



## Telecom Decision CRTC 2009-681

Ottawa, 30 October 2009

### Confirmation of Telecom Decision 2006-71 regarding revisions to or replacement of the *Telecommunications Fees Regulations, 1995*

File number: 8657-A53-200606692

*In this decision, the Commission lifts the stay on the review and vary proceeding regarding Telecom Decision 2006-71 that was initiated in Telecom Public Notice 2008-13, and determines that no further process is necessary before reaching a final determination in that proceeding. The Commission also confirms Telecom Decision 2006-71, following a ruling by the Federal Court of Appeal that proposed amendments to or replacement of the Telecommunications Fees Regulations, 1995 are not subject to requirements of the User Fees Act. In a separate Notice of Consultation issued today, the Commission is also calling for public comments on proposed new Telecommunications Fees Regulations, 2010.*

1. In Telecom Decision 2006-71, the Commission considered an application by Aliant Telecom Inc. (now Bell Aliant Regional Communications, Limited Partnership) and Bell Canada (collectively, the Bell companies) requesting that the Commission revise the *Telecommunications Fees Regulations, 1995* (the 1995 Fees Regulations) and, in particular, the basis on which telecommunications fees are levied.
2. Under the 1995 Fees Regulations, the Commission levies telecommunications fees on Canadian carriers to recover costs that are attributable to the Commission's responsibilities under the *Telecommunications Act*. Each carrier pays its prorated share of the aggregate of all feepayers' telecommunications operating revenues.
3. In their application, the Bell companies submitted that the current method for determining the telecommunications fees payable by each carrier is inequitable and is inconsistent with the Treasury Board's *Policy on Service Standards for External Fees*. As a solution, it proposed adopting a revenue-based approach similar to that implemented by the Commission in Decision 2000-745 for the contribution regime, which subsidizes the high cost of residential telephone service in rural and remote areas of Canada. In addition, the Bell companies submitted that the *User Fees Act* applies to the 1995 Fees Regulations.
4. In Telecom Decision 2006-71, the Commission determined that it had taken measures to comply with the Treasury Board's Policy. The Commission also noted the diminished importance of tariff-related activities as cost-drivers, a conclusion which was mentioned in the *Telecommunications Policy Review Panel Final Report 2006*, and considered that it would be more equitable to levy telecommunications fees on all telecommunications service providers (TSPs), rather than on just those that file tariffs. The Commission further determined that adopting a revenue-based approach similar to that in the contribution regime, with a \$10 million revenue threshold to determine liability, would be appropriate.

5. However, during government inter-departmental deliberations that took place after Telecom Decision 2006-71, the Commission received conflicting legal opinions with respect to the application of the *User Fees Act* to the 1995 Fees Regulations. In Telecom Public Notice 2008-13, the Commission noted the conflicting legal opinions and determined that it had failed to dispose of the portion of the Bell companies' submission that the *User Fees Act* applies to the 1995 Fees Regulations. Accordingly, the Commission decided to reopen the proceeding that led to Telecom Decision 2006-71 to consider whether to review and vary that decision.
6. The specific issue to be resolved was whether the telecommunications fees are “user fees” within the meaning of section 2 of the *User Fees Act*, and whether changing the 1995 Fees Regulations as contemplated by Telecom Decision 2006-71 would amount to fixing, increasing, expanding the application of, or increasing the duration of a “user fee” within the meaning of subsection 4(1) of that Act. If so, the Commission would have to comply with the requirements for implementing “user fees” under that Act.
7. To resolve this issue, the Commission stayed the review and vary proceeding, and referred the above question of law to the Federal Court of Appeal for a hearing and determination. The Commission also stated in Telecom Public Notice 2008-13 that it would consider what process, if any, was needed to amend or replace the 1995 Fees Regulations within 120 days after a final decision had been rendered in the reference proceeding.
8. On 2 July 2009, the Federal Court of Appeal ruled that amending or replacing the 1995 Fees Regulations as contemplated in Telecom Decision 2006-71 would not require the Commission to follow the process set out in the *User Fees Act*.
9. Given this outcome, the Commission now lifts the stay on the proceeding to review and vary Telecom Decision 2006-71. In these circumstances, the Commission is of the view that no further public process is necessary, prior to determining whether or not to confirm Telecom Decision 2006-71. The Commission continues to consider that the proposed change to the 1995 Fees Regulations will make them more equitable by requiring companies that generate a substantial amount of regulatory activity to pay telecommunications fees, even if they do not file a tariff with the Commission for approval. As such, and given the fact that Telecom Decision 2006-71 was reopened only to consider whether the *User Fees Act* applies to the process for amending or replacing the 1995 Fees Regulations, the Commission considers it appropriate to confirm Telecom Decision 2006-71.
10. Accordingly, the Commission will now proceed with the proposed changes to the 1995 Fees Regulations. In Telecom Notice of Consultation 2009-682, issued today, the Commission is requesting comments from interested parties on the text of the proposed new *Telecommunications Fees Regulations, 2010*. As noted in Telecom Notice of Consultation 2009-682, parties may comment on the proposed 2010 Fees Regulations by 14 January 2010.

Secretary General

## Related documents

- *Call for comments on proposed new Telecommunications Fees Regulations, 2010, Telecom Notice of Consultation CRTC 2009-682, 30 October 2009*
- *Review of Telecom Decision 2006-71 regarding revisions to the Telecommunications Fees Regulations, 1995, Telecom Public Notice CRTC 2008-13, 15 October 2008*
- *Part VII application to revise the Telecommunications Fees Regulations, 1995, Telecom Decision CRTC 2006-71, 6 November 2006*
- *Changes to the contribution regime, Decision CRTC 2000-745, 30 November 2000*

*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>*