

ITEM
102

General Rights and Obligations

This Item sets out the basic rights and obligations (hereinafter referred to as the “Terms”) of both TCI and Telecommunications Providers in connection with the interconnection services provided under this Tariff.

ITEM
102.1

General

1. The offer of interconnection services by TCI to Telecommunications Providers under this Tariff is subject to the following:
 - a. the general rights and obligations contained in these Terms;
 - b. the rates, terms and conditions contained elsewhere in this Tariff, to the extent that they are not inconsistent with these Terms, unless any such rates, terms or conditions expressly override these Terms and have been approved by the CRTC;
 - c. the rights, obligations, rates, terms and conditions contained in written agreements for the provision of interconnection services under this tariff, to the extent that they are not inconsistent with these Terms or this Tariff, unless any such rights, obligations, rates, terms or conditions expressly override these Terms or this Tariff and have been approved by the CRTC.

All of the above bind TCI and Telecommunications Providers.

ITEM
102.2

Effective Date of Changes

1. Subject to Item 102.2.2, changes to these Terms or this Tariff, as approved by the CRTC, take effect on their effective date even though Telecommunications Providers have not been notified of them or have paid or been billed at the previously-approved rate.
2. Where interconnection services that were to be provided by a certain agreed-upon date were not provided, through no fault of the Telecommunications Provider and, in the meantime, a rate increase has gone into effect, the previously-approved non-recurring charges shall apply.

ITEM
102.3

Obligation to Provide Service

1. Except as otherwise expressly specified elsewhere in this Tariff, and subject to Item 102.3.2 to 102.3.4 below, all of the interconnection services available to Telecommunications Providers under this Tariff are provided by TCI pursuant to an obligation to serve.

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ITEM
102.3

Obligation to Provide Service - Continued

2. Notwithstanding TCI's obligation to offer the services under this Tariff, TCI is not required to provide interconnection service to a Telecommunications Provider where:
 - a. the Telecommunications Provider owes amounts to TCI that are past due, other than as a guarantor;
 - b. the Telecommunications Provider does not provide to TCI a reasonable deposit or alternative required pursuant to these Terms; or
 - c. the Telecommunications Provider refuses to pay the additional charge referred to in Item 102.3.3.
3. Where it is necessary for TCI to install special equipment or to incur unusual expense in order to meet a Telecommunications Provider's requirements, an additional charge may be assessed based upon the equipment to be installed or the expense to be incurred.
4. Where TCI does not provide service on an application by a Telecommunications Provider, it must provide written explanation upon request.

ITEM
102.4

TCI's Facilities

1. Upon termination of service, the Telecommunications Provider must return any equipment provided by TCI.
2. TCI must bear the expense of maintenance and repairs required due to normal wear and tear to its facilities, except that TCI may charge for the additional expense incurred when the Telecommunications Provider requires maintenance and repair work to be performed outside of regular working hours. This does not apply where otherwise stipulated in these Terms, the Tariffs, or by special agreement.
3. A Telecommunications Provider which has deliberately, or by virtue of a lack of reasonable care, caused loss or damage to TCI's facilities, may be charged the cost of restoration or replacement. In all cases, Telecommunications Providers are liable for damage caused TCI's facilities by any facilities provided by the Telecommunications Provider or its customer.
4. Where the Telecommunications Provider reports trouble in relation to the interconnection services to TCI, TCI must initiate trouble repair procedures at such time.

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102 **General Rights and Obligations - Continued**

ITEM
102.5 **TCI's Right to Enter Premises**

Unless otherwise expressly permitted in this Tariff, a written agreement, or under any guidelines applicable to TCI and the Telecommunications Provider and approved by the CRTC, TCI, its employees or agent, shall have no right to enter the premises of the Telecommunications Provider, including any premises on which service is currently or is to be provided to the Telecommunications Provider, unless TCI has first obtained express permission to do so from the Telecommunications Provider. Prior express permission shall not be required in cases of emergency or where entry is pursuant to a court order. In every case, valid TCI identification must be shown to the Telecommunications Provider, at the Telecommunications Provider's request, prior to entering the premises.

ITEM
102.6 **Deposits and Alternatives**

1. TCI may require deposits from a Telecommunications Provider:
 - a. which has no credit history with TCI and will not provide satisfactory credit information;
 - b. which has an unsatisfactory credit rating with TCI due to previous payment practices with TCI; or
 - c. where the provision of the interconnection services to the Telecommunications Provider clearly presents an abnormal risk of loss.
2. TCI must inform the Telecommunications Provider of the specific reason for requiring a deposit, and of the possibility of providing an alternative to a deposit, such as arranging for third party payment, a bank letter of credit or a written guarantee from a third person whose credit is established to the satisfaction of TCI.
3. A Telecommunications Provider may provide an alternative to a deposit, provided it is reasonable in the circumstances.
4. Deposits earn interest at the savings account rate of the Bank of Montreal, calculated on the balance of the deposit plus interest accrued prior to the current billing period. The interest will be credited to the account annually or upon refund of the deposit, and will be reflected on TCI's next billing statement.
5. TCI will show the total principal amount of deposits held on each Telecommunications Provider's billing statement.

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ITEM
102.6

Deposits and Alternatives - Continued

6. TCI must review the continued appropriateness of deposits and alternative arrangements at 6-month intervals. When service is terminated or the conditions which originally justified such arrangements are no longer present, TCI must promptly refund or credit the deposit, with interest, or return the guarantee or other written undertaking, retaining only any amount then owed to it by the Telecommunications Provider.
7. At no time may the amount of all deposits and alternatives provided exceed 3 months of charges for all interconnection services provided by TCI to the Telecommunications Provider under this Tariff.

ITEM
102.7

Restrictions on Use of Services

1. A Telecommunications Provider may not use the interconnection services provided by TCI or allow the interconnection services to be used for a purpose or in a manner contrary to any applicable law or regulation.
2. Neither TCI nor the Telecommunications Provider may re-arrange, disconnect, repair, remove or otherwise interfere with the facilities of the other party, except in the following three circumstances:
 - a. cases of emergency;
 - b. where otherwise expressly permitted in TCI's Tariffs; or
 - c. where otherwise expressly permitted by the provisions of an applicable interconnection agreement.

In all cases TCI or the Telecommunications Provider, as the case may be, must then be notified of the changes as soon as possible.

3. No payment may be exacted directly or indirectly from a Telecommunications Provider by any party other than TCI for use of any of TCI's interconnection services except where otherwise stipulated in TCI's Tariffs, or by the provisions of an applicable interconnection agreement.

ITEM
102 **General Rights and Obligations - Continued**

ITEM
102.8 **Non-Disclosure of Confidential Information**

As a condition of TCI providing interconnection services to the Telecommunications Provider pursuant to this Tariff, the Telecommunications Provider agrees to protect TCI's confidential information as if it were a party to Schedule A of the MALI. TCI shall provide to the Telecommunications Provider a copy of Schedule A. For its part, TCI shall protect the Telecommunications Provider's confidential information to the same standard.

ITEM
102.9 **Refunds in Cases of Service Problems**

Where there are omissions, interruptions, delays, errors or defects in transmission, or failures or defects in TCI's facilities, TCI's liability is limited to a refund of charges, on request, proportionate to the length of time that the problem existed. No request is necessary where a problem in service lasts 24 hours or more from the time TCI is advised of the problem. However, where the problem is occasioned by TCI's negligence, TCI is also liable for the amount calculated in accordance with Item 102.10.2.

ITEM
102.10 **Limitation of TCI's Liability**

1. These Terms do not limit TCI's liability in cases of deliberate fault, gross negligence, anti-competitive conduct, breach of contract where the breach results from the gross negligence of TCI, or disclosure of confidential information contrary to Item 102.8.
2. Except with regard to physical injuries, death, or damage to a Telecommunications Provider's premises or other property, occasioned by its negligence, TCI's liability for negligence, and for breach of contract where the breach results from the negligence of TCI, is limited to three times the amounts refunded or cancelled in accordance with Item 102.9, as applicable.
3. TCI is not responsible for:
 - a. libel, slander, defamation or the infringement of copyright or other unlawful activity arising from material or messages transmitted over TCI's facilities;
 - b. the infringement of patents arising from the combining or using of the Telecommunications Provider's facilities with TCI's facilities; or
 - c. damages arising out of the act, default, neglect or omission of the Telecommunications Provider in the use or operation of facilities provided by TCI.

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102 **General Rights and Obligations - Continued**

ITEM
102.10 **Limitation of TCI's Liability - Continued**

4. When facilities of third parties are used in establishing connections to or from facilities under the control of a Telecommunications Provider, TCI is not liable for any act, omission or negligence of the third party.
5. In the provision of interconnection services, TCI is not responsible to the Telecommunications Provider's customer for end-to-end service.

ITEM
102.11 **Payment**

1. Subject to Items 102.11.2 and 102.11.3, charges cannot be considered past due until the next billing statement has been generated or the time period for payment indicated on the previous billing statement has passed.
2. In exceptional circumstances, prior to the normal billing date, TCI may request payment from a Telecommunications Provider, on an interim basis, for non-recurring charges that have accrued, by providing notice to the Telecommunications Provider with details regarding the services and charges in question. In such cases, subject to Item 102.11.3, the charges can be considered past due 3 days after they are incurred, or 3 days after TCI demands payment, whichever comes later.
3. No charge disputed by a Telecommunications Provider can be considered past due unless TCI has reasonable grounds for believing that the purpose of the dispute is to evade or delay payment. The dispute procedure set out in Schedule E of the MALI shall be followed and the Telecommunications Provider must pay the undisputed portion of the billing statement. TCI shall provide to the Telecommunications Provider a copy of Schedule E.
4. TCI may request immediate payment in extreme situations, provided that a notice has been issued pursuant to Item 102.11.2, and the abnormal risk of loss has substantially increased since that notice was given, or TCI has reasonable grounds for believing that the Telecommunications Provider intends to defraud TCI.

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102 **General Rights and Obligations - Continued**

ITEM
102.12 **Liability for Unbilled and Underbilled Charges**

1. Telecommunications Providers are not responsible for paying a previously unbilled or underbilled charge for interconnection services provided under this Tariff except where:
 - a. in the case of a recurring charge, it is correctly billed by TCI within a period of one year from the date it was incurred; or
 - b. in the case of a non-recurring charge, it is correctly billed by TCI within a period of 150 days from the date it was incurred.
2. In the circumstances described in Item 102.12.1, TCI cannot charge a Telecommunications Provider interest on the amount of the correction. If the Telecommunications Provider is unable to promptly pay the full amount owing, TCI must attempt to negotiate a reasonable deferred payment agreement.
3. Items 102.12.1 and 102.12.2 above shall not apply in circumstances where there has been deception by the Telecommunications Provider with regard to a charge for interconnection services.

ITEM
102.13 **Liability for Charges that Should Not Have Been Billed and Those That Were Overbilled**

1. In the case of a recurring charge that should not have been billed or that was overbilled, a Telecommunications Provider must be credited with the excess back to the date of the error, subject to applicable limitation periods provided by law. However, a Telecommunications Provider that does not dispute the charge within one year of the date of an itemized billing statement which shows that charge correctly, loses the right to have the excess credited for the period prior to that statement.
2. Non-recurring charges that should not have been billed or that were overbilled must be credited, provided that the Telecommunications Provider disputes them within 150 days of the date of the billing statement.
3. A Telecommunications Provider that is credited with any amount that should not have been billed or that was overbilled must also be credited with interest on that amount at the rate payable for interest on deposits that applied during the period in question.

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102 **General Rights and Obligations - Continued**

ITEM
102.14 **Minimum Contract Period**

The minimum contract period for TCI's interconnection services is one month commencing from the date the interconnection services are provided, except where a longer minimum contract period is stipulated in either TCI's Tariffs or an agreement between TCI and the Telecommunications Provider.

ITEM
102.15 **Telecommunications Provider - Initiated Cancellation or Termination of Service**

1. A Telecommunications Provider which cancels or delays a request for service before installation work has started cannot be charged by TCI. Installation work is considered to have started when the Telecommunications Provider has advised TCI to proceed, and TCI has incurred any related expense. A Telecommunications Provider which cancels or delays a request for service after installation work has started, but before service has started, will be charged the lesser of the full charge for the entire minimum contract period plus the installation charge or the estimated costs incurred in installation less estimated net salvage (referred to hereinafter as "cancellation charges"). The estimated installation costs include the cost of non-recoverable equipment and materials specifically provided or used plus the cost of installing, including engineering, supply expense, labour and supervision, and any other disbursements resulting from the installation and removal work.
2. A Telecommunications Provider which gives TCI reasonable advance notice may terminate service after expiration of the minimum contract period, in which case it must pay charges due for interconnection services which have been furnished.
3. Notwithstanding Item 102.15.1, TCI may waive its rights, in their entirety or in part, to claim cancellation charges in the case where the Telecommunications Provider wishes to replace the interconnection services by one or more of TCI's interconnection services of equal or greater value to the cancelled interconnection service.

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General Rights and Obligations - Continued

ITEM
102.16

TCI-Initiated Suspension or Termination of Service

1. For greater certainty, the phrase “reasonable advance notice” as used in this Item 102.16 will generally be at least 30 days.
2. TCI may suspend or terminate a Telecommunications Provider’s service only where the Telecommunications Provider:
 - a. fails to pay an amount owing by the Telecommunications Provider that is past due, provided that TCI has provided reasonable advance notice;
 - b. fails to provide or maintain a reasonable deposit or alternative when required to do so pursuant to these Terms;
 - c. fails to comply with the provisions of a deferred payment agreement;
 - d. repeatedly fails to provide TCI with reasonable entry and access in conformity with Item 102.5;
 - e. uses or permits others to use any of TCI’s interconnection services so as to prevent fair and proportionate use by others;
 - f. contravenes Item 102.7; or
 - g. fails to provide payment when requested by TCI pursuant to Item 102.11.4.
3. TCI may not suspend or terminate service in the following circumstances:
 - a. where the Telecommunications Provider is prepared to enter into and honour a reasonable deferred payment agreement; or
 - b. where there is a dispute regarding the basis of the proposed suspension or termination, provided payment is being made for undisputed outstanding amounts and TCI does not have reasonable grounds for believing that the purpose of that dispute is to evade or delay payment.

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TCI-Initiated Suspension or Termination of Service - Continued

4. Prior to suspension or termination, TCI must provide the Telecommunications Provider with reasonable advance notice, stating:
 - a. the reason for the proposed suspension or termination and the amount owing, if any;
 - b. the scheduled suspension or termination date; and
 - c. subject to contrary provisions of this Tariff or as approved by the CRTC, that a reasonable deferred payment agreement can be entered into (where the reason for suspension or termination is failure to pay).
5. Where repeated efforts to contact the Telecommunications Provider have failed, TCI must, at a minimum, deliver the notice referred to in Item 102.16.4 to the billing address prior to delivering the notice referred to in Item 102.16.6.
6. In addition to the notice required by Item 102.16.4, TCI must, at least 24 hours prior to suspension or termination, advise the Telecommunications Provider or another responsible person that suspension or termination is imminent, except where:
 - a. repeated efforts to so advise have failed;
 - b. immediate action must be taken to protect TCI from network harm resulting from facilities controlled or provided by the Telecommunications Provider; or
 - c. the suspension or termination occurs by virtue of a failure to provide payment when requested by TCI pursuant to Item 102.11.4.
7. Except with the Telecommunications Provider's consent or in exceptional circumstances, suspension or termination may occur only on business days between 8 a.m. and 5 p.m., local time, unless the business day precedes a non-business day, in which case disconnection may not occur after 12 noon local time.
8. Suspension or termination does not affect the Telecommunications Provider's obligation to pay any amount owed to TCI.
9. In the case of interconnection services that have been suspended, unless suspension occurs during the minimum contract period, TCI must make a daily pro rata allowance based on the monthly charge for such interconnection services.

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ITEM
102.16 **TCI-Initiated Suspension or Termination of Service - Continued**

10. TCI must restore service, without undue delay, where the grounds for suspension or termination no longer exist, or a payment or deferred payment agreement has been negotiated. Service charges may apply.

11. Where it becomes apparent that suspension or termination occurred in error or was otherwise improper, TCI must restore service the next day, at the latest, unless exceptional circumstances do not permit this, and no reconnection charges shall be levied.

ITEM
102.17 **Assignment**

The Telecommunications Provider cannot assign its rights or obligations pursuant to this Tariff without having obtained the prior written consent of TCI, which consent shall not unreasonably be withheld.

ITEM
102.18 **Right of Access**

When a Telecommunications Provider offers services to tenants within a multi-tenant building, it must provide TCI with direct access, under reasonable terms and conditions, to tenants who choose to receive services to which a right of direct access has been mandated by the CRTC from TCI rather than, or in addition to, services from the Telecommunications Provider.