



Telecom Decision CRTC 2024-42

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Execulink Telecom Inc. – Application requesting non-discriminatory and timely access on reasonable terms and conditions to multi-dwelling units owned by JLC Homes Ltd.

Summary

Execulink Telecom Inc. (Execulink) filed an application claiming it is being denied timely access to three multi-dwelling units (MDUs) owned by JLC Homes Ltd. (JLC) under reasonable terms and conditions. Execulink is seeking access to these buildings so that it can offer telecommunications services, including Internet access, to residents. It requests relief through the Commission's enforcement of its MDU access condition, established in Telecom Decision 2003-45.

The MDU access condition prescribes that all local telephone service providers and Internet service providers wishing to serve end-users in an MDU must be able to do so on a timely basis under reasonable terms and conditions. The MDU access condition is intended to foster competition and consumer choice, by ensuring Canadians can select their preferred service provider regardless of the type of building they live in.

The Commission finds that JLC has denied Execulink timely access to the three MDUs under reasonable terms and conditions. JLC's denial of access affects both the residents' ability to choose their preferred service provider and Execulink's ability to compete. Therefore, the Commission **approves** Execulink's request for timely access to the three MDUs, to install its facilities and provide services to residents.

This decision sets incremental steps by which the Commission intends to enforce the MDU access condition in this case. Specifically, if timely access under reasonable terms and conditions is not provided, increasingly stringent regulatory measures will be applied **30, 45, and 60** days following the date of this decision. The purpose of this approach is to motivate the parties to negotiate promptly in the three MDUs, while at the same time mitigating the impact on residents. Execulink and JLC are directed to provide regular updates on their negotiation progress until Execulink gains access to the MDUs.

Introduction

The MDU access framework and condition

1. In Telecom Decision 2003-45, the Commission set out its multi-dwelling unit (MDU) access framework. In doing so, the Commission emphasized the importance of facilitating competition and end-user choice. Specifically, the Commission said that all end-users should have the right to select the telecommunications service provider (TSP) of their choice, regardless of the type of dwelling they reside in. In that decision, the Commission also established the MDU access condition, as set out below:

Accordingly, pursuant to its powers under section 24 of the [Telecommunications] *Act*, the Commission requires that the provision of telecommunications services by a [local exchange carrier] (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.¹

2. The Commission indicated that it would take action as was appropriate, depending on the circumstances of each case, to ensure that all LECs are able to provide telecommunications services in an MDU according to the MDU access condition. In particular, the Commission indicated that it would be prepared to issue an order under section 42 of the *Telecommunications Act* (the Act), subject to such conditions as to compensation or otherwise as the Commission determines to be just and expedient.

Execulink's application

3. On 22 February 2023, Execulink Telecom Inc. (Execulink) filed an application, submitting that it has been denied timely access to three MDUs owned by JLC Homes Ltd. (JLC), located at 136 Concession St. East, 62 1st St., and 98 King St., in Tillsonburg, Ontario², in contravention of the MDU access condition. Execulink is a TSP based in Ontario, and is seeking access to JLC's MDUs for the purpose of installing its own fibre facilities and providing telecommunications services to residents.
4. In Execulink's view, the consequence of JLC's alleged non-compliance with the MDU access condition is that residents of the MDUs are currently being denied the right to select the TSP of their choice. Moreover, they are being denied the competitive benefits that the MDU access condition is intended to foster. Execulink

¹ In Telecom Regulatory Policy 2021-239, the Commission extended the MDU access condition and associated obligations to all carrier Internet service providers (ISPs) that provide services to end-users in MDUs.

² Tillsonburg is situated within Execulink's southwestern Ontario service territory.

requested that the Commission enforce the MDU access condition pursuant to section 24 of the Act, as follows:

- Within **15 days** following the date of the Commission's decision, any LEC or carrier ISP already in the MDUs will not be permitted to provide services to any new resident of the MDUs, and will not be permitted to provide services to a current resident who is not an existing customer of the service provider;
- Within **30 days** following the date of the Commission's decision, any LEC or carrier ISP present in the MDUs will not be permitted to modify or upgrade the services being provided to a current resident;
- Within **45 days** following the date of the Commission's decision, the Commission will explore all regulatory options available to it, including issuing an order under section 42 of the Act and issuing a decision which could result in all LECs and carrier ISPs present in the MDUs not being permitted to provide any services to the residents.

Issues

5. The Commission has identified the following issues to be addressed in this decision:
 - Is Execulink being denied timely access to the MDUs, under reasonable terms and conditions, contrary to the Commission's MDU access condition?
 - If Execulink is being denied timely access to the MDUs, what action should the Commission take to ensure that Execulink obtains non-discriminatory and timely access to the MDUs under reasonable terms and conditions?

Is Execulink being denied timely access to the MDUs, under reasonable terms and conditions, contrary to the Commission's MDU access condition?

Positions of parties

Execulink

6. Execulink submitted that it first requested access to the MDUs in November 2022. However, in response, JLC indicated that it was party to exclusive access agreements with other carriers. JLC therefore refused to negotiate reasonable terms of access. Execulink followed up with JLC in January 2023, explaining that exclusive access arrangements are strictly prohibited by the Commission pursuant to Telecom Decision 2003-45. Further, it requested that JLC confirm by 1 February 2023 that it would grant access to Execulink following the expedited negotiation of reasonable access terms. According to Execulink, JLC did not commit to negotiating terms of access by this date.

JLC

7. In JLC's answer, it denied having any ownership stake in the MDUs.

Execulink – Reply comments

8. In its reply, Execulink submitted that Jonathan Leahy, the person who had responded to Execulink's access request, is attempting to use corporate structure to evade JLC's obligations under the MDU access condition. Execulink added that the outward appearance of an agency relationship between JLC and the companies with title to the MDUs is reinforced by public site proposal documents. Execulink also submitted that Mr. Leahy has not contested any of the facts set out in its application. Moreover, Execulink argued that even if there is no agency relationship between JLC and the owners of the MDUs, its application was served on Mr. Leahy, who Execulink says is the authority on all matters relating to access to the MDUs.

Commission's analysis

9. The evidence on the record of this proceeding indicates that Mr. Leahy is the president and sole director of JLC; Escalade Property Corp. (Escalade), which is the registered owner of two of the MDUs; and 1822094 Ontario Inc. (1822094), which is the registered owner of the other MDU subject to this dispute. As such, he is the principal and directing authority regarding the granting or denial of access by TSPs to the MDUs.³
10. The record of the proceeding also indicates that no substantive discussions on granting Execulink access have occurred between Execulink and JLC. In the Commission's view, by refusing to negotiate with Execulink, JLC is denying Execulink access to the MDUs, contrary to the MDU access framework's core principles of competition and end-user choice.
11. Although Execulink submitted that it had been informed by JLC in November 2022 that the latter was party to exclusive access agreements with other carriers, there is no evidence on the record of this proceeding to indicate that Bell Canada, Rogers Communications Canada Inc. (RCCI), or any other TSPs have entered into an agreement with JLC, Escalade, or 1822094 which grants exclusive access to any of the MDUs. Even if such an agreement existed, it would not be considered a valid reason to avoid granting access to Execulink or any other service provider. In Telecom Decision 2003-45, the Commission determined that any arrangement between a LEC and another party, whether written or unwritten, that has the effect of restricting another LEC from accessing and serving end-users in an MDU is unjustly discriminatory, and contrary to the MDU access condition.
12. In light of the above, and having regard to the evidence on the record for this proceeding, the Commission considers that Mr. Leahy, in his capacity as president

³ Specifically, the corporate profiles of JLC, Escalade, and 1822094 from the province of Ontario's Ministry of Public and Business Service Delivery registry (copies of which Execulink attached to its reply comments) name Jonathan Leahy as the sole director, president, secretary, and treasurer of these companies.

and sole director of JLC, Escalade and 1822094, is denying Execulink timely access to the MDUs under reasonable terms and conditions.

If Execulink is being denied timely access to the MDUs, what action should the Commission take to ensure that Execulink obtains non-discriminatory and timely access to the MDUs under reasonable terms and conditions?

13. In a number of previous decisions addressing MDU access – most recently, in Telecom Decision 2022-5 and Telecom Decision 2022-148 – the Commission enforced the MDU access condition by taking two different approaches, referred to in this decision as the incremental and immediate approaches.
14. An incremental approach has been adopted in already occupied MDU properties to encourage prompt negotiations between a TSP and the building owner, while limiting the impact on occupants who were being served by other TSPs with access to the building. For example, in Telecom Decision 2022-148, the Commission set out conditions with escalating restrictions at 30 and 45 days after its decision unless the property owner granted the TSP access to the MDU.
15. The Commission has adopted an immediate approach in instances where the MDU at the centre of the dispute was under construction, and where it was expected that the MDU would not be occupied by the time the Commission issued its decision. For example, in Telecom Decision 2015-148, in which Bell Canada applied for timely access to Edenshaw Homes Limited’s Chaz Yorkville MDU project, rather than imposing escalating service restrictions, the Commission directed that if the applicant did not gain access by a specified date (i.e., the earliest date on which residents could commence occupying their units), other LECs would not be permitted to provide telecommunication services at the MDU until such time as the applicant gained access. This approach can have the advantage of promoting a faster resolution than the incremental approach.
16. In the present case, Execulink has requested that the Commission take the same incremental approach – with similar timelines and directives – used by the Commission in Telecom Decision 2022-148; namely, escalating restrictions at 15, 30, and 45 days after the Commission issues its decision.
17. Information obtained from the Town of Tillsonburg indicates that occupancy permits have been issued in respect of the MDUs located at 136 Concession Street East and 98 King St. However, as of 5 January 2024, the MDU located at 62 1st St. had not received an occupancy permit. As such, it can reasonably be expected that this MDU is not currently occupied.
18. Based on this information, the Commission adopts the incremental approach that it used in Telecom Decision 2022-5 and Telecom Decision 2022-148 for the MDUs located at 136 Concession St. East, and 98 King St., and the immediate approach for the MDU located at 62 1st St.

Conclusion

19. In light of all of the above, the Commission **approves** Execulink's request for access to the MDUs on a timely basis and under reasonable terms and conditions, for the purpose of installing, operating, maintaining, and replacing transmission facilities and ancillary telecommunications equipment to provide its services to end-users who wish to avail themselves of Execulink's service offerings. Unless Execulink is permitted access to the MDUs under reasonable terms and conditions, the Commission will enforce the MDU access condition pursuant to section 24 of the Act, as follows:
- (a) For the MDUs located at 136 Concession St. East and 98 King St.:
- **Effective 30 days** from the date of this decision, neither Bell Canada, RCCI, nor any other LECs or carrier ISPs will be permitted to provide services to any new customer, regardless of whether the customer is a new or a current resident.
 - **Effective 45 days** from the date of this decision, neither Bell Canada, RCCI, nor any other LECs or carrier ISPs will be permitted to modify or upgrade the services being provided to an existing resident and customer.
- (b) For the MDU located at 62 1st St.:
- **Effective the date of this decision**, the restrictions outlined in bullet (a) will also apply to this MDU if there are any residents in the MDU as of the date of this decision. If there are no residents in the MDU as of the date of this decision, neither Bell Canada, RCCI, nor any other LECs or carrier ISPs will be permitted to provide any services to any future resident.
- (c) For all three MDUs, **if access is not granted within 60 days** from the date of this decision, the Commission will explore all regulatory options, including issuing an order under section 42 of the Act and issuing a decision which could result in all LECs and carrier ISPs present in the MDUs not being permitted to provide any services to the residents.
20. Furthermore, the Commission **directs** Execulink and JLC to inform it of the state of their negotiations, with the first three reports to be filed within **30, 45, and 60 days** following the publication of this decision. The Commission **directs** the parties thereafter to file reports on a biweekly basis until Execulink has obtained access to all three MDUs.
21. Although in this case, the MDU access condition is being enforced against Bell Canada, RCCI, and any other carriers that are present in the MDUs, building owners are reminded that they are expected to cooperate with carriers to enable them to access end-users in their MDUs in compliance with the MDU access condition to promote consumer choice.

Policy Direction

22. The Commission considers that the measures set out in this decision advance the policy objectives set out in paragraphs 7(b), (c), (f), and (h) of the Act.⁴ The Commission considers that the recommendations would allow end-users in MDUs to choose their preferred TSP and will foster greater competition in the offering of telecommunications services in MDUs. The Commission further considers that, without the Commission exercising its powers under section 24 of the Act, timely access by Execulink to the MDUs under reasonable terms and conditions would be denied.
23. The Commission also considers that these measures would, in accordance with the 2023 Policy Direction,⁵ promote competition, affordability and consumer interests. In particular, they would advance the following key objectives: 2(a) encourage all forms of competition and investment; 2(b) foster affordability and lower prices, especially when TSPs exercise market power; and 2(e) reduce barriers to entry into the market and to competition for TSPs that are new, regional or smaller than the incumbent national service providers.

Secretary General

Related documents

- *Rogers Communications Canada Inc. – Application for non-discriminatory and timely access under reasonable terms and conditions to the multi-dwelling unit at 70 Yorkville Avenue, Toronto, Ontario*, Telecom Decision CRTC 2022-148, 8 June 2022
- *Rogers Communications Canada Inc. – Request for non-discriminatory and timely access to the Telegraph Square multi-dwelling unit development and to future developments by IronGate Developments Inc.*, Telecom Decision CRTC 2022-5, 14 January 2022
- *Access to in-building wire in multi-dwelling units*, Telecom Regulatory Policy CRTC 2021-239, 27 July 2021

⁴ The cited policy objectives are: 7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; 7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and 7(h) to respond to the economic and social requirements of users of telecommunications services.

⁵ *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, SOR/2023-23, 10 February 2023.

- *Bell Canada – Application for timely access on reasonable terms to Edenshaw Homes Limited’s Chaz Yorkville multi-dwelling unit project*, Telecom Decision CRTC 2015-148, 16 April 2015
- *Provision of telecommunications services to customers in multi-dwelling units*, Telecom Decision CRTC 2003-45, 30 June 2003