



Telecom Order CRTC 2005-84

Ottawa, 2 March 2005

Instalment payment plans for service improvement plans

Reference: Aliant Telecom Tariff Notice 70, Bell Canada Tariff Notices 6731 and 6731A, MTS Tariff Notice 519, Télébec Tariff Notice 294, TCI Tariff Notice 87, and TELUS Québec Tariff Notice 346

*In this Order, the Commission **approves** a large construction charges instalment payment plan for Aliant Telecom Inc., Bell Canada, MTS Communications Inc., Société en commandite Télébec (Télébec), TELUS Communications Inc., and TELUS Communications (Québec) Inc. (TELUS Québec), as well as small and medium instalment payment plans for Télébec and TELUS Québec for telephone service provided to residential customers under the companies' service improvement plans.*

Background

1. In *Telephone service to high-cost serving areas*, Telecom Decision CRTC 99-16, 19 October 1999, the Commission defined the basic service objective (BSO) as, among other things, an individual line with privacy features and the capability to connect via low-speed data transmission to the Internet at local rates. The Commission set three goals: (i) to extend service to the few areas that were unserved; (ii) to upgrade service levels in those areas where customers did not have access to telecommunication services that meet the BSO; and (iii) to maintain service levels. In order to achieve these goals, the Commission directed the incumbent local exchange carriers (ILECs) to develop service improvement plans (SIPs) which would be reviewed in the price cap review proceeding, which ultimately led to *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002 (Decision 2002-34).
2. In approving the expenditures related to the SIPs, in Decision 2002-34, the Commission concluded that a capital cost criteria of \$25,000 per premise was to be used to determine whether the ILECs would have to provide service to previously unserved areas. The Commission determined that an initial payment of \$1,000 had to be paid by the customer requesting service. The Commission noted that the requirement that the customers requesting service under the SIP pay the initial \$1,000 construction fee in a lump sum might be a hardship and a disincentive to taking the service. The Commission therefore directed the ILECs¹ to institute an instalment payment plan (IPP) for the \$1,000 customer payment (small IPP), using the same criteria approved in Order CRTC 2000-1096, 4 December 2000, for Northern Telephone Limited.
3. In Decision 2002-34, the Commission also noted that, even with the approved capital cost allowance of \$25,000, a number of unserved areas would still not qualify for service under the SIPs because of higher construction costs. The Commission noted that occupants of premises in these areas could undertake to pay the additional construction costs to obtain service.

¹ The ILECs referred to in this section of Decision 2002-34 were Aliant Telecom Inc., Bell Canada, and TELUS Communications Inc.

The Commission concluded that, as an incentive to the customers who were willing to pay additional construction costs, it would require Aliant Telecom Inc. (Aliant Telecom), Bell Canada, and TELUS Communications Inc. (TCI) to institute an instalment plan for customer payments limited to a maximum of \$10,000 (medium IPP), using the same criteria approved in Order CRTC 2000-980, 26 October 2000, for Bell Canada.

4. In the event that the total construction costs exceeded the amounts described above and to further encourage the provision of service to unserved premises, the Commission stated, in Decision 2002-34, that it would explore a large construction charges instalment payment plan (LCCIPP) for additional charges greater than \$10,000 per customer premise. Accordingly, the Commission directed Aliant Telecom, Bell Canada, and TCI to file such a plan for Commission consideration.
5. In *Follow-up to price cap Decision 2002-34: Large construction charges instalment payment plan for high-cost residential premises as part of the service improvement plans*, Telecom Decision CRTC 2003-2, 23 January 2003 (Decision 2003-2), the Commission approved the following LCCIPP criteria for Aliant Telecom, Bell Canada, and TCI:
 - the customer must pay 20 percent of the construction charges as a non-refundable deposit prior to the start of construction;
 - the balance of construction charges would be payable in equal monthly instalments over a period of 60 months;
 - interest equal to the ILEC's cost of capital at the time the LCCIPP is entered into by the customer would be chargeable on the outstanding balance and would be calculated and payable with each monthly instalment;
 - prior to the ILEC commencing construction, the customer would be required to provide security for the instalment payment plan in an amount and form to be agreed to by the company and the customer. The customer would be responsible for arranging the security, including the cost of arranging security;
 - interest would also be charged on late payments of instalments that are due each month in accordance with the ILEC's tariffed late payment interest rate;
 - customers would be required to satisfy specific credit criteria; and
 - customers would be required to sign an agreement with the ILEC, consistent with the above terms and conditions, as part of the LCCIPP.
6. In the same Decision, the Commission directed Aliant Telecom, Bell Canada, and TCI to file tariff pages and draft agreements for approval.

7. In *Implementation of price regulation for Télébec and TELUS Québec*, Telecom Decision CRTC 2002-43, 31 July 2002 (Decision 2002-43), the Commission approved the criteria for small and medium IPPs for TELUS Communications (Québec) Inc. (TELUS Québec²) and Télébec ltée (now Société en commandite Télébec) (Télébec)) and directed them to file a proposal for an LCCIPP and tariff pages for approval.
8. Pursuant to *Follow-up to Decision 2001-767: MTS' revised service improvement plan: Expedited consideration of the proposed capital expenditures for 2003 and 2004*, Telecom Decision CRTC 2002-63, 15 October 2002 (Decision 2002-63), MTS Communications Inc. (MTS) (now known as MTS Allstream Inc.) issued tariff pages for small and medium IPPs. Pursuant to *Follow-up to Decision 2002-63: MTS' service improvement plan*, Telecom Decision CRTC 2003-68, 10 October 2003 (Decision 2003-68), MTS filed amended tariff pages for small and medium IPPs. The Commission approved those tariff pages in *MTS Communications Inc. – Service improvement plan*, Telecom Order CRTC 2003-511, 15 December 2003.
9. In *Société en commandite Télébec – Follow-up to Decision 2002-43 – Service improvement plan*, Telecom Decision CRTC 2004-77, 18 November 2004, and *TELUS Communications Inc. – Follow-up to Decision 2002-43 – Service improvement plan*, Telecom Decision CRTC 2004-78, 18 November 2004 (Decision 2004-78), the Commission noted that the Télébec and TELUS Québec tariff pages related to IPPs would be addressed in a subsequent decision.

Applications

10. The Commission received applications from Aliant Telecom, Bell Canada, and TCI dated 24 February 2003 pursuant to Decision 2003-2 regarding an LCCIPP for telephone service provided to residential customers under a SIP. The applications were set out in Aliant Telecom Tariff Notice (TN) 70, Bell Canada TN 6731, and TCI TN 87, and included tariff pages and a customer agreement. In Bell Canada TN 6731A dated 20 November 2003, Bell Canada submitted revised wording for the customer agreement and withdrew proposed revisions to its General Tariff item 155 that were set out in Bell Canada TN 6731.
11. The Commission also received applications from Télébec and TELUS Québec dated 31 March and 10 April 2003, respectively, pursuant to Decision 2002-43 regarding small and medium IPPs and an LCCIPP. The applications were set out in Télébec TN 294 and TELUS Québec TN 346. Télébec filed tariff pages, which included the small and medium IPPs and the LCCIPP, and an agreement for the LCCIPP. TELUS Québec filed tariff pages, which included the small and medium IPPs, but failed to file an LCCIPP proposal and agreement.
12. The Commission also received an application from MTS dated 2 December 2003 regarding an LCCIPP, filed pursuant to Decision 2003-68. The application was set out in MTS TN 519. MTS filed proposed tariff pages and an agreement.

² Effective 1 July 2004, TCI has assumed all rights, entitlements, liabilities, and obligations relating to the provision of telecommunications services in the territories previously served by TELUS Québec. For ease of reference, TELUS Québec is used throughout this Decision.

13. The Commission received no comments from interested parties.

Positions of parties

14. Aliant Telecom and MTS proposed a small change to the Commission's criteria such that residence customers would be permitted to spread construction charges greater than \$10,000 over a period up to and including 60 months. TCI proposed a payment period of 60 months. TELUS Québec proposed a single payment or a payment period of 60 months.
15. Bell Canada submitted that where the total payable construction charge amount is in excess of \$10,000, customers could select a payment term of either 12, 24, 36, 48, or 60 months. Télébec proposed a payment period that was similar to Bell Canada's.
16. Aliant Telecom, Bell Canada, TCI, MTS, and Télébec enclosed a draft basic service customer agreement, which they submitted was consistent with the terms and conditions set out by the Commission in Decision 2003-2.
17. Aliant Telecom, Bell Canada, and Télébec noted that, after construction work had started, an unforeseen increase in the costs of the work could arise. These companies proposed that the customer be liable for this cost increase. Aliant Telecom and Télébec submitted that in the event the customer terminated the contract due to the cost increase, the customer would be required to pay amounts owing at the date of the termination in accordance with the terms of the agreement. Bell Canada submitted that the customer would be required to pay amounts owing at the date of the termination in accordance with Article 20.2 of Bell Canada's Terms of Service.
18. Bell Canada stated that it expected no demand for the LCCIPP.
19. Bell Canada and TCI requested an effective date six months after the approval date to develop procedures and to undertake billing system modifications. MTS requested an effective date three months following Commission approval.
20. Bell Canada proposed to incorporate the conditions specific to construction charge amounts over \$10,000 into the existing medium IPP tariff, including the customer agreement. Those conditions were that security was to be provided by the customer, customers were to satisfy specific credit criteria, and that the parties were to sign an agreement consistent with all the terms and conditions set out in the Decision.
21. MTS also proposed to combine the already-approved medium IPP and the LCCIPP in its agreement, but did not specifically set out the terms in its proposed tariff.

Commission's analysis and determinations

The LCCIPP for Aliant Telecom, Bell Canada, MTS, TCI, Télébec and TELUS Québec

22. Aliant Telecom, Bell Canada, MTS, TCI, and Télébec filed tariff pages and customer agreements for the LCCIPP, in compliance with the relevant decisions noted above except for the following:

- Aliant Telecom and MTS suggested that the Commission slightly modify its requirement for the payment term from "60 months" to "up to 60 months".
 - Bell Canada and Télébec suggested a set number of months - 12, 24, 36, 48, or 60 months - for the payment term.
 - Four of the companies filed agreements that were similar: Aliant Telecom, Bell Canada, TCI, and Télébec. MTS filed an agreement generally containing the same terms as the other four companies, but included a term regarding default under the payment plan unlike the other four companies (see below for details). MTS also included the medium IPP in its agreement wording.
 - Aliant Telecom, Bell Canada, and Télébec proposed that should an unforeseen increase in the costs of the work arise after construction work had started, the customer should be liable for this cost increase.
 - Bell Canada and TCI proposed an effective date of six months following Commission approval, while MTS requested an effective date three months following Commission approval.
23. TELUS Québec failed to file an LCCIPP proposal and agreement. Specifically, TELUS Québec did not correctly address the 20 percent non-refundable deposit, the interest rate, customer security, the provision of customer credit criteria, and the limiting of LCCIPP to residential customers only. The Commission is of the view that TELUS Québec should implement an LCCIPP that is the same as that of the other five companies approved herein, and accordingly, directs TELUS Québec to do so.
 24. The Commission **approves** Aliant Telecom's and MTS' suggestion of "up to 60 months" for the payment period for Aliant Telecom, MTS, TCI, and TELUS Québec since it gives customers more flexibility.
 25. The Commission **approves** Bell Canada's and Télébec's suggestion of "12, 24, 36, 48, or 60 months" for the payment period for Bell Canada and Télébec since it also gives customers more flexibility.
 26. Unlike Aliant Telecom, Bell Canada, TCI, and Télébec, MTS included a term regarding default in the customer agreement. MTS proposed that if the customer misses a payment by the due date and fails to remedy the default within 10 business days after written notice by MTS, the remaining balance of the construction charges would become immediately payable. The Commission considers this term in MTS' agreement to be unduly onerous and finds that it is not required.
 27. The Commission finds that the rights and responsibilities of customers and ILECs should be consistent across the country. Accordingly, the Commission directs each of the six ILECs to use the customer agreement attached as Appendix 1 together with the specification of information to be included in Schedule A to the agreement as specified in Appendix 2.

28. The Commission finds that Aliant Telecom's, Bell Canada's, and Télébec's proposals that the customer be liable for any increase in costs after construction has started would be unfair to the customer since, if he/she cancelled the project due to increased costs discovered after the start of construction, he/she would have to pay for partial construction, and would not receive telephone service. This would run counter to the Commission's policy objectives set out in the *Telecommunications Act*, specifically (a) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; and (b) every rate charged by a Canadian carrier for telecommunications service shall be just and reasonable.
29. Accordingly, the Commission **denies** the three companies' proposals regarding cancellation of the project due to increased costs discovered after the start of construction and directs the six ILECs to provide the service at the originally estimated cost.
30. The Commission finds that an effective date three months following the date of this Order would be reasonable in that it allows ample time for all six companies to develop procedures and undertake billing system modifications. Accordingly, the Commission directs all six companies to implement an LCCIPP within a period of three months from the date of this Order.

The small IPP for TELUS Québec and Télébec

31. In Decision 2002-43, the Commission directed TELUS Québec and Télébec to institute small IPPs requiring an initial deposit of \$100, but did not specifically require the small IPP deposits of TELUS Québec or Télébec to be non-refundable.
32. TELUS Québec proposed a small IPP that included a \$100 deposit, without specifying that it was non-refundable. Télébec proposed a small IPP that included a \$200 deposit, specifying that it was non-refundable.
33. To be consistent with other ILECs, the Commission finds that the initial deposit is to be \$200 and that it is to be non-refundable.
34. Télébec proposed that the maximum average capital cost per network access service per locality be \$15,000, rather than \$25,000 as indicated by the Commission in Decision 2002-34.
35. For TELUS Québec, the Commission **approves** the tariff pages with changes: specifically, replace \$100 with \$200 and make the deposit non-refundable. The Commission also requires the companies to change the SIP roll-out period to 2004-2006 to reflect the SIP roll-out period set out in Decision 2004-78.
36. For Télébec, the Commission **approves** the tariff pages with changes: specifically, change the maximum average capital cost per network access service per locality from \$15,000 to \$25,000.

The medium IPP for TELUS Québec and Télébec

37. The Commission notes that TELUS Québec's submission did not include a proposal for a medium IPP.

38. The Commission also notes that Télébec's medium IPP submission did not provide the possibility of the customer to pay any remaining balance owing without penalty. The Commission finds that this term must be included.
39. For TELUS Québec, the Commission **approves** the tariff pages with changes: specifically, TELUS Québec is directed to include a 20 percent deposit, a payment plan of up to 36 months, interest to be charged on the unpaid balance at the rate of the company's cost of capital, and the possibility for the customer to pay any remaining balance owing without penalty.
40. For Télébec, the Commission **approves** the tariff pages with changes: specifically, Télébec is directed to include the possibility for the customer to pay any remaining balance owing without penalty.

Combining the already-approved medium IPP and the LCCIPP

41. The Commission notes that the Bell Canada and MTS proposals to combine the already-approved medium IPP and the LCCIPP in their tariff and/or customer agreements would impose additional requirements on the customers of the medium IPP over and above what the Commission ordered in Decisions 2002-34 and 2002-43.
42. The Commission, in Decisions 2002-34 and 2002-43, did not intend that the medium IPP would include these additional requirements. Accordingly, the Commission **denies** the Bell Canada and MTS proposals to combine the medium IPP and the LCCIPP.

Tariff pages

43. The Commission **approves** the applications referenced above, as amended in this Order. The Commission directs the companies to issue revised tariff pages and customer agreements forthwith.

Secretary General

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>

**SERVICE IMPROVEMENT PLAN:
BASIC SERVICE CONSTRUCTION AGREEMENT FOR THE
INSTALMENT PAYMENT PLAN OF MORE THAN \$10,000, INCLUDING
THE INITIAL \$1,000 CONSTRUCTION CHARGE – TERMS AND CONDITIONS**

- 1) DEFINITIONS: For the purpose of this Agreement, the following terms have the following meanings:

"Affiliate" has the meaning set forth in the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44, as amended.

"Agreement" means this agreement, including the terms and conditions of (the company's) applicable Tariffs, which are incorporated by reference herein and in any Schedules attached hereto and forming a part hereof.

"(The company)" means (the company) and, as applicable, its Affiliates, agents and sub-contractors.

"CRTC" means the Canadian Radio-television and Telecommunications Commission.

"Customer" means an applicant, customer or lessee as per applicable Tariffs and the person whose name appears at the end of this document.

"Deposit" means an amount of money equal to 20% of the SIP construction charges. This amount must be paid before construction begins. The deposit is generally non-refundable after (the company) has started the Work.

"Effective Date" means the later of the dates of (the company's) or the Customer's signature appearing at the end of this document.

"Schedules" means attachments to this Agreement as added or amended in writing from time to time.

"SIP" means the (the company) Service Improvement Plan as approved by the CRTC.

"Start Date" means the estimated date of commencement of the Work as set out in the Schedules.

"Tariffs" means the applicable tariffs of (the company) for telecommunications services as approved by the CRTC, including General Tariff items xxx.

"Work" means the construction of telecommunications facilities by (the company) for the provision of telecommunications service; the Work is more particularly described in the Schedules.

- 2) **APPLICABLE PROVISIONS:** This Agreement applies to the performance of the Work by (the company) as requested by the Customer. The performance of the Work is governed by this Agreement and (the company's) applicable Tariffs, which are incorporated by the reference herein. In the event of conflict between the terms and conditions of the Agreement and those of the Tariffs, the Tariffs will prevail.
- 3) **WORK:** (the company) shall use commercially reasonable efforts to perform the Work. (the company) may perform its obligations hereunder through its Affiliates, agents or sub-contractors. The performance of the Work by (the company) is subject to (the company's) continued approval of the Customer's creditworthiness and an appropriate security arrangement as described in the Schedules.
- 4) **CHARGES AND PAYMENT:** The Customer will pay the charges for the Work as set out in the Schedules and in accordance with applicable provisions herein and in the Tariffs. (the company) will start billing the Customer under this Agreement once the Work has been completed and the Customer receives residential telephone service at the Customer's premises. Where the Customer does not make a monthly payment by the due date for the payment, interest shall apply on the late payment at the applicable rate of interest set out in Item Z of (the company's) General Tariff as amended from time to time.
- 5) **TERM, SUSPENSION AND TERMINATION:** This Agreement will be effective on the Effective Date and continue in full force and effect until the Work is completed or fully paid up by the Customer, whichever is later. If the Agreement is terminated before (the company) has started the Work, (the company) will refund the full amount of the deposit and instalment payments paid, with interest calculated in the same manner and at the rate set out in (the company's) Tariff item X [*Interest on Deposits*]/Terms of Service Article Y.
- 6) **CHANGES TO OR DELAYS IN THE WORK:**

a) Before the Commencement of the Work

If, before commencement of the Work, (the company) determines that changes to the Work are required and such changes will increase the associated costs, (the company) will immediately notify the Customer who agrees to amend this Agreement accordingly or terminate it.

b) After the Commencement of the Work

If, after the commencement of the Work, (the company) determines that the cost to the customer will increase, (the company) must nonetheless provide the service at the originally estimated cost to the Customer, whether or not such changes were reasonably foreseeable before the commencement of the Work.

c) Delay in commencement of the Work

The Customer agrees to notify (the company) of any desired changes to the Work. In such a case, this Agreement may be amended as required. Where the Work has not started within six months of the Effective Date due to Customer delay, this Agreement will be reviewed by the parties and amended or terminated as required.

- 7) **CUSTOMER RESPONSIBILITIES:** The Customer will
- 7.1 Provide access to the site where the Work is to be performed;
 - 7.2 Provide and pay for access to a local supply of commercial electricity in accordance with (the company's) standards;
 - 7.3 Arrange, provide and pay the cost of security as applicable; and
 - 7.4 Consent to credit checks (the company) reasonably deems prudent to perform prior to the Start Date and from time to time as required.
- 8) **ACCELERATED PAYMENT:** The Customer, at any time during the Payment Term, may pay any remaining balance of the Construction charges owing by the Customer to (the company) without penalty.
- 9) **OWNERSHIP OF MATERIALS:** (the company) will maintain the ownership of and all the rights, titles and interests (including rights in respect of any intellectual property) in the Work, components of the Work and all equipment that may be used or supplied under this Agreement to perform the Work.
- 10) **LIMITATION OF LIABILITY:** (the company's) liability in connection with the Work provided hereunder will be as set out in (the company) General Tariff item xxx.
- 11) **NOTICE:** Notice required pursuant to this Agreement will be in written form and sent by registered mail. Such notice will be deemed to have been received within three (3) days after the mailing of same.
- 12) **GENERAL:** The Customer will not assign this Agreement without the prior written consent of (the company). (the company) will not be responsible for damages caused by delay or failure to perform its obligations hereunder when the delay or failure is caused by events beyond its reasonable control including, but not limited to, fires, explosions, floods, acts of God, shortage of water, power, facilities, materials and supplies, strikes or other labour disputes, riots and war (an event of "Force Majeure"). In an event of Force Majeure, (the company) will be allowed a reasonable period of time to fulfill its obligations having regard to the applicable circumstances. This Agreement may not be modified except in writing by (the company). No agent, employee or representative of (the company) has authority to bind (the company) unless by representation or warranty included in this Agreement or in written amendments hereto. This Agreement will be governed by the laws of the province where the Work is performed and the laws of Canada applicable therein. The failure of (the company) to insist upon strict adherence to any term hereunder on any occasion or the waiver of a breach of this Agreement in any instance shall not, unless expressly provided otherwise in writing, deprive (the company) of the right thereafter to insist on strict adherence to that term or any other term hereunder or be construed as a waiver of any subsequent breach, whether or not similar. The provisions of this Agreement are severable; if any are determined to be void, invalid, or otherwise unenforceable by any court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected and

shall remain in full force and effect. This Agreement may be executed by facsimile, which will be considered an original. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and there are no other conditions or warranties, express or implied, applicable to the subject matter hereof. The parties desire that this Agreement and all related documents be drafted in English. Les parties désirent que le présent contrat de même que tous les documents s'y rattachant, soient rédigés en anglais.

I have read, understood and agree with all of the applicable terms and conditions of this Agreement, including the limitation of (the company's) liability, and hereby authorize (the company) to perform the Work described herein.

CUSTOMER

Signature:

Print Name:

Date:

CUSTOMER

Signature:

Print Name:

Date:

**SERVICE IMPROVEMENT PLAN:
BASIC SERVICE CONSTRUCTION AGREEMENT FOR THE
INSTALMENT PAYMENT PLAN OF MORE THAN \$10,000 INCLUDING
THE INITIAL \$1,000 CONSTRUCTION CHARGE:**

SCHEDULE A – RESIDENTIAL CUSTOMERS

In this part of the Agreement, the companies are to:

- a) insert the following sentence: The Customer will pay a deposit of 20% of the total charges for the Work upon execution of the Agreement. This deposit is generally non-refundable after the Work has started.
- b) indicate the following information: construction charges; non-refundable deposit; payment term in months; monthly instalment payment (excluding interest and taxes); interest rate; (the company's cost of capital); monthly interest; monthly taxes; and total monthly instalment payment (including interest and taxes).