



## Telecom Order CRTC 2005-392

Ottawa, 1 December 2005

### **TELUS Communications Inc. agreements with Société en commandite Télébec and the customer**

Reference: 8340-T69-200318776

#### **Background**

1. In 1998, Québec-Téléphone, now known as TELUS Communications Inc. (TCI), and Télébec ltée, now known as Société en commandite Télébec (Télébec), jointly submitted a proposal to the customer for a telecommunications project. TCI and Télébec were awarded the project and entered into a service agreement between themselves and the customer dated 6 March 1996 (the Service Agreement). TCI and Télébec also entered into an interconnection agreement with each other dated 22 April 1998.
2. Near the end of the initial contract period, the customer exercised its option to renew the Service Agreement for a five-year period, commencing 1 January 2003. Pursuant to this, TCI and Télébec renewed their interconnection agreement (the Renewed Interconnection Agreement).

#### **The application**

3. On 17 December 2003, TCI filed an application with the Commission for approval of the Renewed Interconnection Agreement, pursuant to section 29 of the *Telecommunications Act* (the Act). The proposed renewal period would run from 31 December 2002 to 31 December 2007.
4. With its application, TCI filed a number of letter agreements between itself and Télébec, which are referenced in the Renewed Interconnection Agreement. TCI also filed the Service Agreement as an appendix to the Renewed Interconnection Agreement.
5. TCI initially filed both agreements in confidence. On 13 December 2004, TCI filed an abridged version of the Renewed Interconnection Agreement.
6. The Commission received no comments with respect to this application.

#### **Regulatory framework**

7. Subsection 25(1) of the Act reads as follows:

No Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission that specifies the rate or the maximum or minimum rate, or both, to be charged for the service.

8. Section 29 of the Act provides:

No Canadian carrier shall, without the prior approval of the Commission, give effect to any agreement or arrangement, whether oral or written, with another telecommunications common carrier respecting

- (a) the interchange of telecommunications by means of their telecommunications facilities;
- (b) the management or operation of either or both of their facilities or any other facilities with which either or both are connected; or
- (c) the apportionment of rates or revenues between the carriers.

**Commission's analysis and determinations**

- 9. In *TELUS Communications Inc. - Fibre Use and Management Agreement*, Telecom Decision CRTC 2003-4, 31 January 2003, the Commission found that an agreement between TCI and Axia SuperNet Ltd. with respect to the provision of interexchange dark fibre in Alberta did not fall within section 29 of the Act, because its essence was the provision of a telecommunications service, namely interexchange dark fibre, and did not primarily address matters falling within section 29, namely the interchange of telecommunications by means of telecommunications facilities, the management or operation of facilities, or the apportionment of rates or revenues between carriers. Accordingly, the Commission directed TCI to issue tariff pages for the service.
- 10. The Commission notes that TCI requested approval of the Renewed Interconnection Agreement but did not seek specific approval of the Service Agreement.
- 11. The Commission is of the view that the Renewed Interconnection Agreement is a section 29 agreement because its essence is an interconnection agreement between two carriers in order to provide telecommunications services to an end-customer:
  - TCI and Télébec have jointly constructed and interconnected their networks over their respective operating territories in order to provide telecommunications services to the customer;
  - TCI and Télébec agreed on an equitable sharing of costs and revenues with respect to the construction of the network and the provision of telecommunications services provided to the customer; and
  - the agreement anticipates an ongoing relationship between the two carriers in respect of the operation and management of the network beyond the term of the Service Agreement.

12. The Commission finds that the Renewed Interconnection Agreement satisfies several objectives set out in section 7 of the Act. It supports the provision of reliable and affordable telecommunications services in a rural area of Canada, it facilitates the orderly development of the Canadian telecommunications system, and it promotes the use of Canadian transmission facilities for telecommunications services within Canada.
13. The Commission finds, however, that the Service Agreement between TCI, Télébec and the customer falls within section 25 of the Act because its essence is the provision of telecommunications services to an end-customer. These services include the provision of telecommunications facilities and related equipment, and the provision of maintenance and repair services.
14. In light of the above, the Commission:
  - reminds TCI and Télébec that intercarrier agreements require Commission approval pursuant to section 29 of the Act prior to being implemented;
  - **approves** the Renewed Interconnection Agreement between TCI and Télébec pursuant to section 29 of the Act; and
  - directs TCI and Télébec, within 60 days of this Order, to provide the telecommunications services set out in the Service Agreement to the customer in accordance with their general tariffs or to file one or more special facilities tariffs for the services provided to the customer under the Service Agreement.

Secretary General

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