



Telecom Decision CRTC 2016-324

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Beanfield Technologies Inc. – Application for timely access on reasonable terms and conditions to multi-dwelling units located in Toronto, Ontario

The Commission finds that Beanfield Technologies Inc. has been denied timely access on reasonable terms and conditions to provide services in certain multi-dwelling units in Toronto, Ontario. If access is not provided, increasingly stringent regulatory measures will be applied to facilitate competition and maximize consumer choice.

Application

1. In December 2013, Beanfield Technologies Inc. (Beanfield), a local exchange carrier (LEC), initiated discussions to gain access to the multi-dwelling unit (MDU) buildings located at 65, 75, and 85 East Liberty Street (the East Liberty Street MDUs) in Toronto, Ontario. Having been unsuccessful, Beanfield contacted Commission staff in June 2015 regarding the possibility of engaging in informal staff-assisted mediation with Toronto Standard Condominium Corporation No. 2322 (the Corporation) in order to come to an agreement regarding access to the East Liberty Street MDUs.
2. After it was still unable to obtain access, Beanfield filed an application with the Commission, dated 22 December 2015, in which the company requested that the Commission issue an order directing the Corporation to grant it timely access on commercially reasonable terms to the East Liberty Street MDUs. Beanfield requested that, if it is not granted such access, the Commission order the telecommunications service providers (TSPs) currently present in the MDUs, namely Bell Canada, Coextro, and Rogers Communications Partnership (RCP),¹ to refuse to provide services to any new resident of the MDUs and any current resident who is not an existing customer of the applicable TSP until Beanfield is granted access. In the alternative, Beanfield requested that the Commission exercise its power under section 42 of the *Telecommunications Act* (the Act)² to require the Corporation to grant Beanfield access to the MDUs in question.

¹ RCP ceased to exist as of 1 January 2016. All of RCP's business activities, including its assets and liabilities, are now held by Rogers Communications Canada Inc.

² Section 42 of the Act states the following: (1) Subject to any contrary provision in any Act other than this Act or any special Act, the Commission may, by order, in the exercise of its powers under this Act or any special Act, require or permit any telecommunications facilities to be provided, constructed, installed,

3. The Commission received interventions regarding Beanfield's application from Bell Canada, the Corporation, and the Public Interest Advocacy Centre. The public record of this proceeding, which closed on 8 April 2016, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Issues

4. The Commission has identified the following issues to be addressed in this decision:
 - Is Beanfield being denied current access to the East Liberty Street MDUs on reasonable terms and conditions?
 - If so, what form of access by Beanfield would constitute access under reasonable terms and conditions on a timely basis?
 - What action, if any, should the Commission take to ensure that Beanfield obtains access under reasonable terms and conditions on a timely basis?

Is Beanfield being denied current access to the East Liberty Street MDUs on reasonable terms and conditions?

5. Beanfield stated that it has recently begun providing services to residential customers in MDUs. However, in the case of the East Liberty Street MDUs, the company submitted that the Corporation never attempted to negotiate access, nor did it ever propose a form of agreement that it would be willing to accept or terms for negotiations. Beanfield therefore argued that there has been an outright denial of access to the East Liberty Street MDUs, and that such denial violates the guiding principles of Telecom Decision 2003-45 (the MDU framework) and hampers the development of facilities-based competition in these MDUs.
6. Beanfield argued that residents of the East Liberty Street MDUs are being deprived of its services, and that the MDUs in question are some of the few in the Liberty Village development without access to the company's services.
7. The Corporation argued that it has never refused Beanfield access to the East Liberty Street MDUs, and that it is prepared to negotiate access with Beanfield, taking into account current limitations with respect to physical facilities in the MDUs.

altered, moved, operated, used, repaired or maintained or any property to be acquired or any system or method to be adopted, by any person interested in or affected by the order, and at or within such time, subject to such conditions as to compensation or otherwise and under such supervision as the Commission determines to be just and expedient. (2) The Commission may specify by whom, in what proportion and at or within what time the cost of doing anything required or permitted to be done under subsection (1) shall be paid.

8. The Corporation stated that when access was negotiated with the three other TSPs, there was still capacity within the building, but as of the date of Beanfield's application, the MDUs' infrastructure could no longer accommodate Beanfield's proposed network. The Corporation submitted to the Commission a report from a consultant who evaluated the current state of the East Liberty Street MDUs' infrastructure. According to the report, there is insufficient space for Beanfield to install its facilities.
9. Beanfield submitted that, based on information that the Corporation provided to the Commission, there appears to be sufficient capacity in most conduits to accommodate the company's fibres. Beanfield further submitted that it would be prepared to build its own conduit at its own cost, if necessary.³
10. The Corporation argued that since three other TSPs are already present in the East Liberty Street MDUs, residents are not denied access to competitive TSPs.
11. Also, the Corporation submitted that since the East Liberty Street MDUs are already occupied, consideration would have to be given to ensuring that Beanfield's required work is not disruptive to the residents. The Corporation further submitted that any construction must be done by contractors approved by the Corporation.
12. Finally, the Corporation submitted that an access agreement with Beanfield would not be identical to the ones negotiated with the three other TSPs, which were negotiated when there was more capacity available.

Commission's analysis and determinations

13. In the MDU framework, the Commission indicated that end-users should have the right to select the TSP of their choice, regardless of their type of dwelling. This principle reflects the importance that the Commission has placed on facilitating competition and maximizing end-user choice.
14. The MDU framework also established the MDU access condition, which states the following:

Accordingly, pursuant to its powers under section 24 of the Act, the Commission requires that the provision of telecommunications service by a LEC in an MDU be subject to the condition that all LECs wishing to serve end-users in that MDU are able to access end-users in that MDU on a timely basis, by means of resale, leased facilities or their own facilities, at their choice, under reasonable terms and conditions.

³ The MDU framework states that where there is insufficient space available in risers to install additional in-building wiring, a TSP may be permitted to construct additional conduits.

15. As noted above, Beanfield submitted that there appears to be sufficient capacity in most conduits to accommodate the company's fibres, and that it would be prepared to build its own conduit at its own cost, if necessary.
16. Nonetheless, the record indicates that representatives for both parties have not had any substantive discussions on granting Beanfield access to the East Liberty Street MDUs since 2014. Furthermore, despite the fact that Beanfield approached Commission staff in June 2015 for informal staff-assisted mediation, the company has still not been granted access to the East Liberty Street MDUs.
17. In light of the above, the Commission finds that Beanfield is being denied current access to the East Liberty Street MDUs on reasonable terms and conditions.

If so, what form of access by Beanfield would constitute access under reasonable terms and conditions on a timely basis?

18. Given the finding that Beanfield is being denied current access on reasonable terms and conditions, the Commission must determine what constitutes access on reasonable terms and conditions, and when such access must be provided.

Commission's analysis and determinations

19. In Telecom Decision 2015-148, which resulted from an application in which Bell Canada requested access to an MDU, the Commission found that having Bell Canada extend its wire from the street into the main terminal room (MTR),⁴ then into each communications closet,⁵ may not be necessary since it was conceivable that the company would never need to access a specific communications closet. Indeed, having some floors with no Bell Canada customers was considered a realistic possibility since residents already had access to two other TSPs in the MDU.
20. Accordingly, the Commission determined in that decision that timely access under reasonable terms and conditions consisted of, at a minimum, immediate access to the MDU for the purpose of extending Bell Canada's network from the street to the MTR. Once inside the MTR, the company would be given access for the purpose of extending its network from the MTR to individual units (via the communications closets, if required) upon request for its services.

⁴ The MTR is the room where TSPs' wires enter a building from the street. The East Liberty Street MDUs have one MTR for all three buildings.

⁵ Communications closets are enclosed areas located on various floors of an MDU from where the wires from the MTR can be redirected to individual units.

21. Similar to the Bell Canada case, it is possible that some floors of the East Liberty Street MDUs will never have any units whose residents request services from Beanfield, due to the presence of other TSPs. Furthermore, providing Beanfield with immediate access to the various telecommunications closets located in the East Liberty Street MDUs regardless of service demand could result in unnecessary disruption to residents.
22. Accordingly, the Commission determines that timely access under reasonable terms and conditions, such that the MDU access condition is satisfied in this case, consists of, at a minimum,
 - immediate access from the street to the East Liberty Street MDUs' MTR; and
 - once inside the MTR, access to individual units (via the communications closets, if required) upon request for its services, and for the purposes of installing, operating, maintaining, and replacing Beanfield's facilities.
23. Beanfield also requested that access be provided to the East Liberty Street MDUs on commercially reasonable terms as set out in its standard MDU access agreement or the access agreements for the MDUs with either Bell Canada or RCP.
24. In the Bell Canada case noted above, Bell Canada had requested access to the MDU pursuant to the terms and rates of a negotiated agreement between another TSP and the building owner. The Commission found that it would be inappropriate to apply to Bell Canada an agreement that was the result of negotiations between two other parties. The Commission was of the view that Bell Canada should not benefit from negotiations in which it did not participate. The same principle should apply in the present case.
25. The Commission is not prepared to rule in favour of the Corporation's position that any construction resulting in modifications to the existing building infrastructure must be done by Corporation-approved contractors; the parties should negotiate this issue among themselves.

What action, if any, should the Commission take to ensure that Beanfield obtains access under reasonable terms and conditions on a timely basis?

26. Beanfield submitted that if it is not granted access under reasonable terms and conditions to the East Liberty Street MDUs, the Commission should order the three TSPs currently present in the MDUs to refuse to provide services to any new resident of the MDUs and to any current resident who is not an existing customer of the applicable TSP until Beanfield is granted access. In the alternative, Beanfield requested that the Commission exercise its power under section 42 of the Act to require the Corporation to grant Beanfield access to the MDUs in question.

Commission's analysis and determinations

27. In the MDU framework, the Commission stated that where it determines that access to an MDU has not been, or is not likely to be, provided on a reasonable basis, it will take further action as is appropriate, depending on the circumstances of each case, to ensure that all TSPs are able to provide telecommunications services in an MDU.
28. In two recent decisions addressing MDU access,⁶ the Commission relied on the MDU access condition imposed pursuant to section 24 of the Act and did not issue an order pursuant to section 42 of the Act. In both decisions, the Commission noted that it could issue an order pursuant to section 42 of the Act should such an order prove to be necessary.
29. In light of the above, and consistent with its previous decisions and the MDU access condition, the Commission determines that,
- if Beanfield is not granted access, as described in paragraph 22 above, to the East Liberty Street MDUs within **60 days** of the date of this decision, Bell Canada, Coextro, and Rogers Communications Canada Inc. (RCCI) will not be permitted to provide services to any new resident of the MDUs nor to any current resident who is not an existing customer of the applicable TSP;
 - if Beanfield is not granted access, as described in paragraph 22 above, to the East Liberty Street MDUs within **90 days** of the date of this decision, Bell Canada, Coextro, and RCCI will not be permitted to upgrade or otherwise modify the services they are providing to any current resident; and
 - if Beanfield is not granted access, as described in paragraph 22 above, to the East Liberty Street MDUs within **120 days** of the date of the decision, the Commission will explore all regulatory options available to it, including (i) issuing an order under section 42 of the Act, and (ii) issuing a decision that could result in Bell Canada, Coextro, and RCCI not being permitted to provide any services to residents of the East Liberty Street MDUs.
30. Finally, Beanfield and the Corporation are to inform the Commission of the state of their negotiations on a monthly basis, with the first report to be filed within **30 days** of the date of this decision.

Secretary General

Related documents

- *Bell Canada – Application for timely access on reasonable terms to Edenshaw Home Limited's Chaz Yorkville multi-dwelling unit project*, Telecom Decision CRTC 2015-148, 16 April 2015

⁶ See Telecom Decisions 2014-42 and 2015-148.

- *Bell Canada – Request for access to Plaza Corporation’s York Harbour Club multi-dwelling unit building project*, Telecom Decision CRTC 2014-42, 5 February 2014
- *Provision of telecommunications services to customers in multi-dwelling units*, Telecom Decision CRTC 2003-45, 30 June 2003