



Telecom Decision CRTC 2014-265

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Shaw Cablesystems G.P. – Request for relief with regard to TELUS Communications Company’s service pole census

The Commission determines that a census conducted by TCC to determine the number of service poles in its British Columbia operating territory is valid, in that it provides the appropriate basis of a service pole record. The Commission also determines that Shaw be given a period of six months from the date of this decision or from the date that TCC provides it with the census results specific to Shaw, whichever is latest, to validate TCC’s census results.

*The Commission **denies** Shaw’s request that it not be required to pay a portion of the costs of TCC’s census.*

Background

1. A “service pole” refers to a pole owned by an incumbent local exchange carrier (ILEC) on which the only licensee¹ attachment is a drop wire to the subscriber’s premises.
2. In Telecom Decision 2011-406, the Commission approved a service pole rate for each of the following ILECs: Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, and Télébec, Limited Partnership (collectively, Bell Canada et al.); MTS Allstream Inc.; and TELUS Communications Company (TCC). The approved rate is a service pole-specific rate and therefore requires that the ILECs determine the number of billable service poles for each user.
3. In Telecom Order 2013-114, the Commission approved, with modifications, revisions to Bell Canada et al.’s respective support structure service tariffs. Those revisions involved (a) the implementation of a charge for the use of a service pole, (b) the recovery of a portion of the cost of a service pole census conducted by Bell Aliant in the Atlantic provinces, and (c) the introduction of a charge for the non-reporting of service poles used by licensees (unauthorized attachment charge).

¹ Licensees are cable television undertakings or Canadian carriers that attach their facilities, such as wires, onto ILECs’ poles to serve their own end-users.

Application

4. On 23 October 2013, Shaw Cablesystems G.P. (Shaw) filed an application with the Commission with regard to a census being conducted by TCC to determine the number of service poles in its British Columbia operating territory. Shaw argued that TCC undertook its census without providing Shaw with appropriate notice and was failing to follow certain principles in conducting the census.
5. Shaw requested that the Commission order TCC to cease its census and to withdraw any resulting invoices for service poles. Shaw also requested that the Commission establish a timeline to give Shaw the opportunity to undertake its own full census of the service poles in TCC's operating territory.
6. The Commission received an intervention from TCC. The public record of this proceeding, which closed on 20 January 2014, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Issues

7. The Commission has identified the following issues to be addressed in this decision:
 - I. Should TCC be required to start a new census?
 - II. Should Shaw be given time to verify the results of TCC's census?
 - III. Should Shaw be required to pay a portion of the costs of TCC's census?

I. Should TCC be required to start a new census?

8. Shaw submitted that in Telecom Order 2013-114, the Commission established a number of general principles and best practices regarding service pole counts. The company also submitted that there are fundamental principles of fairness and equity that govern service pole censuses conducted by the ILECs. Shaw argued that TCC's census failed to meet these broad principles, and requested that the Commission require TCC to stop its census and start a new one that would meet them.
9. According to Shaw, any ILEC undertaking a service pole census should (a) limit the scope of the census, (b) have an independent third party conduct the census, (c) provide prior notice of the census to licensees at the time of issuance of the request for proposals (RFP), (d) provide licensees with the means and opportunity to assess the parameters of the census, and (e) provide licensees with all service pole attachment information and a reasonable period of time to verify that information.
10. Shaw expressed concern that TCC's census was not limited in scope to service poles and that it was not being conducted by an independent third party. Shaw added that TCC did not properly provide it with prior notice of the census, sufficient means and opportunity to assess the parameters of the census, or the service pole attachment information it required to verify the census results.

11. TCC argued that it was not subject to the Commission directives in Telecom Order 2013-114, submitting that the order was specific to Bell Canada et al. and to their relevant tariff notices. TCC also submitted that no other ILEC was made party to that proceeding, nor did Telecom Order 2013-114 contain a show cause notice.
12. TCC also argued that a single census is the most efficient method of establishing a baseline database of service poles in its British Columbia operating territory. The company considered that such a database could not be built by a licensee performing an independent census.
13. TCC submitted that it had invited Shaw to participate in its census on several occasions, and that it had taken measures to ensure that its census was conducted appropriately. TCC also submitted that the census was conducted by an independent third party that only collected three or four data points related to the location of service poles.
14. TCC stated that it would inform licensees of future service pole censuses and provide them with a reasonable opportunity to observe those censuses, adding that it would make sufficient census data available for licensees to verify the service pole invoices it sent to them.
15. TCC argued that there is no valid reason to restart its census, particularly given the diligence the company employed in conducting it.

Commission's analysis and determinations

16. Telecom Order 2013-114 provided direction regarding service pole censuses, for example with regard to the information to be provided to licensees, self-reporting by licensees, and notification to licensees at the time that Bell Canada et al. issued an RFP. However, the determinations in that order are only binding on Bell Canada et al. The Commission did not initiate any proceeding to determine whether those determinations should apply to other ILECs, such as TCC, and it has not established general service pole census directives in any other Commission decision.
17. Accordingly, the Commission determines that it has not established any service pole census principles applicable to TCC and that, therefore, TCC cannot be found to have breached the Commission's service pole census directives.
18. The Commission notes that a third party was hired to conduct TCC's census and that the scope of the census is limited to determining the number of service poles in British Columbia and the presence of licensee attachments on those poles, if any.
19. The Commission considers, however, that TCC did not provide Shaw with sufficient notice that it was going to undertake a service pole census nor did TCC provide Shaw with sufficient data to validate the census results. Such steps would have likely improved the accuracy of the results and of the service pole database, thus benefitting both parties.

20. While TCC insufficiently communicated with Shaw before and after the census, which limited Shaw's ability to verify the accuracy of the census results, the Commission nevertheless determines that TCC's census is valid, in that it provides the appropriate basis of a service pole record. Consequently, TCC is not required to start a new census.

II. Should Shaw be given time to verify the results of TCC's census?

21. Shaw requested that the Commission establish a time frame within which Shaw may elect to undertake its own full census of service poles in TCC's operating territory. Shaw indicated that it needed additional time to ensure the accuracy and integrity of TCC's census processes and results.
22. Shaw submitted that the only information it had received with regard to TCC's census results were invoices from TCC, which simply provided a general description of the geographic region in which the census took place, the service pole count, the date range of the service pole charges, and the total amount due. In Shaw's view, it was unfair and unreasonable for TCC to send it invoices before providing it with complete service pole attachment information.
23. TCC submitted that any independent census conducted by a licensee such as Shaw should not interfere with or delay TCC's census and billing of licensees. TCC added that each licensee is free to conduct an independent census of service poles in TCC's operating territory at any time, and that Shaw did not do so prior to TCC's census.
24. TCC stated that in the future, it would provide licensees with (a) advance notice of a census, and (b) sufficient data to verify census results and invoices, upon request.

Commission's analysis and determinations

25. Other than self-reporting by licensees or a negotiated agreement, a census is the only method to determine the number of service poles used by licensees. Since the publication of Telecom Decision 2011-406, Shaw has not reported its service pole usage to TCC. Therefore, in the absence of self-reporting, TCC's census is an appropriate method for the company to establish a database that provides a record of Shaw's use of TCC's service poles.
26. However, for a service pole database to be as accurate as possible, licensees should be given the opportunity to verify and validate the census results. Without such input, the database could be inaccurate, resulting in erroneous charges to licensees for service pole usage.
27. To date, Shaw has not been given the opportunity to validate the census results. It will take TCC approximately one year to complete its census, and Shaw has already begun working on how best to validate the census results. However, Shaw needs sufficient time and information from TCC to perform this validation.

28. In light of the above, the Commission determines that Shaw be given a period of six months from the date of this decision or from the date that TCC provides it with the census results specific to Shaw, whichever is latest, to validate the census results. Until that six-month period passes, Shaw is not required to pay any charges related to TCC's census results, and late payment charges cannot be incurred until 30 days after the six-month period has passed.
29. In addition, the Commission expects that in the future, TCC will (a) notify licensees of a service pole census at the time that it issues an RFP for that census, and (b) provide licensees with sufficient census results and a reasonable period of time to enable them to validate the accuracy of these results before they begin receiving invoices for service pole usage.

III. Should Shaw be required to pay a portion of the costs of TCC's census?

30. Shaw requested that it not be required to pay any of the costs of TCC's census. Shaw submitted that, since TCC refused to address its concerns, it should have the right to conduct its own service pole census in British Columbia.
31. In that regard, Shaw noted that in Telecom Order 2013-114, the Commission considered that licensees that have self-reported should not be required to pay the one-time charge for census costs with respect to the service poles they have reported. Shaw submitted that it should not have to pay a portion of the costs of TCC's census because it intends to conduct its own census to determine the number of service poles it is using in TCC's British Columbia operating territory.
32. TCC argued that Shaw is required to pay its portion of the costs of the census. TCC submitted that the Commission has been very explicit that the ILECs have the role and the ability to undertake a service pole census to establish a baseline database.
33. TCC noted that since the publication of Telecom Decision 2011-406, Shaw has not reported a single service pole or subscriber drop attachment to TCC. TCC submitted that Shaw is free to perform its own facilities inventory whenever it wishes, but that it must still meet its obligation to share in the cost of a baseline census for service poles. However, TCC added that allowing Shaw to perform its own census would be an inefficient use of resources.

Commission's analysis and determinations

34. Shaw's request to be exempted from paying any of the costs of TCC's census is based on its proposal to conduct its own service pole census. The Commission notes, however, that Shaw had ample opportunity to initiate its own census prior to TCC's census, but it did not do so.
35. In this regard, despite the Commission's determinations in Telecom Decision 2011-406, TCC still does not have the service pole records it requires, due to the lack

of self-reporting by licensees and the absence of information on licensees' use of its service poles.

36. The Commission considers that Shaw's proposal to conduct its own service pole census is a reactive measure intended to verify the accuracy of TCC's census, rather than a proactive measure intended to provide TCC with the records it needs. The Commission therefore considers that Shaw's proposal does not alleviate the need for TCC to conduct a service pole census.
37. In light of the above, the Commission **denies** Shaw's request that it not be required to pay a portion of the costs of TCC's census.

Secretary General

Related documents

- *Bell Aliant Regional Communications, Limited Partnership; Bell Canada; and Télébec, Limited Partnership – Revisions to support structure service tariffs*, Telecom Order CRTC 2013-114, 11 March 2013
- *Follow-up to Telecom Decision 2010-900 – Service pole rate and markup issues*, Telecom Decision CRTC 2011-406, 4 July 2011