



Telecom Order CRTC 2005-387

Ottawa, 24 November 2005

TELUS Communications (Québec) Inc. fibre agreements with Vidéotron Télécom ltée

Reference: 8340-T69-200318891 and 8340-T69-200318909

Introduction

1. On 22 December 2003, TELUS Communications (Québec) Inc., now known as TELUS Communications Inc. (TCI), filed two applications with the Commission for approval of an agreement with Vidéotron Télécom ltée (Vidéotron) related to a fibre swap (the Fibre Swap Agreement) and an agreement with Vidéotron related to a long-term lease of optical fibre facilities (the Optical Fibre Lease Agreement). Both applications were filed for approval pursuant to section 29 of the *Telecommunications Act* (the Act).
2. The Fibre Swap Agreement involves intra and interexchange fibres provided by TCI between various cities throughout Quebec. The agreement stipulates that the value of the fibres provided is deemed to be equivalent and that no financial settlements will be paid by either party. The agreement also stipulates that the arrangement will be in effect for a 20-year period and will be automatically renewed for additional 5-year terms, unless otherwise renegotiated.
3. TCI indicated that the Optical Fibre Lease Agreement will be in effect for a 20-year period.
4. The Fibre Swap Agreement, effective 23 April 2001, was filed in confidence without an abridged version for the public record. On 13 December 2004, TCI filed an abridged version of the Fibre Swap Agreement for the public record.
5. The Optical Fibre Lease Agreement, effective 8 November 2001, was filed in confidence without an abridged version for the public record.
6. The Commission received no comments with respect to these applications.

Regulatory Framework

7. Subsection 25(1) of the Act reads as follows:

No Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission that specifies the rate or the maximum or minimum rate, or both, to be charged for the service.

8. Subsection 27(2) of the Act provides:

No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

9. Section 29 of the Act provides:

No Canadian carrier shall, without the prior approval of the Commission, give effect to any agreement or arrangement, whether oral or written, with another telecommunications common carrier respecting

(a) the interchange of telecommunications by means of their telecommunications facilities;

(b) the management or operation of either or both of their facilities or any other facilities with which either or both are connected; or

(c) the apportionment of rates or revenues between the carriers.

Commission's analysis and determinations

10. In *TELUS Communications Inc. - Fibre Use and Management Agreement*, Telecom Decision CRTC 2003-4, 31 January 2003 (Decision 2003-4), the Commission found that an agreement between TCI and Axia SuperNet Ltd. with respect to the provision of interexchange dark fibre in Alberta did not fall within section 29 of the Act, because its essence was the provision of a telecommunications service and did not primarily address matters falling within section 29, namely the interchange of telecommunications by means of telecommunications facilities, the management or operation of facilities, or the apportionment of rates or revenues between carriers. Accordingly, the Commission directed TCI to issue tariff pages for the service.
11. The Commission notes that both the Fibre Swap Agreement and the Optical Fibre Lease Agreement involve intra and interexchange optical fibre. The Commission further notes that TCI has a General tariff for both intra and inter-exchange optical fibre, which was approved in *TELUS Communications Inc. - General tariff for intra-exchange and inter-exchange optical fibre service in Quebec*, Telecom Order CRTC 2004-438, 23 December 2004.
12. Consistent with the Commission's finding in Decision 2003-4, the Commission considers that the Fibre Swap Agreement and the Optical Fibre Lease Agreement do not come within section 29 of the Act because their essence is the provision of a telecommunications service, namely optical fibre, rather than primarily addressing matters falling within section 29. Accordingly, the Commission considers that, pursuant to section 25 of the Act, TCI must apply approved tariff rates with respect to the fibres provided to Vidéotron, rather than dispose of the applications pursuant to section 29 of the Act.

13. In light of the foregoing, the Commission:

- **denies** the Fibre Swap Agreement and the Dark Fibre Lease Agreement; and
- directs TCI to apply, within 60 days of this Order, the rates, terms and conditions approved under TCI General Tariff sections 2.07, Intra-exchange Optical Fibre Service, and 3.09, Inter-exchange Optical Fibre Service, to the provision of the optical fibre to Vidéotron.

Secretary General

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