
ITEM

250 **Virtual Co-location**

ITEM

250.1 **Service Description**

Virtual Co-location (VCL) is an arrangement which provides Interconnecting Carriers (IC) with the capability to connect transmission facilities to TCI network facilities or to access TCI unbundled-network-components in TCI Premises.

Under this arrangement, the Interconnecting Carrier provides and places outside fibre optic cable to the Meet Point. The Interconnecting Carrier provides and leases to TCI sufficient additional outside fibre optic cable to allow TCI to place the fibre optic cable from the Meet Point to the Transition Cabinet. The Interconnecting Carrier also provides and leases to TCI Transmission Equipment to be placed by TCI in TCI Premises.

TCI connects the outside fibre optic cable provided by the Interconnecting Carrier with TCI's inside fibre optic cable at the Transition Cabinet. TCI also connects TCI's inside fibre optic cable to the Transmission Equipment provided by the Interconnecting Carrier in order to facilitate interconnection by the Interconnecting Carrier to TCI's network facilities or access TCI's unbundled-network-components pursuant to an interconnection agreement or a TCI Tariff.

VCL also provides virtual co-location arrangements to Digital Subscriber Line Service Providers (DSLSP) at the same rates and charges and under the same terms and conditions as specified for ICs under this Tariff Item and the Co-location Lease Agreement, as defined in Item 250.2. Accordingly, for the purposes of this Tariff Item and the Co-location Lease Agreement, any references to an "IC" or "Interconnecting Carrier" shall be deemed to include a DSLSP.

Because the Commission has forborne, in Telecom Regulatory Policy CRTC 2009-19, with respect to the regulation of this service as set out in that decision, the Company may also provide the service in this tariff at rates and on terms different from the tariffed rates and terms pursuant to an agreement entered into between the Company and a competitor that has been filed with the Commission for the public record.

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Definitions

For the purposes of this Tariff Item:

“Digital Subscriber Line Service Provider (DSLSP)” means a non-facilities-based reseller of high speed data services who is duly registered with the CRTC pursuant to Order CRTC 2000-983.

“Co-location Lease Agreement” or *“COLA”* means the Virtual Co-location Lease Agreement between the Interconnecting Carrier and TCI regarding the lease to, and maintenance by, TCI of the Transmission Equipment.

“IC to IC Cross-Interconnection Link” means the arrangement by which a co-located Interconnecting Carrier connects to the facilities of a second Interconnecting Carrier co-located in the same TCI Premises.

“Interconnecting Carrier” or *“IC”* means a Canadian carrier, as defined in the *Telecommunications Act*, which is duly registered with the CRTC and which interconnects with TCI either pursuant to an interconnection agreement entered into with TCI or a TCI Tariff, for the interchange of traffic.

“Meet Point” means the point designated by TCI outside the TCI Premises where VCL has been requested (normally at the manhole nearest to the TCI Premises).

“TCI Premises” means all central office premises of TCI, exclusive of enclosures designed to house remote line concentration equipment, that provide switching capability, including tandem, access tandem, local central offices, toll offices that house local or toll switches or central offices that provide a wire centre or subtending remote wire centre.

“Transition Cabinet” means the location in the TCI Premises at which TCI’s inside fibre optic cable is connected to the outside fibre optic cable leased to TCI pursuant to the Co-location Lease Agreement.

“Transmission Equipment” means IC-provided equipment that:

1. is necessary for interconnection with TCI network facilities or access to TCI unbundled-network-components, with the use of all functions of such equipment, including switching and routing functionality, being permitted under this arrangement;
2. is not ineligible pursuant to the equipment lists provided for in Order CRTC 2001-780; and
3. meets all industry standards as referred to in the COLA.

For the purposes of this Tariff Item 250 and the COLA, references to “Transmission Equipment” shall include the fibre optic cable provided by the IC and placed by TCI from the Meet Point to the Transition Cabinet.

“Transmission Equipment” shall also include IC-provided equipment installed solely for the purpose of connection to an IC to IC Cross-Interconnection Link.

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250.3 **Conditions of Service**

1. VCL is provided under the terms and conditions defined in this Tariff Item and in the COLA.
2. VCL is subject to the availability of suitable space, equipment and other facilities. TCI is not obligated to purchase additional land, buildings, plant or equipment, to relinquish floor space or facilities designated for TCI future use, or to undertake new construction to accommodate a request for VCL. ICs requesting VCL will be accommodated on a first-come, first-served basis, based on the date of submission of a completed application for VCL.
3. When TCI provides an Interconnecting Carrier with VCL in TCI Premises, the Interconnecting Carrier's interface with TCI network facilities or equipment shall comply with TCI's General Tariff Item 175, where applicable.
4. The co-located IC, after interconnecting its Transmission Equipment with TCI's network facilities, is permitted to connect to the Transmission Equipment of a second IC co-located in the same TCI Premises via an IC to IC Cross-Interconnection Link. TCI provides, installs and maintains the IC to IC Cross-Interconnection Link.
5. In co-locating the Transmission Equipment in TCI Premises, the IC shall ensure that the primary purpose of co-location is to interconnect with TCI network facilities, to access TCI unbundled-network-components or to connect to an IC to IC Cross-Interconnection Link. TCI reserves the right to require the IC to demonstrate that the capacity dedicated to interconnection with, or access to, TCI's network facilities is greater than that dedicated to IC to IC cross-connection. TCI also reserves the right to require the IC to demonstrate that the transmission rate of any Transmission Equipment connected to an IC to IC Cross-Interconnection Link can be verified to not exceed the nominal rate of the associated IC to IC Cross-Interconnection Link through a physical inspection by TCI personnel. The IC shall also provide any assistance that TCI personnel reasonably require to verify the transmission rate on any IC to IC Cross-Interconnection Link.
6. The Interconnecting Carrier may only request VCL in those TCI Premises where the Interconnecting Carrier requires interconnection to TCI network facilities or access to TCI unbundled-network-components. TCI shall determine the feasibility and cost of providing VCL at the requested TCI Premises.

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250.3 **Conditions of Service - Continued**

7. A request by the IC for modifications to any existing VCL arrangement of the IC, including replacements, additions or upgrades to the Transmission Equipment or relocations or rearrangements of such Transmission Equipment will be treated by TCI as a new application for VCL in any event in which such request requires re-configuration or modification of any TCI facilities or installations, or where such request would result, in TCI's reasonable assessment, in a change to the co-located equipment's power consumption or heat generation. In any case in which a new application for VCL is not required, the IC shall provide TCI with reasonable advance notification which, in any event, shall not be less than twenty (20) working days.
8. Applications for VCL shall be submitted in the form specified by TCI and shall include all working drawings, specifications, and other related documentation and information as may be required by TCI. The information provided shall include, but not be limited to, the serial numbers, make, models, power consumption and value of the Transmission Equipment and the end-to-end design of the fibre optic system that will terminate in TCI Premises. The proposed design submitted to TCI shall include, at a minimum:
 - a. design specifications;
 - b. transmission loss budget; and
 - c. terminal equipment layout.

TCI shall review the request and proposed design within fifteen (15) business days of receipt. If TCI rejects the request or proposed design, TCI will provide written reasons for the rejection. Requests for VCL which specify equipment which is not identified in the list of acceptable Transmission Equipment provided by TCI as referred to in Tariff Item 250.4.2, or otherwise approved by TCI, will not be accepted.

9. Subject to the approval of the VCL application, TCI shall provide an IC with a VCL arrangement in accordance with the terms and conditions of this Tariff and the COLA within three (3) months from the date that TCI receives the IC's completed application.
10. Installation, removal, and connection and disconnection of the Transmission Equipment, the IC to IC Cross-Interconnection Link and the fibre optic cable from the Transition Cabinet to the Transmission Equipment, in TCI's Premises to TCI facilities, equipment or TCI's network (or to other IC equipment or facilities, as the case may be), shall be carried out only by TCI personnel or by an agent approved by TCI.

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250.3 **Conditions of Service – Continued**

11. The Interconnecting Carrier shall ensure that the Transmission Equipment and any other IC equipment installed or located in TCI Premises comply with all technical standards as established and amended from time to time including, but not limited to, all Canadian Standards Association (CSA) and applicable governmental standards (such as Industry Canada and Department of Communications (DOC) certified standards), and any and all network performance or other standards established and amended from time to time by TCI regarding the operation of the Transmission Equipment in TCI Premises or in association with TCI facilities, equipment or TCI's network, and the IC shall provide TCI with written confirmation as to such compliance upon request. TCI shall provide a minimum of six (6) months notice of changes to equipment standards or network specifications affecting co-located equipment, or such lesser amount of notice as may be permitted by the Commission. Where the Transmission Equipment does not comply with the foregoing standards, TCI shall provide the IC with written notification to comply with such standards within a period of fifteen (15) days, or such other period that TCI may reasonably specify. If the IC fails to correct any non-compliance within the compliance period referred to above, TCI may, at its sole discretion, have the non-compliance removed or corrected at the IC's expense, or terminate VCL without further notification, without incurring any liability of any kind to the IC with respect to such removal, correction or termination. The Interconnecting Carrier shall, at its own expense, obtain and maintain any and all necessary permits or licenses and any other approvals or consents necessary or required to own or operate the Transmission Equipment or otherwise required in connection with VCL and the operation of the Transmission Equipment in TCI Premises or in association with TCI facilities, equipment or TCI's network.

Notwithstanding the foregoing, where any failure to comply with the above requirements or any other situation or circumstance poses an immediate threat to the safety of TCI employees or any other persons, interferes with the performance of TCI's services, or interferes with or poses an immediate threat to the integrity of the TCI Premises, TCI facilities, equipment or TCI's network, TCI may perform such work and/or take whatever action TCI deems necessary or advisable to remove such threat or interference, including disconnection of the Transmission Equipment, without prior notice to the Interconnecting Carrier. All reasonable costs incurred for such work and/or actions shall be paid by the Interconnecting Carrier. Where such threat or interference cannot be removed by TCI in a timely manner, using commercially reasonable efforts, TCI shall be entitled to terminate VCL upon fifteen (15) days written notice to the Interconnecting Carrier, without incurring any liability of any kind to the IC with respect to any of the foregoing actions or termination.

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250.3 **Conditions of Service - Continued**

12. The Interconnecting Carrier shall not register, permit or cause to be registered against any TCI property, any lien, encumbrance or other charge under any law, or otherwise encumber any title to any TCI property. Any such registration shall be immediately removed by the Interconnecting Carrier at the expense of the Interconnecting Carrier. If the Interconnecting Carrier fails to remove any such registration within fifteen (15) days of notice to do so, TCI may do so at the expense of the Interconnecting Carrier without further notice and the Interconnecting Carrier, by executing the COLA, shall be deemed to have irrevocably appointed TCI as the Interconnecting Carrier's attorney with full power and authority to execute any instruments required to discharge any such registration.
13. The Interconnecting Carrier shall not assign, transfer or otherwise dispose of its interest in the Transmission Equipment, in whole or in part, while the Transmission Equipment is located in TCI Premises, without the prior written consent of TCI, which may not be unreasonably withheld. Notwithstanding the foregoing, the IC may grant a security interest in the Transmission Equipment without obtaining the prior written consent of TCI.
14. If TCI Premises are rendered partly or wholly unusable due to fire or other casualty, TCI may, at its option, either:
 - a. repair such damage at TCI's expense and suspend VCL until such damage has been repaired; or
 - b. give written notice to the Interconnecting Carrier, within thirty (30) days after the date of occurrence of such damage, of TCI's intention to cancel and terminate VCL at that location and the effective date of such termination, in which case the provisions of Tariff Item 250.3.16 shall apply.

Notwithstanding the above provisions, if TCI Premises are damaged as a result of any negligent or willful act or omission of the Interconnecting Carrier, or its agents or contractors, TCI may, at its option, and without prejudice to any other remedies or recourses available to it, repair such damage at the expense of the Interconnecting Carrier.

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250.3 **Conditions of Service - Continued**

15. TCI reserves the right to utilize the space and other facilities within the TCI Premises in such a manner as will best enable TCI, in its sole discretion, to meet its overall service requirements. If TCI determines, in its sole discretion, that it is necessary to rearrange, relocate, evacuate, dismantle, vacate or abandon any TCI Premises, the Interconnecting Carrier shall direct TCI to move the Transmission Equipment or remove the Transmission Equipment from the TCI Premises, at the IC's expense, on or before the later of (a) the date which is one hundred and eighty (180) days following the date of the notice from TCI, and (b) the date specified in the notice from TCI. TCI shall use commercially reasonable efforts to minimize downtime during any rearrangement or relocation of any TCI Premises, and the IC shall not be liable for recurring charges associated with the services and facilities provided pursuant to this Tariff Item during any such downtime.
16. In the event that the Interconnecting Carrier does not acknowledge receipt of TCI's written notice received pursuant to Tariff Item 250.3.14 or Tariff Item 250.3.15 and make arrangements for the Transmission Equipment located in TCI Premises to be moved or removed by TCI by the termination, move or removal date, as the case may be, specified in the notice from TCI, the Transmission Equipment may be removed and disposed of as determined by TCI without further notice or compensation to the Interconnecting Carrier, and TCI may immediately terminate VCL without incurring any liability or any kind to the IC as a result of such removal, disposition or termination.
17. The Interconnecting Carrier shall promptly pay any tax, fee or charge that may be levied or assessed against TCI or any property of TCI as a result of VCL. If the Interconnecting Carrier fails to pay such tax, fee or charge prior to the date such amount becomes in arrears, TCI, at its option, may pay such amount on account of the Interconnecting Carrier, in which case the Interconnecting Carrier shall promptly reimburse TCI for the full amount so paid, plus interest at the same rate applicable to arrears for monthly recurring charges.
18. Notwithstanding the entering into of the Co-location Lease Agreement and the providing of VCL as contemplated in this Tariff Item, TCI has the right to maintain all TCI Premises and to operate its facilities, equipment and TCI's network in such a manner as will best enable it, in its sole discretion, to fulfil its overall current and future service obligations, commitments and requirements. Nothing herein contained or in the COLA shall be construed to compel TCI to retain any facilities or equipment for a period longer than demanded by its own service requirements.

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250.3 **Conditions of Service - Continued**

19. Nothing under this Tariff Item or pursuant to the Co-location Lease Agreement shall create or vest in the Interconnecting Carrier any ownership, license, property rights or rights of occupancy in, or access to, any TCI property.
20. TCI assumes no responsibility for the design, engineering, testing or performance of the end-to-end services operated or offered by the Interconnecting Carrier, nor for the Interconnecting Carrier's choice of equipment or facilities.
21. Access by the IC to the central office area where the IC's equipment and facilities are located for the purpose of periodic inspection of its equipment and facilities, is only permitted for personnel or contractors of the IC who have been approved by the Company.

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TCI and Interconnecting Carrier Responsibilities

1. The Interconnecting Carrier is responsible to provide the Transmission Equipment to be placed in the TCI Premises and will grant a lease of the Transmission Equipment to TCI for a nominal fee prior to installation of the Transmission Equipment at the TCI Premises. The lease will be for the term specified in the Co-location Lease Agreement. The Interconnecting Carrier represents and warrants to TCI that it has sufficient right, title and interest in the Transmission Equipment such that it is entitled and authorized to grant a lease of the Transmission Equipment to TCI.
2. Upon request, TCI shall provide the Interconnecting Carrier with a list of acceptable fibre optic transmission equipment and fibre optic cable, which list may be modified from time to time by TCI. Only fibre optic transmission equipment and fibre optic cable identified on such list, or otherwise approved by TCI, shall be provided by the Interconnecting Carrier for purposes of VCL.
3. TCI is responsible for the installation of the Transmission Equipment, the fibre optic cable from the Transition Cabinet to the Transmission Equipment, the IC to IC Cross-Interconnection Link, and all equipment located in the TCI Premises used in association with VCL. TCI shall determine the specific location for placement of the Transmission Equipment in the TCI Premises.
4. The Interconnecting Carrier is responsible for the provision, installation and maintenance of fibre optic cable from the Interconnecting Carrier's facilities, equipment or network to the Meet Point. The Interconnecting Carrier shall provide sufficient additional fibre optic cable at the Meet Point to allow TCI to place this cable from the Meet Point to the Transition Cabinet.
5. TCI is responsible for the provision, installation and maintenance of fibre optic cable between the Transition Cabinet and the Transmission Equipment. TCI is responsible for completing the physical splice of the Interconnecting Carrier's fibre optic cable with TCI's fibre optic cable at the Transition Cabinet. TCI is also responsible for the provision, installation and maintenance of the IC to IC Cross-Interconnection Link necessary to interconnect two ICs co-located in the same TCI Premises. Notwithstanding the foregoing, however, TCI is not responsible for the monitoring or performance of such fibre optic cable or IC to IC Cross-Interconnection Link.

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250.4 **TCI and Interconnecting Carrier Responsibilities - Continued**

6. When requested, TCI shall, at the expense of the Interconnecting Carrier, provide a second communication cable entrance for the Interconnecting Carrier's fibre optic cable into the TCI Premises where such second communication cable entrance exists, and where capacity is available.
7. TCI shall provide all modifications to TCI Premises to provide VCL including, but not limited to, provisioning for electrical power, heat and air conditioning. TCI will maintain an environment in the TCI Premises appropriate for its own facilities, equipment and purposes.
8. TCI shall provide the DC electrical power necessary to operate the Transmission Equipment.
9. The Interconnecting Carrier is responsible for all end-to-end monitoring of the Interconnecting Carrier's fibre optic system including the Transmission Equipment (which includes the fibre optic cable between the Meet Point and the Transition Cabinet) as well as the IC to IC Cross-Interconnection Link and the fibre optic cable between the Transition Cabinet and the Transmission Equipment. This monitoring includes, but is not limited to, remote surveillance, diagnostics and sectionalization of trouble.
10. TCI is responsible only for maintenance that is requested by the Interconnecting Carrier for the Transmission Equipment. The terms and conditions associated with the maintenance will be provided for in the Co-location Lease Agreement.
11. The Interconnecting Carrier shall, at its expense, furnish TCI with standard maintenance spare equipment at the required TCI Premises, to be used in the maintenance of the Transmission Equipment.

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250.5 **Liability and Indemnification**

1. The IC shall indemnify and save TCI harmless from and against any claims by third parties (including, without limitation, the IC's officers, directors, employees, agents, contractors, representatives or customers) arising out of the placement, installation, use (or inability to use), operation, maintenance or removal of the Transmission Equipment in, upon or from the TCI Premises, or otherwise in relation to VCL as provided for in the COLA and in this Tariff Item 250.
2. Notwithstanding any other provisions in TCI's Tariffs, including this Tariff Item, the Interconnecting Carrier shall:
 - a. indemnify and hold harmless TCI, its directors, officers, employees and agents from and against any and all manner of liabilities, awards, claims, demands, suits, proceedings, actions, causes of actions or other claims which may be brought or made against TCI or such persons, or which TCI or such persons may become subject to;
 - b. be liable to TCI, its directors, officers, employees and agents for any and all losses, costs, charges, damages and expenses whatsoever (and without limiting the generality of the foregoing, any direct losses, costs, damages and expenses of TCI or such persons, including costs as between a solicitor and his own client) which TCI or such persons may sustain, pay or incur;

as a result of, arising out of, or in connection with:

- c. the performance of the COLA by the Interconnecting Carrier, the provision of VCL to the Interconnecting Carrier, or the location, or the use or misuse by the Interconnecting Carrier, of the Transmission Equipment or any facilities or equipment of the Interconnecting Carrier;
- d. any breach, violation or non-performance of any condition, covenant, obligation, representation or warranty on the part of the Interconnecting Carrier pursuant to this Tariff Item or the Co-location Lease Agreement, or any act or omission of the Interconnecting Carrier in connection with the performance of its obligations under the Co-location Lease Agreement, this Tariff Item or any other applicable tariff;
- e. damage to the TCI Premises or any personal property (including loss of use thereof) of TCI or any third party, or physical injury (including death resulting therefrom) caused directly or indirectly by the Transmission Equipment or any facilities or equipment of the Interconnecting Carrier, or by the Interconnecting Carrier;

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250.5 **Liability and Indemnification – Continued**

- f. any acts or omissions of the Interconnecting Carrier in connection with the presence, use, or operation of the Transmission Equipment or any facilities or equipment of the Interconnecting Carrier;
 - g. the proximity of the Transmission Equipment to any facilities or equipment of TCI or any other party occupying space in the TCI Premises, or otherwise as a result of the presence, use or operation of the Transmission Equipment in the TCI Premises;
 - h. any disruption in service provided by TCI to any other party as a result of, arising out of, or in connection with the presence, use or operation of the Transmission Equipment by the Interconnecting Carrier, or any facilities or equipment of the Interconnecting Carrier, or provided on behalf of the Interconnecting Carrier;
 - i. any act or omission of the Interconnecting Carrier in the furnishing or providing of service by the Interconnecting Carrier to the Interconnecting Carrier's customers, or of any service interruption, failure or impairment;
 - j. any actual or attempted seizure or repossession of the Transmission Equipment or any other equipment or property of the IC in any TCI Premises by any creditor of the Interconnecting Carrier or any other party; or
 - k. the infringement of patents or other intellectual property rights arising from the use of the Transmission Equipment or the combining or using of the Transmission Equipment or other facilities or equipment of the Interconnecting Carrier with TCI facilities, equipment or TCI's network.
3. TCI shall not be liable for the quality of transmission or for any damages arising from omissions, interruptions, delays, errors or defects in transmission, or failures or defects in TCI facilities, equipment or TCI's network. However, where such damages are caused solely by TCI's negligence, TCI shall be liable to the IC but only to the extent provided for in Tariff Item 250.5.12. As provided for in Tariff Item 250.5.12, no limitation of liability shall apply where, and to the extent, that death, physical injury or damage to property is directly caused by TCI's negligence.

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250.5 **Liability and Indemnification - Continued**

4. TCI shall not be liable for any act or omission of the Interconnecting Carrier in the furnishing of service by the Interconnecting Carrier to its customers, or for any interruption in the Interconnecting Carrier's service or interference with the operation of the Transmission Equipment or any facilities or equipment of the Interconnecting Carrier arising in any manner from the services provided to the IC under this Tariff Item and the COLA, and the Interconnecting Carrier indemnifies and holds harmless TCI in relation to the foregoing. Notwithstanding any other provision in this Tariff Item, the COLA or any other TCI tariff, the Interconnecting Carrier assumes all responsibility for the use of the Transmission Equipment and all facilities and equipment of the Interconnecting Carrier in connection with the services provided to the IC under this Tariff Item, and the engineering or design of VCL, notwithstanding any TCI approval, or requirements relating to, among other things, standards.
5. TCI shall not be liable to the IC or to any third party for any act, failure, omission or negligence of any companies or other third parties which provide telecommunications services or facilities to the IC or with whom the IC's telecommunication network may be interconnected.
6. TCI shall not be liable to the IC or to any third party for any damages or injuries which may occur through lightning or other currents being carried over or through TCI's facilities, equipment or TCI's network.
7. TCI does not guarantee that a specific portion of TCI's facilities, equipment or TCI's network will remain compatible with the Transmission Equipment or any facilities or equipment of the IC. TCI shall not be liable to the IC or to any third party for any damages of any nature or kind arising or resulting, directly or indirectly, from TCI changing, as it deems necessary or appropriate from time to time, upon reasonable notice to the IC, its facilities, equipment or network, or any portion thereof. For the purposes of this Tariff Item 250.5.7, "reasonable notice" shall mean notice given at the time TCI decides to implement a change, or six (6) months prior to the implementation of a change, whichever is earliest.
8. TCI shall not be liable to the Interconnecting Carrier or any third party for any damages or injuries sustained by reason of any fire, explosion or other occurrence involving TCI facilities, equipment or TCI's network in any place where the atmosphere is or becomes inflammable or explosive. However, where such damages are caused solely by TCI's negligence, TCI shall be liable to the IC but only to the extent provided for in Tariff Item 250.5.12. As provided for in Tariff Item 250.5.12, no limitation of liability shall apply where, and to the extent, that death, physical injury or damage to property is directly caused by TCI's negligence.

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250.5 **Liability and Indemnification – Continued**

9. TCI shall not be liable to the Interconnecting Carrier or any third party in the event of inadequate utility services such as, *inter alia*, electrical power, the loss of utility services or failure to provide utility services.
10. The Interconnecting Carrier shall not be entitled to any claim against TCI in the event of TCI's failure to provide services or any other failure to perform where such failure is directly or indirectly caused by or results from a breach by the Interconnecting Carrier of its obligations under this Tariff Item or the Co-location Lease Agreement, or by an event or events beyond the reasonable control of TCI. These events shall include, but not be limited to, fire, flood, explosion, earthquake, other disaster, telecommunications line failure, power failure, accident, civil disturbance, riot, sabotage, laws imposed after the fact, war, rationing, embargo, strike or labour problem, delay in transmission or transportation, acts of God, or acts of government.
11. In no event will TCI be liable to the Interconnecting Carrier or any party claiming through or under the Interconnecting Carrier for any claim for lost profits, lost revenue, failure to realize expected savings, loss of use or any other commercial or economic loss of any kind, or any punitive, exemplary, indirect, incidental, consequential or special damages, or any third party claims arising out of the use by the Interconnecting Carrier of VCL or any services provided by TCI under this Tariff Item or the COLA, or any other TCI tariff, even if TCI had knowledge of the possibility of such potential losses or damages, and the IC indemnifies and holds harmless TCI in relation to the foregoing.
12. If, despite the foregoing limitations, for any reason TCI becomes liable to the Interconnecting Carrier or a third party arising out of or in any way connected with this Tariff Item, any other TCI tariff, or the Co-location Lease Agreement, in no event whatsoever, regardless of the form or cause of action, whether in contract or in tort, or the number or variety of claims asserted, shall the aggregate liability of TCI to the Interconnecting Carrier and any third party exceed, on a cumulative basis, the total amount of recurring charges paid by the Interconnecting Carrier for VCL pursuant to this Tariff Item and the COLA in respect to the specific TCI Premises in which the cause of action arose, during the twelve (12) months period immediately preceding the date of the cause of action. Notwithstanding the foregoing, the limitation provided for in this Tariff Item 250.5 shall not apply where, and to the extent, that death, physical injury or damage to property is directly caused by TCI's negligence.

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250.5 **Liability and Indemnification – Continued**

13. Other than as provided for in this Tariff Item, there are no other warranties, representations, conditions or guarantees of any kind whatsoever provided by TCI to the IC, either express or implied, whether existing by statute, agreement, tort, product liability or otherwise, regarding this Tariff Item, the COLA or the services provided by TCI with respect to VCL including, but not limited to, warranties, representations and guarantees as to merchantability, fitness for purpose, design, condition or quality.
14. The IC hereby waives any claims it may now or in the future have in tort or contract law, under statute, the common law or in equity and confirms that its rights, obligations, rights of indemnity and measure and type of damages in the event of breach or negligence are limited to those as provided for in this Tariff Item 250.
15. In this Tariff Item 250.5, references to “Interconnecting Carrier” include the Interconnecting Carrier, its directors, officers, employees, contractors, agents and those for whose acts the Interconnecting Carrier is, at law, responsible.
16. Notwithstanding any other provision of this Tariff Item 250.5, the IC shall not be liable to the extent of any third party claims which arise out of the negligence or deliberate fault of TCI or its employees.
17. The provisions contained in this Tariff Item 250.5 shall be subject to the provisions of TCI’s General Terms of Service to be developed in respect of services provided to Canadian carriers, and the latter provisions shall apply to the extent of any express inconsistencies.
18. The provisions of this Tariff Item 250.5 shall survive termination or expiration of VCL pursuant to this Tariff Item and the COLA.

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250.6 **Insurance**

1. The Interconnecting Carrier shall, at its sole cost and expense, procure, maintain, pay for and keep in force during the term of the Co-location Lease Agreement, comprehensive general liability insurance coverage with limits of fifteen million dollars (\$15,000,000.00) on a per occurrence basis, combined single limit, insuring against liability for bodily injury (including death resulting therefrom), personal injury and property damage, including loss of use and damage to the property of others, and must include:

- a. products liability;
- b. contractual liability;
- c. completed operations liability;
- d. owner's protective liability;
- e. contractor's liability;
- f. property custody liability; and
- g. contingent employer's liability;

and shall contain cross liability and severability of interest clauses.

2. The Interconnecting Carrier shall, at its sole cost and expense, procure, maintain, pay for and keep in force during the term of the Co-location Lease Agreement, all risk property coverage on a full replacement cost basis insuring all of the Interconnecting Carrier's real and personal property situated on or within the TCI Premises, with the Interconnecting Carrier as loss payee.

3. The insurance policies referred to in Tariff Item 250.6.1 and Tariff Item 250.6.2:

- a. shall be endorsed to name TCI as an additional named insured; and
- b. shall waive all rights of subrogation against TCI.

4. The Interconnecting Carrier shall provide TCI with certificates of insurance and/or copies of policies reflecting the coverages prior to the effective date of VCL, and annually thereafter during the term of the Co-location Lease Agreement. The Interconnecting Carrier shall ensure that TCI receives from the Interconnecting Carrier's insurers a minimum of thirty (30) days' prior written notice of cancellation of or any material change to the Interconnecting Carrier's insurance policies. Notices of cancellation, change or amendment shall be forwarded immediately to TCI.

ITEM

250 **Virtual Co-location - Continued**

ITEM

250.6 **Insurance**

5. The IC must also conform to the recommendation(s) made or to be made by TCI's insurers and fire and safety protection consultants with which TCI has already agreed to, or in the future agrees to.
6. The insurance coverage required pursuant to this Tariff Item 250.6 shall be obtained solely from insurance companies approved in writing by TCI. Prior to subscribing to such coverage, the IC shall submit identification of such insurance companies for TCI's approval.
7. TCI will not be responsible for insuring the Transmission Equipment, including without limitation its software and data, against loss or damage, and risk, including without limitation loss of use, with respect to the Transmission Equipment shall, at all times, remain with the IC.

ITEM

250 **Virtual Co-location - Continued**

ITEM

250.7 **Termination**

1. Notwithstanding any other provision of any TCI Tariff Items or the COLA, TCI shall be entitled, at its option, to terminate VCL and the Co-location Lease Agreement:

- a. where the Interconnecting Carrier fails to pay any amounts due and owing to TCI under this Tariff Item, the Co-location Lease Agreement, any other applicable TCI tariff, or any other agreement between TCI or its agents and the IC with respect to the TCI Premises;
- b. where the Interconnecting Carrier fails to comply with any of the terms and conditions of this Tariff Item, the Co-location Lease Agreement, any other applicable TCI tariff or any other agreement between TCI or its agents and the IC with respect to the TCI Premises; or
- c. where, in the opinion of TCI, there is no longer a connection between the Transmission Equipment and TCI's network facilities within the TCI Premises for the interchange of traffic as described in Tariff Item 250.3.5;

after having provided the IC with notice of such deficiency and a period of thirty (30) days within which to cure such deficiency, and where such deficiency, in TCI's reasonable determination, remains unremedied at the expiration of such thirty (30) day period, whereupon VCL hereunder and the COLA will terminate, as specified in the notice.

2. Notwithstanding any other provision of any TCI Tariff Items, TCI shall be entitled, at its option, to terminate VCL and the Co-location Lease Agreement immediately upon written notice to the Interconnecting Carrier:

- a. where the Interconnecting Carrier fails to procure, maintain, pay for or keep in force the insurance as required in Tariff Item 250.6;
- b. upon the occurrence of the circumstances as described in Tariff Item 250.3.11;
- c. where the TCI Premises are totally destroyed from any cause (including any total destruction required by any lawful authority), or where the TCI Premises are expropriated, in whole or in part, by lawful authority;
- d. where required by law, court order or regulatory order or directive;
- e. upon the Interconnecting Carrier becoming bankrupt or insolvent;

ITEM

250 **Virtual Co-location - Continued**

ITEM

250.7 **Termination - Continued**

- f. upon the filing by the Interconnecting Carrier of any petition or answer seeking reorganization, readjustment or arrangement of the business of the Interconnecting Carrier under any law relating to bankruptcy or insolvency;
 - g. upon the Interconnecting Carrier ceasing to carry on business in the ordinary course;
 - h. upon the appointment of a receiver or receiver-manager for all or substantially all of the property of the Interconnecting Carrier;
 - i. upon any notice of, or actual or attempted seizure or repossession, of the Transmission Equipment by any creditor of the IC or any other party;
 - j. upon the making by the Interconnecting Carrier of any assignment or attempted assignment for the benefit of creditors; or
 - k. upon receipt of the notification specified in Tariff Item 250.7.3 below;
- such termination to be effective on the date specified in the notice of termination.
3. The IC shall provide written notification to TCI of the occurrence of any of the events referred to in Tariff Items 250.7.2(e), (f), (g), (h), (i) or (j), upon the later of: (a) ninety (90) days prior to the occurrence of any of such events; and (b) when the IC first obtains knowledge of the occurrence of any of such events.
 4. Upon expiration or termination of VCL and the Co-location Lease Agreement for any reason, TCI shall, at the expense of the IC, remove the Transmission Equipment from the TCI Premises. If the Transmission Equipment is not removed by the IC as aforesaid, the charges specified in this Tariff Item 250 shall continue to apply until such time as all IC equipment is removed, and TCI shall be relieved from all obligations to provide services hereunder and from any liability imposed on TCI under this Tariff Item 250 or the COLA. Further, if the Transmission Equipment is not retrieved by the IC within thirty (30) days of the date arranged by TCI and the IC for pick-up or, failing such arrangement, within thirty (30) days of the effective date of expiration or termination, the IC shall be deemed to have abandoned its equipment and TCI may dispose of such equipment as it deems fit, without further notice, and shall not be liable to the IC for any proceeds of disposition or any losses, costs or damages whatsoever in connection with the disposal. The IC shall be responsible for all removal and disposition costs. The IC shall indemnify and hold harmless TCI against any third-party claims arising in connection with TCI's disposal of the equipment.

ITEM

250 **Virtual Co-location - Continued**

ITEM

250.7 **Termination - Continued**

5. Notwithstanding the above, TCI shall have the option of removing the equipment of the IC from the TCI Premises as of the day following the effective date of expiration or termination, and of storing such equipment until the removal of the equipment by the IC, or until disposal by TCI pursuant to Tariff Item 250.7.4, above. In such event, the IC shall be responsible for all costs associated with such removal and storage.
6. During the initial one (1) year term of VCL, in the event of termination by TCI pursuant to this Item 250.7, or in the event that the IC terminates VCL and the COLA for any reason, the IC shall pay, on or before the effective date of termination, termination charges equal to the amount equivalent to six (6) months of the recurring charges applicable to the terminated VCL arrangement, or such lesser number of months as are remaining in the initial one (1) year term, if there are less than six (6) months remaining in the initial one (1) year term. Such charges shall be in addition to any charges payable by the IC as of the date of termination and any interest charges that by then have or will accrue until paid.
7. Expiration or termination of VCL and the COLA shall not relieve the IC of its obligation to pay any amounts due or to become due to TCI, nor deprive TCI of any of its rights or remedies or actions against the IC that accrue up to and including the effective date of expiration or termination.
8. In the circumstances described in Tariff Item 250.7.1 and 250.7.2, TCI may, at its option but without waiving its right to terminate at any time thereafter, suspend any and all services and/or facilities, including the furnishing of electrical power, to be provided hereunder until such time as the perceived danger, interference or non-compliance has been eliminated. Notice of suspension shall be given to the IC prior to suspension where practical, and otherwise as soon as reasonably practical thereafter. Applicable recurring monthly charges will continue to apply during such period of suspension.

ITEM

250 **Virtual Co-location - Continued**

ITEM

250.8 **Rates**

For the purposes of this Tariff Item, the following explanations regarding Service Items shall apply:

1. Pre-engineering Fee includes the preliminary work needed to determine whether VCL can be provided, or subsequently modified, as the case may be, to meet the Interconnecting Carrier's requirements and to provide an estimate of the Project Fee that will be incurred for the provision or modification of VCL at the specified TCI Premises.
2. Building Riser Space and Fibre Optic Cable provides for the building riser space and fibre optic cable between the Transition Cabinet and the Transmission Equipment.
3. The monthly rate for Space includes the use of the bay space required for Transmission Equipment and associated spares to be housed in a separate cabinet.
4. Space, Category I applies to TCI Premises located in the Toll Building and Edmonton Main Building in Edmonton and the Len Werry, Capitol Hill and 7th Avenue Main buildings in Calgary.
5. Space, Category II applies to TCI Premises housing local end offices or tandem switches not specified in Category I.
6. Space, Category III applies to TCI Premises housing digital remotes.
7. Access to the Synchronization Clock provides for access to the clock at the TCI Premises, where such exists and is required by the Interconnecting Carrier.
8. Project Fee includes:
 - a. provisioning for environmental items such as power, air conditioning and heating to the bay in which the Transmission Equipment is located;
 - b. administration, design and engineering;
 - c. increasing the capacity of the existing TCI power facility;
 - d. installation of the Transmission Equipment;
 - e. splicing at the Transition Cabinet; and
 - f. any other direct costs not included in other rates and charges incurred by TCI to provision VCL.
8. A monthly rate will apply for the IC to IC Cross-Interconnection Link between two ICs in the same Central office as specified in this Tariff Item 250.8.

ITEM
250 **Virtual Co-location - Continued**

ITEM
250.8 **Rates - Continued**

The Interconnecting Carrier shall pay the following rates and charges for VCL, such rates and charges being in addition to other rates and charges that may be applicable:

Project Fee	(Notes 1, 2, 3, 4, 5)
Installation & Maintenance	(Notes 2, 3, 4)

Note 1: The Interconnecting Carrier shall pay all costs incurred by TCI associated with the Pre-engineering Fee and Project Fee from the date of a request for VCL to the date of the cancellation of the order should the Interconnecting Carrier cancel the order prior to implementation of VCL.

Note 2: For the first hour or fraction thereof of work performed during “normal hours” an hourly labour rate of \$64.40 applies.

Note 3: For each additional 15 minutes or fraction thereof, a charge of \$16.10 applies.

Note 4: For work done on a call-out basis entirely outside of normal working hours, a minimum charge of 2 hours of labour time at \$105.80 per hour plus 1 hour of regular time at \$64.40 applies.

Note 5: The charges for Project Fees associated with sub-contracted work are based on the costs incurred by TCI.

Note 6: The provision of an IC to IC Cross-Interconnection Link requires that each IC pre-order a Central Office Link under tariff CRTC 21462 Item 211.3.1 for DS-1 or DS-3; or a CDN Optical Co-location Link under tariff CRTC 21462 Item 224.3.4 for 2.5 Gbps.

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