



Telecom Decision CRTC 2014-419

PDF version

Ottawa, 7 August 2014

File number: 8678-T66-201402891

TELUS Communications Company – Application to revise the company’s deferral-account-funded broadband service expansion plan

*The Commission **approves** TCC’s request to extend the deadline for completion of its deferral-account-funded broadband service expansion to communities in Alberta and British Columbia to the end of 2014 for certain communities, and to the end of 2015 for the remaining communities. The Commission also **approves** TCC’s proposal for Smithers Landing, British Columbia, to serve as a replacement for a community that was previously approved in its deferral-account-funded broadband service expansion plan. Further, the Commission invites interested parties to comment, within **20 days** of the date of this decision, on why it should not approve Glenemma, British Columbia, as a replacement for the community of Spuzzum, British Columbia.*

Although it approves TCC’s requested deadline extension, the Commission is very concerned about TCC’s failure to meet the 31 August 2014 deadline, because it is depriving approved communities of an important service that they have been promised for, in most cases, at least four years. The Commission determines that for any community in TCC’s deferral-account-funded broadband service expansion plan whose service is delayed beyond the end of 2014, TCC is to provide qualifying residential subscribers with retail Internet service at no charge for a period commensurate with the number of months of service delayed beyond the end of 2014. The Commission also determines that TCC is to provide quarterly reports, rather than yearly reports, until its service rollout is completed.

Further, if TCC does not complete its rollout by 31 December 2015, the Commission will consider imposing additional regulatory measures, such as requiring TCC to rebate primary exchange service subscribers. The Commission also notes that the Government of Canada has indicated that it intends to ask Parliament to give the Commission the power to impose administrative monetary penalties on companies that fail to comply with their regulatory obligations.

Background

1. In Telecom Decisions 2010-637, 2010-638, and 2010-639, the Commission approved deferral account draw-downs by Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies); MTS Allstream Inc. (MTS); and TELUS Communications Company (TCC),

respectively, to expand broadband service to certain rural and remote communities by 31 August 2014.

2. In Telecom Decision 2014-114, the Commission denied TCC's request to add Pashilqua Indian Reserve (IR) No. 2 to its deferral-account-funded broadband service expansion plan to replace a community that the Commission had previously approved for broadband service implementation (an approved community). In that decision, the Commission directed TCC to propose an alternative replacement community.

Application

3. The Commission received an application from TCC, dated 31 March 2014, in which the company requested (i) approval of Smithers Landing, British Columbia, as a replacement community for Pashilqua IR No. 2; and (ii) an extension to the deadline for completion of its deferral-account-funded broadband service expansion to communities in Alberta and British Columbia, specifically to the end of 2014 for 18 communities so that it could take advantage of the full construction season, and to the end of 2015 for the remaining 11 communities.
4. TCC submitted that it would not be able to provide high-speed Internet service in Smithers Landing by the end of the 2014 construction season, and requested an extension to the end of 2015. TCC also indicated that the Pinkut Lake IR No. 23 community is still uninhabited and planning could not be completed until development of the community has begun.

Additional process

5. By letter dated 5 June 2014, Commission staff expanded the scope of this proceeding to examine whether, and if so, what, regulatory measures should be imposed on the Bell companies, MTS, and TCC if their respective broadband service expansion plans are not implemented by the 31 August 2014 deadline.
6. TCC subsequently indicated that, on 13 June 2014, it had received a letter from the Chief and Council of the Spuzzum First Nation confirming their decision not to proceed with broadband service implementation in Spuzzum. TCC indicated that it would propose, on or before 5 July 2014, a replacement community that would be served by year-end 2015. By letter dated 4 July 2014, TCC proposed the community of Glenemma, British Columbia, as a replacement community.¹
7. The Commission received interventions from ABC Communications (ABC); All Nations Trust Company; Bell Canada; CityWest Cable and Telephone Corp. (CityWest); Indigiinet Corporation (Indigiinet); MTS; Network BC, on behalf of the Government of British Columbia; the Public Interest Advocacy Centre (PIAC); TCC; and Xplornet Communications Inc. (Xplornet). The Commission also received letters

¹ See the Appendix for TCC's list of remaining communities, with proposed timelines for broadband service implementation.

of support, forwarded by TCC, from the Xaxli'p Chief and Council, on behalf of the community of Chilhil IR No. 6; the Hesquiaht First Nation, on behalf of the Hesquiaht communities; the Tlatlasikwala First Nation, on behalf of the community of Hope Island IR No. 1; the Lhoosk'uz Dene Nation, on behalf of the community of Kluskus IR No. 1; the Lake Babine Nation, on behalf of the communities of Fort Babine IR No. 6, Tachet IR No. 25, and Pinkut Lake IR No. 23; the Upper Nicola Band, on behalf of the communities of Nicola Lake IR No. 1 and Douglas Lake IR No. 3; the Nuchatlaht Tribe, on behalf of the community of Oclucje IR No. 7; the In-SHUCK-ch Nation, on behalf of the communities of Sachteen IR No. 2A and Skoomkumchuck IR No. 4; and the Xeni Gwet'in First Nations Government, on behalf of the community of Chilco Lake IR No. 1A.

Issues

8. The Commission has identified the following issues to be addressed in this decision:

- Should Smithers Landing and Glenemma, British Columbia, be approved to replace communities that were previously approved for broadband service expansion?
- Is it appropriate to retain Pinkut Lake IR No. 23 as an approved community?
- Should TCC's request to extend the deadline for completion of its deferral-account-funded broadband service expansion be approved?
- Should the Commission impose regulatory measures on an ILEC that does not complete its broadband service expansion by the 31 August 2014 deadline and, if so, what regulatory measures would be appropriate?

Should Smithers Landing and Glenemma, British Columbia, be approved to replace communities that were previously approved for broadband service expansion?

9. TCC indicated that Smithers Landing is a small, remote community on Lake Babine in the interior of British Columbia, comprising approximately 40 households, including some seasonal dwellings. TCC submitted that the community strongly supports its proposal to obtain broadband service, and that the company expected at least half the dwellings with permanent residents to subscribe to its high-speed Internet service.
10. TCC stated that Glenemma is unserved by terrestrial broadband, and that it expected that at least half of the 110 households in Glenemma would subscribe to its high-speed Internet service.

Commission's analysis and determinations

11. The Commission notes that in Telecom Decision 2006-9, it determined, among other things, that the incumbent local exchange carriers (ILECs) were to submit proposals to provide broadband service in communities located in high-cost serving areas where

broadband service was not available from any service provider and was not part of their existing commitments or planned broadband service expansion. In preparing their submissions, the ILECs were directed to consult with provincial and other governments.

12. The Commission received no comments opposing Smithers Landing as a replacement community. The Commission notes that Smithers Landing and Glenemma are in high-cost serving areas in the interior of British Columbia. The Commission considers that TCC's proposal to replace a previously approved community with Smithers Landing is reasonable, given Smithers Landing's support for the proposal. The Commission also considers that TCC's proposal to replace Spuzzum with Glenemma is reasonable. However, the Commission considers that it would be appropriate to allow parties to contest the inclusion of Glenemma in TCC's broadband rollout plan.
13. Accordingly, the Commission **approves** TCC's request to replace a previously approved community with Smithers Landing, and invites interested parties to comment, within **20 days** of the date of this decision, on why the Commission should not approve Glenemma as a replacement community.

Is it appropriate to retain Pinkut Lake IR No. 23 as an approved community?

14. TCC submitted that the Pinkut Lake IR No. 23 community, part of the Lake Babine Nation, had not yet been built and was without power. It noted that the Chief of this First Nation had confirmed that there would be residents in the community by 2015. TCC submitted that it was continuing work to serve this community, but that development work must begin in the community before the company can complete its broadband implementation planning.

Commission's analysis and determinations

15. The Commission considers that while it is commendable for TCC to try to meet this First Nation's needs, it would not be appropriate to wait to subsidize broadband service in a community that is not yet developed when other communities do not yet have broadband service.
16. Accordingly, the Commission **directs** TCC to report to the Commission by the end of 2014 whether the necessary development work has been undertaken by the Pinkut Lake community, and whether construction of Pinkut Lake IR No. 23 will be started in time to ensure that TCC's broadband service rollout is completed on a timely basis. The Commission also **directs** TCC to choose and start its planning process for an alternative community, and to include this information in its report, so that if development does not start in Pinkut Lake IR No. 23 by the end of 2014, TCC can rapidly start work in the replacement community.

Should TCC's request to extend the deadline for completion of its deferral-account-funded broadband service expansion be approved?

17. TCC submitted that unique combinations of circumstances had delayed construction in the remaining approved communities in its territory. According to TCC, these circumstances included *force majeure* events, such as an earlier-than-normal and prolonged 2013-2014 winter season, and flooding in Alberta in June 2013; and other issues, such as withdrawal of a partner service provider, the need to develop custom microwave radio solutions, and time to dispose of its 1 August 2013 application, which resulted in Telecom Decision 2014-114.
18. TCC submitted that the communities in which it intended to complete broadband service implementation in 2014 and 2015 are in some of the most remote and logistically challenging locations in Canada. TCC added that most of these communities are First Nations communities, and that carriers require permits under the *Indian Act* or other delegated land management legislation to secure land and access rights on reserve lands. TCC indicated that this involved consultations and negotiations with First Nations and their tribal affiliations.
19. TCC submitted that in the context of a program that began in 2006, it would be reasonable to allow the company the requested three or four additional months to complete broadband service implementation in certain approved communities by year-end 2014. It noted that certain communities were especially challenging, and committed to serve these remaining communities by the end of 2015.
20. The First Nations identified in paragraph 7, as well as ABC, All Nations Trust Company, CityWest, Indigiinet, and Network BC all supported allowing TCC to complete its broadband service expansion after the deadline.
21. PIAC submitted that failure to complete broadband service expansion on time is a serious matter for potential competitors and for the communities that have been waiting for service for several years. PIAC submitted that postponement of the 31 August 2014 deadline should not be an option for any of the ILECs. It submitted that the ILECs' proposals to use deferral account funds to subsidize broadband service expansion were approved approximately eight years ago in Telecom Decision 2006-9. In PIAC's view, the ILECs had had ample time to research, develop, and implement their proposals.
22. Xplornet submitted that it was a waste of public money to continue to subsidize the ILECs' construction of broadband systems in rural and remote areas, and that the public interest would not be served by granting an extension beyond the 31 August 2014 deadline.
23. TCC submitted that the leaders of the approved communities unanimously support TCC's efforts to date and its extension request.

Commission's analysis and determinations

24. The Commission considers that the 2013 flooding in Alberta was a *force majeure* event that was beyond TCC's control and that would have contributed to a decrease in TCC's resources for broadband service planning and implementation for several months. The Commission notes that while the winter weather in parts of Canada may have been more severe in 2013-2014 than in recent years, it is hard to measure the associated effects in a given area in TCC's operating territories of Alberta and British Columbia. The Commission considers that the flooding alone would have had a significant effect on TCC's broadband service expansion operations in remote areas, and that the other challenges TCC faced, such as helicopter-based construction processes and complex interactions with First Nations, also affected TCC's implementation timeline.
25. Regarding PIAC's comments, given the remoteness of these communities and the unavailability of broadband transport facilities, the Commission considers it unlikely that potential competitors would have avoided serving them solely because of an expectation that TCC would have already implemented broadband service.
26. In response to the concern expressed that it would be an inappropriate use of public money to continue to subsidize broadband rollout to the communities in question, the Commission notes that TCC has already begun to invest in facilities in many of these communities, and considers that these investments should be put to their proper use. In addition to support from the communities in question, the Commission notes support from Network BC on the record of this proceeding for the complementary role that TCC's deferral-account-funded broadband service expansion plays in bringing the benefits of broadband Internet to rural and remote communities.
27. Accordingly, under the circumstances, the Commission **approves** TCC's request for an extension of the deadline for completion of its broadband service expansion as proposed, to the end of 2014 for certain communities and to the end of 2015 for the remaining communities. Therefore, TCC must complete its deferral-account-funded broadband rollout by 31 December 2015. The Commission notes that the 31 December 2015 deadline also applies to the replacement communities discussed above.

Should the Commission impose regulatory measures on an ILEC that does not complete its broadband service expansion by the 31 August 2014 deadline and, if so, what regulatory measures would be appropriate?

28. In its 5 June 2014 letter, Commission staff sought comments on whether the Commission should impose specific regulatory measures, such as the reimposition of interest charges on deferral account amounts.
29. The Bell companies and MTS both submitted that they would meet the deadline of 31 August 2014 and that, therefore, any proposed regulatory measures would not apply to them. As a result, they did not comment on the appropriateness of implementing such measures.

30. TCC submitted that it should not be penalized for taking on the difficult challenge of connecting very remote communities while facing a variety of *force majeure* events. It added that any penalties would be counterproductive.
31. TCC submitted that heightened monitoring of, and reporting on, its progress, including periodic conference calls with Commission staff, would be the appropriate measure to adopt in the circumstances. TCC proposed that if additional measures were considered necessary, for each community in which it did not complete broadband service implementation by the end of 2014 or 2015, as per its deadline extension request, it would provide qualifying residential subscribers with retail Internet service at no charge for a period commensurate with the number of months that broadband service implementation was delayed.
32. TCC indicated that it works with local Internet service providers whenever possible to strengthen regional businesses. It proposed that in communities where it expands the service to the community using deferral account funds but is not the entity that actually provides retail Internet service to end-users, it would indemnify the retail Internet service provider for the foregone revenue associated with providing qualifying residential subscribers in those communities a commensurate number of months of retail Internet service at no charge.
33. Network BC submitted that given TCC's past efforts in completing its broadband service expansion in the majority of approved British Columbia communities, as well as the significant challenges involved in connecting remote First Nations communities, TCC should not be penalized for its inability to connect the remaining communities within what might have been somewhat optimistic time estimates. Network BC submitted that ending TCC's broadband service expansion would only further isolate some of British Columbia's remote First Nations communities.
34. PIAC and Xplornet both supported imposing regulatory measures on an ILEC that does not complete its broadband service expansion by the 31 August 2014 deadline.
35. PIAC proposed that the Commission initiate an independent audit of the entire broadband service expansion projects of companies that miss the deadline, at the companies' expense. PIAC submitted that such an audit would ensure accountability and enable companies to take corrective action.
36. Xplornet submitted that the Commission should end broadband service expansion after the deadline and return any remaining unspent deferral account funds, with interest, to subscribers whose overpayments for local exchange service had generated the funds.
37. In reply, TCC submitted that the work involved in an audit would take resources away from completing its broadband service expansion, and the communities strongly desire that TCC continue its rollout so they can have terrestrial broadband service. TCC submitted that regulatory measures should be efficient and proportionate to their

purpose, as required by the Policy Direction.² TCC further submitted that, in this case, the purpose of applying any regulatory measures should be to ensure that broadband service expansion is completed as soon as possible.

Commission's analysis and determinations

38. The Commission considers that an ILEC's failure to meet its deadline is a serious matter that needs to be addressed.
39. The Commission notes that it first approved the use of deferral account funds to implement broadband service in remote communities in 2006. While the plans for the communities were finalized in 2010, most of the approved communities were initially proposed in 2006 and reviewed in the proceeding initiated by Telecom Public Notice 2006-15. The Commission therefore considers that ILECs ought reasonably to have been prepared for the challenges they might face.
40. The Commission also notes that TCC failed to notify the Commission in a timely manner of the delay in its broadband service expansion, leaving little or no time for the Commission to take corrective action. The Commission further notes that in the course of TCC's rollout, the company applied twice to replace previously approved communities since they had no permanent residents. This suggests that aspects of TCC's rollout could have been planned or managed more effectively.
41. The Commission further notes that ILECs were given a wide latitude to expand broadband service in what they considered the most efficient and effective manner, and have benefited since 2010 from accrued interest on unused amounts in their deferral accounts. The Commission considers that an ILEC that does not meet the 31 August 2014 deadline is depriving approved communities of an important service that they have been promised for, in most cases, at least four years. Given this, the Commission finds that regulatory measures are required to address situations in which ILECs fail to comply with established deadlines.
42. The Commission notes that the Bell companies and MTS both submitted that they would meet the deadline and did not comment on the proposed measures. The Commission further notes that MTS has since confirmed completion of its rollout. With respect to the Bell companies, the Commission considers it unnecessary to apply regulatory measures at this time on the assumption that they will fulfill their undertaking to meet the 31 August 2014 deadline. However, if the Bell companies should fail to meet this deadline, the Commission will have no choice but to consider what regulatory measures, if any, should be applied in light of the Bell companies' particular circumstances at that time.

² *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

43. With respect to TCC, the Commission considers that any regulatory measures that it decides to impose at this stage should provide an incentive for TCC to complete its rollout as soon as possible.
44. The Commission considers that although an audit, as proposed by PIAC, might identify deficiencies in an ILEC's planning and implementation process, it would not benefit the communities that continue to be unserved after the deadline.
45. The Commission considers it appropriate to impose measures for all remaining approved communities that are not served by the end of 2014, rather than the time frame proposed by TCC – that is, by the end of 2014 and 2015. This option will enable TCC to make full use of the 2014 construction season to make up for the delay caused by the 2013 flooding in Alberta, and should provide an appropriate incentive for the company to complete its broadband service expansion with minimal delay.
46. Accordingly, the Commission determines, further to TCC's own proposal, that for communities where TCC's deferral-account-funded broadband service expansion is delayed beyond 2014, TCC is to ensure that qualifying residential subscribers are provided with retail Internet service at no charge for a period commensurate with the number of months beyond 2014 that broadband service implementation is delayed. The Commission notes that, as proposed by TCC, in communities where TCC is not the retail Internet service provider, TCC would indemnify the service provider for the foregone revenues from providing service at no charge to subscribers. Subsequently, the service provider, whether TCC or a partner Internet service provider, is to apply its regular rate, including the six-month discount that TCC normally applies to new customers.³
47. The Commission considers that qualifying subscribers should be those who choose to subscribe to Internet service within two years of its availability. The Commission considers that this would provide sufficient time for current consumers in a given community to find out about, and sign up for, the new service and would maximize the benefit to the community.
48. In addition, the Commission considers that closer monitoring of TCC's broadband rollout is required. Therefore, the Commission **directs** TCC to provide reports to the Commission quarterly, rather than yearly, until after its rollout has been completed. These reports are to be filed within 15 days of the end of each quarter. In its quarterly reports, TCC must provide
- a) updates on the status of the broadband rollout, including when construction is expected to begin and be completed for each remaining community;
 - b) the name of the local partner that will provide broadband service, if TCC will not be the service provider;

³ In its response to a request for information, TCC indicated that it would provide its Internet 6 DSL service at a rate of \$55 per month (\$35 per month for the first six months), when purchased on a stand-alone basis or \$50 per month (\$30 per month for the first six months), when combined with another TCC service.

- c) the technology used to extend service to subscribers and any change in this regard;
 - d) the month in which service is expected to be made available;
 - e) a description of any significant changes to the previous report and reasons for those changes; and
 - f) a summary of the risks to its rollout schedule and its mitigation plans, including the steps TCC is taking to avoid excessive delays due to any such risks.
49. As noted above, the Commission is very concerned about TCC's failure to meet the 31 August 2014 deadline and, in particular, by the very late notice given by TCC that it would require up to another 17 months to complete its broadband rollout using deferral account funds. The Commission notes that if TCC fails to complete its broadband rollout by 31 December 2015, the Commission will consider imposing additional regulatory measures, such as rebates to primary exchange service subscribers.
50. The Commission notes that on 18 December 2013, the Minister of Industry announced, among other things, that the Government of Canada would ask Parliament to amend the *Telecommunications Act* (the Act) to give the Commission the power to impose administrative monetary penalties (AMPs) on companies that fail to comply with their regulatory obligations. The Commission considers that, generally, in circumstances such as when a company fails to meet established deadlines, it would be necessary to consider the application of AMPs as a regulatory measure.

Policy Direction

51. The Policy Direction states that the Commission, in exercising its powers and performing its duties under the Act, shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(a), (b), and (c) of the Policy Direction.
52. The Commission considers that its determinations in this decision will advance the policy objectives set out in paragraphs 7(b) and (h) of the Act.⁴ The Commission considers that its determinations will provide incentive to TCC to roll out broadband service to approved remote communities, using deferral account funds, with minimal delay, and notes that these services will be available at rates similar to rates available in urban areas.
53. The Commission further considers that broadband service will allow people in these communities to participate in the digital economy and access information and services that relate to many aspects of their lives. Given the remoteness of these communities and the unavailability of transport facilities, the Commission also considers that its determinations are consistent with the Policy Direction requirements that (i) the

⁴ The cited policy objectives of the Act 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; and

7(h) to respond to the economic and social requirements of users of telecommunications services.

measures in question are efficient and proportionate to their purpose and interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives, and (ii) the measures neither deter economically efficient competitive entry into the retail Internet services market nor promote economically inefficient entry.

Secretary General

Related documents

- *TELUS Communications Company – Application to replace six communities in the company’s deferral-account-funded broadband service expansion plan*, Telecom Decision CRTC 2014-114, 14 March 2014
- *Follow-up to Telecom Decision 2008-1 – Proposal by TELUS Communications Company to dispose of the funds remaining in its deferral accounts*, Telecom Decision CRTC 2010-639, 31 August 2010
- *Follow-up to Telecom Decision 2008-1 – Proposal by MTS Allstream Inc. to dispose of the funds remaining in its deferral account*, Telecom Decision CRTC 2010-638, 31 August 2010
- *Follow-up to Telecom Decision 2008-1 – Proposal by Bell Aliant Regional Communications, Limited Partnership and Bell Canada to dispose of the funds remaining in their deferral account*, Telecom Decision CRTC 2010-637, 31 August 2010
- *Review of proposals to dispose of the funds accumulated in the deferral accounts*, Telecom Public Notice CRTC 2006-15, 30 November 2006
- *Disposition of funds in the deferral accounts*, Telecom Decision CRTC 2006-9, 16 February 2006

Appendix

In its 16 June 2014 submission in response to the additional process, TCC indicated that broadband service had been or would be implemented as follows:

A. In the following 5 communities by the 31 August 2014 deadline (*the status of TCC's work in the community is indicated at the end of each line*):

1. Marble Canyon IR No. 3 (British Columbia) – complete
2. Tsimpsean IR No. 2 (British Columbia) – complete
3. Dead Point IR No. 5 (British Columbia) – expected completion in August 2014
4. Oregon Jack Creek (British Columbia) – expected completion in July 2014
5. Quae IR No. 7 (British Columbia) – expected completion in August 2014

B. In the following 12 communities by year-end 2014:

1. Byemoor (Alberta)
2. Chipewyan Lake (Alberta)
3. Etzikom (Alberta)
4. Legal (Alberta)
5. Manyberries (Alberta)
6. Peerless Lake (Alberta)
7. Robb (Alberta)
8. Trout Lake (Alberta)
9. Ehatis 11 (British Columbia)
10. Refuge Cove IR No. 6 (British Columbia)
11. Hope Island IR No. 1 (British Columbia)
12. Chilco Lake IR No. 1A (British Columbia)

C. In the following 13 communities by year-end 2015:

1. Chilhil IR No. 6 (British Columbia)
2. Hesquiaht (British Columbia)
3. Kluskus IR No. 1 (British Columbia)
4. Fort Babine IR No. 6 (British Columbia)
5. Pinkut Lake IR No. 23 (British Columbia)
6. Tachet IR No. 25 (British Columbia)
7. Nicola Lake IR No. 1 (British Columbia)
8. Oclucje IR No. 7 (British Columbia)
9. Sachteen IR No. 2A (British Columbia)
10. Skookumchuck IR No. 4 (British Columbia)
11. Douglas Lake IR No. 3 (British Columbia)
12. Smithers Landing (British Columbia) – proposed as a replacement community in the 31 March 2014 Part 1 application
13. Glenemma (British Columbia) – proposed as a replacement community in the 4 July 2014 letter on the record of the 31 March 2014 Part 1 application