



## Telecom Order CRTC 2016-474

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Ottawa, 2 December 2016

*File numbers: Tariff Notices 489 and 510*

### TELUS Communications Company – Proposed changes to Support Structure Service tariff

*The Commission **approves on a final basis** Tariff Notice 489, including TCC's proposal to bill its licensees a one-time charge for a service pole census of \$3.19, to be applied to each service pole on which a licensee has placed one or more attachments, and a one-time charge of \$100 for unreported attachments to its service poles. The Commission **denies** Tariff Notice 510, in which TCC proposed a revision to its Support Structure Service tariff to explicitly state that the one-time charge for the service pole census is applicable for each pole audited, including those it does not own or control. The Commission **directs** TCC to withdraw all invoices and/or provide refunds to all licensees for payments related to the \$3.19 one-time charge for service poles that TCC (i) does not own or control, and (ii) does own or control but that have an attachment placed by a licensee that had been self-reported.*

### Background

1. In Telecom Decision 2010-900, the Commission noted that incumbent local exchange carriers (ILECs) incur costs related to licensees'<sup>1</sup> use of their service poles<sup>2</sup> and that they should be allowed to charge licensees for such use. As a result of a follow-up proceeding, the Commission determined in Telecom Decision 2011-406 that each ILEC's service pole rate would be set equal to its mainline pole rate. The Commission noted that ILECs lacked the records required to accurately bill a service-pole-specific rate and considered that there were alternative approaches to determining the number of billable service poles for each licensee.
2. In Telecom Order 2013-114, the Commission noted that Bell Aliant Regional Communications, Limited Partnership (Bell Aliant); Bell Canada; and Télébec, Limited Partnership (Bell Canada et al.) did not have adequate service pole records and considered that, other than self-reporting by licensees or negotiated agreements, a census (which had been undertaken in Bell Aliant's serving territory) was the only method to determine the number of service poles used by licensees. Further, the Commission approved the service pole rates for Bell Canada et al. and considered it

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<sup>1</sup> A licensee is a company that has placed an attachment on a pole that an ILEC owns or controls.

<sup>2</sup> Two types of poles are used to support aerial facilities: service poles, on which the only licensee attachment permitted is a drop wire to a subscriber's premise; and mainline poles, on which licensees can place other types of attachments.

appropriate to allow the companies to recover a portion of their census costs by applying a one-time service charge through their support structure tariffs.

3. In that same order, the Commission noted that licensees would be provided with all service pole attachment information to enable them to verify the census results. Finally, the Commission considered that licensees that had self-reported attachments to service poles should not be required to pay the one-time charge for the census costs with respect to the attachments they had reported.
4. Starting in June 2013, TELUS Communications Company (TCC) initiated a third-party census in British Columbia (BC) to determine the number and location of all service poles in that province, as well as which licensees had placed attachments on which poles. As the service pole census progressed, TCC began sending invoices to licensees for their attachments to service poles.
5. In Telecom Decision 2014-265, in response to an application by Shaw Cablesystems G.P. (Shaw), the Commission determined that in the absence of self-reporting, TCC's census was an appropriate method for the company to establish a database that would provide a record of the use of its service poles by licensees. In addition, the Commission denied Shaw's request that it not be required to pay a portion of the costs of TCC's census.
6. In Telecom Decision 2014-645, in response to an application by Raftview Communications Ltd. (Raftview), the Commission determined that TCC was precluded by item 404 – Support Structure Service<sup>3</sup> of its General Tariff (referred to hereafter as the Support Structure Service tariff) from charging licensees for attachments to service poles it did not own or control.<sup>4</sup>
7. In Telecom Decision 2015-374, the Commission directed TCC to provide Shaw with the detailed service pole information it had requested<sup>5</sup> to allow it to validate TCC's census results. The Commission expressed an expectation that to the extent that an ILEC has collected certain types of pole identification and ownership information for one of its licensees, that information should generally be provided to other similarly placed licensees, upon request, to facilitate the validation of service pole census results.
8. In Tariff Notice 489, filed on 20 January 2015, TCC proposed to recover a portion of the costs for its service pole census through a one-time charge of \$3.19 per service pole, to be applied per licensee when a licensee is identified during the census as

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<sup>3</sup> TCC's Support Structure Service is a tariffed, wholesale service through which the company makes support structures available to licensees for use as an input to provide their own retail services.

<sup>4</sup> According to TCC's Support Structure Service tariff, a pole that TCC "owns or controls" is one that the company either owns or jointly owns, or for which it has an agreement giving it the right to provide licensees with access to that pole.

<sup>5</sup> Shaw requested the name of the licensee, the service area/city/town, the Global Positioning System (GPS) coordinates, pole tag information, ownership of the pole, and digital photographs of the pole and pole tag.

having an attachment to a service pole. TCC also proposed to establish a one-time unreported attachment charge of \$100, to be applied on a going-forward basis when a licensee places an attachment on a service pole without reporting it. In Telecom Order 2015-37, the Commission approved Tariff Notice 489 on an interim basis.

## **Application**

9. In Tariff Notice 510, filed on 31 May 2016, TCC proposed a revision to its Support Structure Service tariff to explicitly state that the one-time charge for the service pole census of \$3.19, as proposed in its Tariff Notice 489, is applicable for each pole audited, including those TCC does not own or control. The proposed revision also included the formula TCC used to calculate that charge. TCC did not propose any amendment to the unreported attachment charge of \$100.
10. The Commission received interventions opposing TCC's application from Bragg Communications Inc. operating as Eastlink (Eastlink), Raftview, and Shaw. The public record of this proceeding, which closed on 10 July 2016, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the file numbers provided above.

## **Issues**

11. The Commission has identified the following issues to be addressed in this order:

- Is it appropriate for TCC to apply a one-time charge for the service pole census to a service pole that it does not own or control?
- Is it appropriate for TCC to apply a one-time charge for the service pole census to a licensee that has self-reported an attachment to a service pole?
- Should there be an adjustment to the one-time charge to licensees for the service pole census?

### **Is it appropriate for TCC to apply a one-time charge for the service pole census to a service pole that it does not own or control?**

12. Eastlink and Shaw both submitted that there is no justification for TCC to apply the one-time charge for its service pole census to service poles that it does not own or control. Raftview supported this position. Shaw noted that TCC's definitions of "support structure" and "support structure services" in its General Tariff refer strictly to facilities it owns or controls.
13. Raftview submitted that it was unjust to rural customers who had installed their own service poles for TCC to recover the costs of auditing those poles through the one-time charge.
14. Shaw submitted that the wording in TCC's Support Structure Service tariff pages is identical in substance to the wording approved by the Commission in Telecom Order 2013-114 for Bell Canada et al.'s one-time charge for their service pole census.

Shaw pointed out that Bell Canada et al. applied the one-time charge only to service poles they owned or controlled and that, for there to be a consistent interpretation of tariffs across companies, TCC should do the same.

15. Shaw submitted that TCC had the means to exclude from its census all the service poles it did not own or control by using the detailed pole attribute information recorded and maintained in TCC and BC Hydro's Joint Use Administrative System (JUAS), since the ownership and location of each pole catalogued in the JUAS are available. Shaw added that Bell Aliant had records similar to the JUAS that enabled the third-party contractor conducting the pole census in Bell Aliant's serving territory to exclude poles that the company did not own from the census.
16. In its reply, TCC submitted that it had followed the guidance regarding service pole censuses contained in Telecom Order 2013-114. The company noted that its service pole census was undertaken prior to Telecom Decision 2014-645 and that, subsequent to that decision, it removed poles that it did not own or control from its database of billable service poles. TCC further argued that the recurring pole attachment fee for licensees established in Telecom Decision 2011-406 is not comparable to its proposed one-time charge for the service pole census.
17. TCC submitted that the one-time charge for the service pole census recovers, in part, the costs of creating a database of billable service poles that is available to any interested party free of charge. TCC added that in many instances, it is not immediately clear whether a service pole is located on public or private property, and provided examples of poles located near property lines to illustrate this point.
18. With regard to the JUAS, TCC submitted that it cannot be used as a basis for a service pole census because it does not include certain areas of BC, nor does it provide any information regarding the number of poles with attachments placed by licensees. TCC submitted that it could not fulfill the Commission's direction in Telecom Decision 2015-374 to provide Shaw with detailed service pole information without a complete census of all the service poles in BC.

### **Commission's analysis and determinations**

19. The purpose of TCC's census was to establish a database of the number of service poles and the presence of licensee attachments so that the company could accurately charge licensees for the use of its service poles. Under TCC's definition of support structures<sup>6</sup> in its Support Structure Service tariff, a census should include only service poles owned or controlled by the company.

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<sup>6</sup> According to Item 404.1 of TCC's General Tariff, "*Support Structures*' means the supporting structures, including poles, Conduits, Strands, anchors and Manholes (but excluding central-office vaults and controlled environmental vaults) which the Company owns or which the Company does not own but for which it has the right to grant License(s) thereto."

20. When Bell Aliant did its census, it carried out up-front activities to establish which service poles it owned, and it did not include non-owned poles in the census. Also, it recovered a proportionate amount of its census costs by billing a Commission-approved one-time charge to licensees with attachments on its owned service poles. Since the wording in TCC's Support Structure Service tariff is substantively the same as the wording in Bell Aliant's tariff, the Commission considers that TCC should recover its costs for the service pole census in the same manner as Bell Aliant.
21. When TCC initiated its census in 2013, it treated all service poles (including those it did not own or control) as poles that should be audited, in spite of its tariff wording that defines service poles as those it owns or controls. Although the extent of the utility of the JUAS remains unclear, there was information in the JUAS database that would have enabled TCC to exclude at least some of the service poles it did not own or control. As TCC identified attachments on service poles during its census activities, it commenced billing licensees a monthly fee for these attachments, including attachments to service poles it did not own or control.
22. At that time, the Commission had not explored ownership of service poles; it had no indication that TCC was including service poles it did not own or control in its census and charging licensees for attachments to such service poles. The Commission's ruling in Telecom Decision 2014-645 prohibited TCC from billing licensees for attachments to service poles it did not own or control. As such, TCC's database of billable service poles, which it developed through its census, effectively became applicable only to service poles it owns or controls.
23. With respect to TCC's contention that it needed to carry out a census of all service poles in order to provide Shaw with the detailed information it had requested, the Commission notes that, as outlined in Telecom Decision 2015-374, Shaw limited its request for detailed census information to billable service poles.<sup>7</sup> Accordingly, the Commission is not persuaded that TCC's contention is valid.
24. The one-time charge for the service pole census is a tariffed item and, according to TCC's Support Structure Service tariff, the company provides support structure services only for poles it owns or controls. The Commission therefore considers that it is not appropriate for TCC to apply a one-time charge for the service pole census to poles it does not own or control.
25. In light of the above, the Commission determines that TCC is precluded from applying the one-time charge for the service pole census to service poles it does not own or control.

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<sup>7</sup> See Paragraph 2 of Telecom Decision 2015-374.

**Is it appropriate for TCC to apply a one-time charge for the service pole census to a licensee that has self-reported an attachment to a service pole?**

26. Eastlink submitted that TCC should have a record of all self-reported attachments on its service poles, and that a licensee should only be required to pay the one-time charge for the service pole census when it has not already self-reported an attachment to a service pole that TCC owns or controls.
27. TCC noted that it did not charge for service pole attachments by licensees prior to Telecom Decision 2011-406, and therefore neither it nor the licensees with attachments to its service poles had any incentive to maintain records of those attachments.

**Commission's analysis and determinations**

28. As noted above, in Telecom Order 2013-114, the Commission considered that licensees that had self-reported an attachment on one of Bell Canada et al.'s service poles should not be required to pay the one-time charge for the service pole census with respect to the attachments they had reported. The Commission considers that TCC has not provided sufficient rationale as to why licensees that have self-reported attachments on service poles that it owns or controls should not be treated in the same manner.
29. To be considered as having self-reported an attachment on a service pole, a licensee should have reported the attachment before receiving its initial invoice for the attachment from TCC. Since TCC began issuing invoices to licensees as it identified attachments on service poles during its census activities, licensees received their initial invoices at different times, with some of them receiving separate initial invoices for different geographical areas at different times, based on how TCC rolled out its census activities.
30. Ideally, for licensees that received initial invoices for different regions at different times, the consideration of self-reporting of an attachment should be done for each region, based on when the initial invoices were received. However, because of the lack of appropriate geographic information in the invoices, this approach is not feasible. Accordingly, to avoid the one-time charge for the service pole census, a licensee should have self-reported its attachment before the date of the initial invoice it received.
31. In light of the above, the Commission determines that, in cases where a licensee self-reported an attachment to a service pole before receiving its initial invoice for attachments, TCC is precluded from charging the licensee the one-time service pole census charge for that pole.

## **Should there be an adjustment to the one-time charge to licensees for the service pole census?**

32. In Tariff Notice 489, TCC proposed an average census cost of \$6.39 per service pole, which it calculated by dividing its total census costs by the number of service poles it had audited. TCC further proposed that, based on the average number of company and licensee attachments per service pole, each licensee should be responsible to pay a one-time service pole census charge of \$3.19 per service pole on which a licensee has placed one or more attachments.

### **Commission's analysis and determinations**

33. Although TCC indicated that it had to go to all service poles in order to carry out its census, the Commission does not consider it appropriate for the company to recover from licensees the census costs related to service poles it does not own or control. However, as per Telecom Order 2015-37, licensees are required to pay a proportional amount of the census costs for billable (i.e. TCC owned or controlled) service poles on which they have placed attachments.
34. The Commission considers it acceptable to use TCC's proposed average census cost per service pole as a proxy for the average census cost per billable service pole. In addition, the average number of attachments by TCC and licensees per service pole, as proposed by TCC for all service poles in BC (whether or not it owns or controls them), can serve as a proxy for the average number of attachments per billable service pole.
35. The Commission therefore determines that the one-time charge for the service pole census is to remain at \$3.19, applicable to billable service poles.

### **Conclusion**

36. In light of all the above, the Commission **approves on a final basis** Tariff Notice 489 and **denies** Tariff Notice 510. The Commission also **directs** TCC to withdraw all invoices and/or provide refunds to all licensees for payments related to the one-time charge for the service pole census for service poles that TCC (i) does not own or control, and (ii) does own or control but that have an attachment placed by a licensee that had been self-reported before the licensee received its initial invoice for attachments.

Secretary General

### **Related documents**

- *Shaw Cablesystems G.P. – Application requesting relief with regard to charges for access to TELUS Communications Company's service poles*, Telecom Decision CRTC 2015-374, 14 August 2015

- *TELUS Communications Company – Interim approval of a tariff application*, Telecom Order CRTC 2015-37, 9 February 2015
- *Raftview Communications Ltd. – Request for relief from alleged inappropriate charges by TELUS Communications Company for privately owned service poles*, Telecom Decision CRTC 2014-645, 12 December 2014
- *Shaw Cablesystems G.P. – Request for relief with regard to TELUS Communications Company’s service pole census*, Telecom Decision CRTC 2014-265, 22 May 2014
- *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
- *Review of the large incumbent local exchange carriers’ support structure service rates*, Telecom Decision CRTC 2010-900, 2 December 2010, as amended by Telecom Decision CRTC 2010-900-1, 9 December 2010