS), each of whom compete as new entrants against incumbent BDUs, supported such an expansion of regulated access.

7. One other party, Robinson Electronics and Music (Robinson), did not expressly identify itself as being opposed to or in support of expanding access to include the wiring in commercial and institutional properties. Rather, it described problems that, in its view, are a consequence of the Commission's current regulatory regime concerning access to cable in MUDs. These are matters that, in the Commission's view, fall outside of the scope of the current proceeding.
8. The salient issues surrounding competitive access to wiring in commercial and institutional properties, the positions of the interested parties with respect to each, and the Commission's analysis and determinations, are set out below.

Size and significance of the potential market

Positions of parties

9. Parties, both those who supported amending the Regulations to mandate access to wiring in commercial and institutional properties and those who did not, focused many of their comments on the size of the market that such properties represent for the distribution of broadcasting services.
10. Based on the study submitted with its comments, Bell Canada estimated that the potential market for BDU services in residential commercial and institutional properties (including hotels, hospitals, penitentiaries and student housing) was approximately 700,000 units, and represented approximately \$90 million in potential annual revenues. It was Bell Canada's view that this would constitute a significant market for competing BDUs, and that regulated access to wiring in commercial and institutional properties is necessary to the health and competitiveness of the BDU market.
11. MTS, SaskTel and TELUS also argued that the potential market for BDU services in commercial and institutional properties is significant, and that the Commission should intervene to require competitive access to the wiring in such properties. MTS, in particular, indicated that the current need to install duplicate wiring in commercial and institutional properties is a significant impediment to competition.
12. In contrast, parties opposed to regulated access to wiring in commercial and institutional properties generally argued that the residential and non-residential commercial market for BDU services is too small to justify the time, effort and expense that would be necessary to implement such regulation. For instance, the CCTA indicated in its reply comments that the commercial and institutional properties served by its members across Canada would represent approximately 548,000 units, which it estimated to represent only 2% of their cable television revenues (that is, excluding Internet and telephony revenues). According to the CCTA, before the Commission could expand the current regulatory regime to include access to wiring in commercial and institutional properties, an extensive process would have to be undertaken to establish the amount of unrecovered costs of installing wiring in these properties, as the basis for setting an appropriate access fee.

Commission's analysis and determinations

13. Having considered the information filed and the comments received as to the size of the potential market, the Commission is of the view that the estimates of the number of "units" in commercial and institutional properties provided by the parties to this proceeding likely overstate the size of the market for BDU services. For instance, many of these units, such as the individual rooms in a university dormitory or a hospital, are of a type that may not have wiring, or may house residents who would not be likely to subscribe to a BDU's television services. In some such commercial and institutional properties, television service may be shared by the residents of a number of units through the use of "common rooms." Consequently, the number of potential revenue-generating units in commercial and institutional properties may actually be considerably less than the estimated total number of units in these properties.
14. However, the Commission considers that, even at 700,000 units (the number estimated in Bell Canada's study), the market for the delivery of broadcasting services in commercial and institutional properties represents a relatively small segment of the overall BDU market, and one that is broadly dispersed across the country. While this market segment is not insignificant, the Commission finds that it is not of great enough size nor is it sufficiently concentrated to substantially affect the health of the competitive market for BDU services.

End-user choice and BDU competition

Positions of parties

15. Parties opposed to expansion of competitive access to wiring contended that, in many commercial and institutional properties, such as those identified in the complaint by Bell ExpressVu, the end-user of broadcasting services is a temporary or short-term resident, e.g., a patient in a hospital or a guest in a hotel. In their view, regulating access to wiring in these properties would not further the Commission's policy objective of providing for end-user choice because it is impractical to make provision for a temporary resident to select which BDU will provide his or her service.
16. The CCTA argued that the Commission deliberately excluded these properties in developing its inside wire policy. According to the CCTA, mandated access would not, in fact, contribute to attaining the goal of end-user choice, since compelling a BDU to turn over its facilities to a competitor would merely entail a switch from one exclusive supplier to another. QMI agreed with the CCTA that commercial and institutional properties were intentionally excluded from the Commission's inside wire regime. It argued that commercial and institutional properties have been excluded from the Commission's framework for BDU competition since its report of 19 May 1995 entitled *Competition and Culture on Canada's Information Highway: Managing the Realities of Transition*. According to QMI, BDUs should install duplicate wiring if they wish to serve these premises.

17. QMI also stated that, historically, cable companies had an obligation to serve only those residences that were supplied by municipal water or sewer services and were situated within 150 feet of their networks in areas zoned residential. QMI noted that cable BDUs had thus installed wiring in many of the properties at issue in the absence of any obligation to do so, on their own initiative and at their own expense.
18. In reply to these arguments, parties in support of mandated access to wiring in commercial and institutional properties acknowledged that end-users in these properties cannot reasonably expect or be expected to exercise choice with respect to the BDU from which they receive service. In their view, however, the subscriber, i.e., the owner or operator of the building, should be able to make such choices. These parties noted various disincentives (e.g., customer disruption) for existing commercial and institutional properties to permit rewiring or duplication of wiring, and argued that, in the absence of regulated access to wiring, incumbents will be permitted to maintain a near perpetual monopoly in most of these properties.

Commission's analysis and determinations

19. In Public Notice 2005-83, the Commission noted that the inapplicability of section 10 of the Regulations to commercial and institutional properties could be inconsistent with its longstanding policy objectives of providing for end-user choice and fostering competition among BDUs.
20. The record of this proceeding indicates that commercial and institutional properties are widely varied in terms of the manner in which BDU services are received and viewed by end-users. Consequently, the concept of end-user choice and the policy rationale, if any, for mandating access may apply differently in different types of commercial and institutional properties. In this regard, the Commission considers that the most appropriate distinction is between commercial and institutional properties that are used for residential purposes, such as hotels or hospitals, and those that are used for non-residential purposes, such as multi-tenant office buildings or retail stores.
21. With respect to the former group, the Commission considers that, in many of these properties, end-users are only short-term residents, e.g., a guest in a hotel. The Commission agrees with parties opposed to mandated access to wiring that it would be impractical, in such circumstances, for end-users to make choices as to which BDU(s) will provide broadcasting services in a particular property. Choices as to the BDU that will provide service are more reasonably made by the owner or operator of the property, e.g., the owner of a hotel. However, since end-users cannot practically be expected to make such choices themselves, the policy objective of providing for end-user choice would not, in the Commission's view, be advanced by mandating access to wiring in such properties.
22. With respect to the latter group, the Commission considers that the primary use of wiring in many non-residential properties is likely to be to receive telecommunications services, such as Voice Over IP telephony or high speed Internet services, rather than broadcasting services. Thus, issues related to access to the facilities necessary to provide such services

are better considered under the *Telecommunications Act*. Moreover, the Commission notes that the viewing of television services in non-residential properties is largely a secondary opportunity for users to view programming services, i.e., in addition to access at their permanent residences. Accordingly, mandating access to wiring in these properties would be of small benefit, if any, in terms of furthering end-user choice.

23. In addition to the above, the Commission considers that, in both residential and non-residential commercial and institutional properties, a significant measure of competition in the provision of distribution services is possible without mandated access to wiring. In this regard, the Commission notes that a number of commercial and institutional properties are already served by competing BDUs.
24. Broadcasting services, like other services, are generally provided to commercial and institutional properties pursuant to a contract between the property owner/operator and a BDU. Once such a contract expires or is terminated, it lies at the discretion of the property owner/operator to negotiate a new contract with the incumbent or with a different BDU(s). Where the owner/operator wishes to contract with a different BDU, either party may negotiate the purchase or lease of wire from the incumbent or may install new wire. In the Commission's view, these types of contractual negotiations already offer an adequate means to provide for competition in commercial and institutional properties. The Commission, however, considers that, in circumstances where contracts related to commercial and institutional properties would appear likely to exclude or significantly diminish the potential for competition (a contract that was unreasonably long, for example), a finding of undue preference pursuant to section 9 of the Regulations might be made.

Conclusion

25. In summary, the Commission finds that mandated access to wiring in commercial and institutional properties would not significantly advance the Commission's policy of providing for end-user choice. Further, given the relatively small size of the market for BDU services in these properties and their widespread distribution across the country, the Commission is not persuaded that access to wiring in these properties would contribute significantly to the health of the competitive market for these services.
26. Accordingly, the Commission will not make any amendments to the Regulations so as to expand competitive access to wire in commercial and institutional properties at this time.

Other matters

Harmonizing of the broadcasting and telecommunications rules

27. Certain comments filed in this proceeding raised the distinctions that exist between the Commission's rules on the broadcasting side concerning access by competing BDUs to inside wire, and the rules established under the *Telecommunications Act* related to the use of copper "in-building" wire by telecommunications carriers. Specifically, SaskTel and MTS recommended that the Commission harmonize the two sets of rules.

28. The circumstances related to inside wire and in-building wire differ in a number of ways, including the much greater size of the commercial telecommunications market, possible differences in the degree to which costs have been recovered, differences in the incentives to rewire or duplicate wire, and the use of “series-looped” inside wire for the provision of broadcasting services in commercial and institutional properties.
29. Based on the combination of factors discussed above, the Commission concludes that it would be inappropriate to harmonize the broadcasting and telecommunications regimes with respect to inside and in-building wire. The Commission notes, however, that, given the increasing use of telecommunications facilities to deliver broadcasting services, and of broadcasting distribution facilities to deliver telecommunications services, it may be necessary, at some point in the future, for the Commission to consider the various circumstances under which one regime or the other might apply to particular facilities, and to ensure that differences in the two regimes remain reasonable and appropriate.

Secretary General

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