



Telecom Decision CRTC 2005-42

Ottawa, 29 July 2005

TELUS Communications Inc.'s request for audited competitors' interexchange private line route reports

Reference: 8640-T66-200408915

*In this Decision, the Commission **denies** TELUS Communications Inc.'s (TCI) application requesting that the Commission order all competitors of the Incumbent Local Exchange Carriers (ILECs), including Broadcast Distribution Undertakings (BDU) and BDU affiliates, that provide telecommunications services, to file, on a one-time basis, audited versions of the semi-annual interexchange private line (IXPL) route reports contemplated in Telecom Order CRTC 99-434, 12 May 1999. In addition, the Commission **denies** TCI's application requesting that the Commission order all competitors of the ILECs, including BDUs and BDU affiliates, that provide telecommunications services, but who are not offering or providing IXPL services to file, on a one-time basis, audited nil reports. The Commission directs that each future semi-annual IXPL report be signed by an officer of the company submitting the report, attesting to its accuracy and completeness.*

The application

1. The Commission received an application dated 18 August 2004 from TELUS Communications Inc. (TCI), filed pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure*. TCI requested that the Commission order all Canadian carriers, broadcast distribution undertakings (BDUs) and BDU affiliates that provide telecommunications services to file, on a one-time basis, audited versions of the semi-annual interexchange private line (IXPL) route reports contemplated in Telecom Order CRTC 99-434, 12 May 1999 (Order 99-434). In addition, TCI requested that carriers not offering or providing any High Capacity/Digital Data IXPL services be required to attest to that, on a one-time basis, in an audited "nil" report. TCI suggested that these one-time modifications to the competitor IXPL reporting process are required in order to produce a complete record of routes that meet the forbearance criterion. TCI submitted that a complete record of IXPL routes has never been available under the existing regime.

Process

2. On 17 September 2004, comments were submitted by Aliant Telecom Inc. (Aliant Telecom), Bell Canada, NorthernTel, Limited Partnership, Saskatchewan Telecommunications and, Société en commandite Télébec (collectively, the Companies); Axia Supernet Ltd. (Axia), Bragg Communications Inc. (EastLink), the Canadian Cable Telecommunications Association (CCTA), MTS Allstream Inc. (MTS Allstream); Shaw Cablesystems GP and its affiliates Shaw Telecom Inc. and Big Pipe Inc. (Big Pipe) (collectively, Shaw) and UTC Canada (UTC). TCI filed its reply on 27 September 2004.

Background

3. In Order 99-434, the Commission directed all competitors of the incumbent local exchange carriers (ILECs), including BDUs and BDU affiliates, to file on a semi-annual basis with the Commission, serving a copy on the relevant ILECs, a report identifying all routes for which they provide or offer IXPL services that meet the Commission's criterion for forbearance established in that Order. The Commission indicated that based on the information submitted, and without further process, it expected to make a quick determination granting forbearance from regulation of the ILECs' IXPL services on those particular routes.
4. In Telecom Order CRTC 99-1113, 2 December 1999 (Order 99-1113), the Commission denied an application filed by Vidéotron Télécom ltée on behalf of itself and AT&T Canada Corp. requesting that the Commission, a) review and vary, and b) stay that part of Order 99-434 that requires competitors to serve on the relevant companies the list of specific routes that meet the forbearance criterion established in the Order. In opposing the application, Bell Canada submitted that the Commission should direct all competitors to file reports even if the reports simply confirm that there are no routes that meet the Commission's criterion. The Commission stated that there was no need for nil reports, as they would serve no purpose. The Commission stated further that if the incumbent companies became aware of any routes that had not been reported they could apply for forbearance on such routes.
5. In *TELUS Communications Inc.'s application for a new process for forbearance from interexchange private line services*, Telecom Decision CRTC 2003-37, 12 June 2003 (Decision 2003-37), the Commission denied TCI's application for a new ILEC-driven process for granting forbearance for IXPL routes in which ILECs would apply for forbearance on particular routes and competitors would have a certain amount of time to state that they did not have the capability to offer or provide service that met the forbearance criterion. In Decision 2003-37, TCI submitted that a new process was necessary as not all competitors complied with the reporting requirements established in Order 99-434 and often filed incomplete or late IXPL reports. TCI also submitted that it might be appropriate for the Commission to require nil reports to be filed as part of the semi-annual IXPL reporting process.
6. In *Application by Aliant Telecom Inc. regarding compliance with Telecom Order CRTC 99-434*, Telecom Decision CRTC 2003-74, 3 November 2003 (Decision 2003-74), Aliant Telecom requested, among other things, that EastLink be required to submit affidavits signed by senior executives when filing its semi-annual reports and be required to file revised reports semi-annually, including nil reports. The Commission denied this part of Aliant Telecom's application, noting that the ILECs' ability to file, at any time, requests for forbearance from IXPL services on routes that competitors have failed to report, serves as a fundamental check and balance against inaccurate reporting of routes by competitors.

Positions of parties

TCI

7. TCI submitted that the existing regime is simply not effective and reporting has been inconsistent and inadequate. TCI submitted that the existing IXPL route reporting regime

amounts to an honour system and the Commission has had to remind competitors on several occasions of their obligation to report. According to TCI, competitors' IXPL reports filed pursuant to Order 99-434 were incomplete. TCI stated that the evidence required to support further forbearance determinations provided for in Order 99-434 was only in the possession of competitors, and they had no incentive to report it.

8. TCI submitted that not all routes on which competitors are offering or providing IXPL services have been disclosed in the semi-annual IXPL reports. As an example, TCI listed the routes from Vancouver to Aldergrove, Cloverdale, Haney, Keating, Ladner, Langley, Newton and Whalley. TCI stated that competitors are active on these routes, but because of the sensitive nature of supplier-customer relationships in a competitive market, TCI could not supply the Commission with *prima facie* evidence to that effect.
9. TCI submitted that some competitors have never reported any IXPL routes pursuant to Order 99-434. TCI referred to Shaw Communications Inc.'s affiliate Big Pipe. In TCI's view, Big Pipe's website indicates that it is a facilities-based carrier offering IXPL services at various bandwidths, from DS-1 to OC-192, on a network with points of presence across Canada, including Alberta and British Columbia.
10. TCI noted that in the proceeding that lead to Order 99-1113, the Commission declined to implement Bell Canada's suggestion that competitors be required to file reports confirming that they have no routes that meet the criterion established in Order 99-434. In Order 99-1113, the Commission noted that "it can be assumed that those who have not filed do not have routes that meet the criterion." TCI stated that the Commission has found on several occasions that that assumption has not proven valid.
11. TCI noted that in Decision 2003-37, the Commission declined to implement TCI's suggested new process for further IXPL forbearance. TCI pointed out, that while the Commission denied its application for a new process in Decision 2003-37, the Commission noted that, "all parties to this proceeding recognized that the current process can only work satisfactorily if competitors comply with the reporting requirements". TCI stated that in the decision the Commission also noted "competitors' acknowledgment that they have this obligation and that they intend to comply". TCI stressed that the problem continues to be that not all competitors comply with the reporting requirements.
12. TCI also noted that although the Commission stated in Decision 2003-74 that it can take steps to ensure compliance with the reporting requirements, it has not done so to date. TCI submitted that the Commission should be prepared to use its powers under section 55 of the *Telecommunications Act* (the Act) in cases where carriers file nil reports and evidence later comes to light that the carrier actually was offering or providing IXPL services according to the criteria set out in Order 99-434.
13. Further, TCI requested the Commission to notify carriers of their obligation to file IXPL reports by means of a Telecom Circular.

14. Finally, TCI submitted that the acquisitions in 2004 by Bell Canada of 360networks (Bell/360networks), and by MTS Communications Inc. of Allstream Corp. (MTS/Allstream), raise the possibility that certain, previously forborne routes may no longer meet the forbearance criteria of Order 99-434. TCI stated that MTS Allstream and Bell Canada should be required to examine whether they are the only carriers offering or providing IXPL services on currently forborne routes.

The Companies

15. The Companies stated that they shared some of the concerns raised by TCI, but submitted that audited and nil reports would be onerous and not the most effective way of dealing with the problem. The Companies submitted that the process established in Order 99-434 is conceptually effective, but that the Commission should monitor the filings more closely to ensure compliance.
16. The Companies stated that the Commission should remind competitors that fail to meet their filing obligations of this requirement. The Companies suggested that the Commission could use its powers under section 51 of the Act to issue mandatory orders against recalcitrant service providers. The Companies submitted that, upon receiving notification from an ILEC or a competitor that a particular company has not accurately reported under the current regime, the Commission should take immediate and decisive action to remedy such a situation.
17. The Companies also submitted that the Commission should reduce the regulatory lag between the IXPL route filings and the issuing of a decision as it puts the ILEC at a disadvantage compared to its competitors.

Axia

18. Axia submitted that it understood and supported the need for TCI to obtain timely forbearance from rate regulation where competition exists. Axia further submitted that TCI had not, however, provided a compelling reason for the request of one-time audited or nil reports, from all carriers and BDUs and that such a requirement may place an undue burden on many of the approximately 200 carriers and BDUs that would be affected. Axia also wondered whether TCI's request for audited and nil reports related either only to competitors in TCI's territory, or to all IXPL competitors in Canada. Axia stated that carriers that are not providing or offering IXPL services contemplated in Order 99-434 should not be required to file nil reports.
19. Axia stated that the Commission should examine the semi-annual reports to determine which carrier(s) should be required to file one-time audited reports.
20. Axia supported TCI's position that carriers should be notified of their filing obligations in a Telecom Circular, but added that carriers should also be reminded of their obligation several weeks prior to the semi-annual reporting dates.

CCTA

21. CCTA opposed TCI's request for a one-time audit, including nil reports.

22. CCTA submitted that a one-time audit of IXPL reports, including nil reports, was not a simple measure and was unreasonable and inefficient. CCTA submitted that significant additional effort could be required to develop or obtain the necessary expertise to develop the IXPL route-specific information. CCTA stated that carriers' auditors would need to develop procedures to confirm the accuracy of the IXPL reports, even if only a nil report, and companies would be required to spend considerable internal and external resources to produce the reports. In CCTA's view, the resources required were disproportional to the minimal, if any, added value that would be gained given the existing process for determining which IXPL routes warrant forbearance.
23. CCTA stated that the existing process is working well and noted that the Commission has previously denied an application by TCI to modify the IXPL reporting process. CCTA indicated that the Commission has the ability to take additional measures to ensure compliance and can validate the IXPL reports using information collected by the Commission from telecommunications service providers as part of the annual telecommunications industry data collection exercise.
24. CCTA argued that it was premature to change regulatory requirements to deal with the implications of the MTS/Allstream and Bell/360 networks transactions. CCTA submitted that the acquiring companies should indicate in their next IXPL reports the routes that no longer qualify for forbearance pursuant to Order 99-434. Failure by MTS Allstream and Bell Canada to do so may lead to applications by competitors compelling such disclosure.

EastLink

25. EastLink submitted that the Commission should dismiss TCI's application. EastLink noted that the Commission had recently dismissed similar applications by TCI (in Decision 2003-37) and by Aliant Telecom (in Decision 2003-74). In each case, the Commission noted that the ILECs' ability to file, at any time, requests for forbearance from IXPL services on routes not reported by competitors, served as a fundamental check and balance against inaccurate reporting of routes by competitors.
26. EastLink stated that, with the exception of one instance where certain routes were inadvertently omitted, it has fulfilled its filing obligations. EastLink submitted that competitors take their regulatory obligations very seriously and that there was no need to amend the existing process. EastLink agreed with the Commission's view, as expressed in Decision 2003-37, that the filing of nil reports would be onerous both for carriers and for the Commission, even if filed on a one-time basis.
27. EastLink argued that a requirement for a one-time audit of IXPL reports would also be onerous and that it was unlikely that any carrier or BDU has in place the procedures for producing such a report. EastLink further submitted that the audit requirement would be an unnecessary expense for the majority of carriers who comply with the filing obligations.

MTS Allstream

28. MTS Allstream submitted that it did not support the filing of an audited report, but would agree to a mandatory one-time filing for each carrier, BDU and affiliate, outlining routes that meet the criterion for forbearance or a nil report in such instance that the company has no relevant route to report.
29. MTS Allstream submitted that it has consistently complied with the IXPL filing requirements. The company conceded that some carriers may be non-compliant, but noted that descriptions shown on carriers' websites do not necessarily indicate that a carrier has any IXPL routes that meet the requirement for forbearance.
30. MTS Allstream stated that it was concerned with the cost associated with an audit of the IXPL reports. It expressed the view that the benefits, as outlined by TCI, of a one-time audit of IXPL reports, do not outweigh the costs of the audit.
31. MTS Allstream also submitted that if the Commission does order a one-time audit of IXPL reports, that the determination include the time frame for the audited report, that the report should be filed no earlier than six months from the date of the decision and that the audit should not correspond with the auditing processes that already take place on or about 1 April of each year.

Shaw

32. Shaw stated that a one-time audit of IXPL reports was unnecessary and stated that the procedures established by the Commission were sufficient. Shaw indicated that it does not presently offer IXPL services to the public but as Big Pipe does, Shaw filed IXPL route reports on its behalf and will do so in the future.

UTC

33. UTC submitted that in its view, TCI had not substantiated its claims that there is a consistent pattern of under-reporting of IXPL routes and thus, there is no justification to order the whole industry to file audited IXPL and nil reports. UTC expressed the view that the expense of having auditors apply the ILECs' complicated exchange boundaries to determine whether a circuit is an IXPL is not justified based on TCI's submission and it would be entirely unfair to impose this requirement on carriers who have complied with the determinations in Order 99-434.
34. UTC submitted that a more practical approach would be for the Commission to remind all carriers of their obligation to file the IXPL reports. UTC also suggested that the work required to file the IXPL reports could be simplified, for example by requiring the ILECs to make their exchange maps available to all carriers.

TCI's reply

35. TCI submitted that several parties, specifically MTS Allstream, Shaw, UTC and EastLink, have conceded that there are carriers that have not complied entirely with their obligation to file all their IXPL routes, as required by Order 99-434. TCI noted that parties disagreed about the appropriate remedy.
36. In response to CCTA, TCI submitted that auditors verify non-financial matters in other contexts. In this case, the carriers would furnish the information on IXPL routes, and the auditors would simply verify the routes reported as qualifying.
37. TCI submitted that it is important to have an accurate account of the IXPL supply base, and that the effort to obtain this would be worthwhile, even though it may be time consuming and expensive.
38. In sum, TCI submitted that the Commission has ample evidence of non-compliance with Order 99-434, and its potential implications.

Commission's analysis and determination

39. The Commission notes that the parties were generally opposed to TCI's application, submitting that an audit of IXPL reports would be onerous and needlessly expensive. CCTA also submitted that carriers' auditors may not be in a position to perform such an audit and may be required to develop new procedures to confirm the accuracy of the IXPL reports.
40. While the Commission is not convinced by CCTA's submissions that auditors would not be in a position to perform this task, the Commission is concerned that TCI's request could impose a significant burden on competitors, BDUs and BDU affiliates. The Commission recognizes that producing audited IXPL reports could be unduly time consuming and financially onerous for companies, as they would be required to allot considerable internal and external resources in order to produce the reports. In addition, the Commission does not consider it necessary for competitors, BDUs or BDU affiliates to file, on a one-time basis, audited nil reports, as it can generally be assumed that those who have not filed do not have routes that meet the criterion for forbearance. The Commission remains of the view that if the incumbent companies are aware of any routes that have not been reported, they can apply for forbearance on such routes.
41. The Commission notes that while parties generally opposed TCI's application, they agreed that the accuracy and completeness of competitors' IXPL reports could be improved. The Commission considers that, on a going forward basis, steps should be taken to ensure that competitors', BDUs' and BDU affiliates' IXPL reports are complete.
42. In the Commission's view, requiring that an officer of the competitor, BDU or BDU affiliate sign each semi-annual IXPL report, attesting to its accuracy and completeness, will achieve the objective that filings be as accurate as possible.

43. Accordingly, the Commission **denies** TCI's application requesting that the Commission order all competitors of the ILECs, including BDUs and BDU affiliates, that provide telecommunications services, to file, on a one-time basis, audited versions of the semi-annual IXPL route reports contemplated in Order 99-434. In addition, the Commission **denies** TCI's application requesting that the Commission order all competitors of the ILECs, including BDUs and BDU affiliates, that provide telecommunications services, but who are not offering or providing IXPL services to file, on a one-time basis, audited nil reports. The Commission directs that each future semi-annual IXPL report be signed by an officer of the company submitting the report, attesting to its accuracy and completeness.

Secretary General

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