



Telecom Decision CRTC 2005-70

Ottawa, 16 December 2005

Extension of the price regulation regime for Société en commandite Télébec and TELUS Communications (Québec) Inc.

Reference: 8678-C12-200505737

In this Decision, the Commission extends the current price regulation regime without changes for Société en commandite Télébec and TELUS Communications (Québec) Inc. for a period of one year, to 31 July 2007. The Commission will initiate a proceeding to review the existing price regulation regime in the first half of 2006 following the release of the decision in the proceeding initiated by Forbearance from regulation of local exchange services, Telecom Public Notice CRTC 2005-2, 28 April 2005.

Introduction

1. In *Implementation of price regulation for Télébec and TELUS Québec*, Telecom Decision CRTC 2002-43, 31 July 2002 (Decision 2002-43), the Commission established the existing price regulation regime for Société en commandite Télébec (Télébec) and TELUS Communications (Québec) Inc. (TCI).¹ The four-year regime ends on 31 July 2006. In Decision 2002-43, the Commission determined that a review of the existing price regulation regime would be initiated in the final year of the plan.
2. In *Proceeding to consider extending the price regulation regime for Télébec and TELUS*, Telecom Public Notice CRTC 2005-4, 13 May 2005 (Public Notice 2005-4), the Commission invited comments on its proposal to extend the existing price regulation regime without changes for a period of two years for Télébec and TCI. The Commission based its proposal on the following factors.
3. The Commission stated that the current price regulation framework was based, in large part, on the general environment under which Télébec and TCI operate, the prospects for the development of local competition in their serving territories, and their ability to achieve productivity and efficiency gains in respect of certain services. The Commission considered that the factors and circumstances present at the time of the establishment of the current price regulation regime had not changed significantly.

¹ Effective 1 July 2004, TELUS Communications Inc. assumed all rights, entitlements, liabilities and obligations relating to the provision of telecommunications services in the territories previously serviced by TELUS Communications (Québec) Inc.

4. The Commission further stated that while competitive entry into the residential local services market through various initiatives, such as voice communication services using Internet Protocol (IP), may well increase the level of competition for residential local services in the future, the timing and magnitude of this impact was not clear at that time. In *Regulatory framework for voice communication services using Internet Protocol*, Telecom Decision CRTC 2005-28, 12 May 2005 (Decision 2005-28), the Commission had set out the regulatory framework for voice communication services using IP. The Commission stated in Public Notice 2005-4 that it would need to assess the impact of Decision 2005-28 on the state of competition in the residential local services market and, consequently, any changes that might be required to the price regulation regime.
5. In addition, the Commission stated that it would need to assess the impact of the proceeding arising out of *Forbearance from regulation of local exchange services*, Telecom Public Notice CRTC 2005-2, 28 April 2005 (Public Notice 2005-2). In Public Notice 2005-2, the Commission initiated a proceeding to consider the framework for forbearance from the regulation of residential and business local exchange services.
6. The Commission further stated that the current price regulation regime was comprised of many interrelated initiatives which were collectively designed to achieve the objectives set out in Decision 2002-43. The Commission considered that the current regime was achieving the objectives set out in Decision 2002-43 and, as such, current circumstances within the industry did not warrant a review at that time.

Process

7. Télébec and TCI were made parties to the proceeding. Télébec, TCI and the City of Calgary (Calgary) filed comments on 27 June 2005, and Télébec and TCI filed reply comments on 11 July 2005.
8. The Public Interest Advocacy Centre as counsel for various consumer groups (the Consumer Groups) requested that their submissions made in the proceeding initiated by *Proceeding to consider extending the price regulation regime*, Telecom Public Notice CRTC 2005-3, 13 May 2005 (Public Notice 2005-3) be included as part of the record of this proceeding. The Canadian Cable Telecommunications Association stated that its comments in the Public Notice 2005-3 proceeding were also generally applicable to the issues raised in this proceeding. TCI submitted that both its legal and policy-based arguments, conclusions and the requested relief filed in response to Public Notice 2005-3, applied in their entirety in this proceeding. These submissions formed part of the record of this proceeding but have not been summarized below.

Positions of parties

Télébec

9. Télébec submitted that a one-year extension would allow the Commission to assess more accurately the impact of voice over IP (VoIP) services on the market. Télébec further submitted that this would also provide an opportunity to assess the decision in the Public Notice 2005-2 proceeding before the Commission initiates a review of the price regulation regime.

10. Télébec proposed two changes if the current price regulation regime was extended for more than one year:
 - i) eliminate the requirement to transfer to the deferral account,² on an annual basis, the funds resulting from the inflation (I) less productivity (X) constraint to the basket of residential local services in non-high cost serving areas (non-HCSAs); and
 - ii) eliminate the requirement that rates should not be de-averaged³ within a rate band.
11. Télébec was of the view that the deferral account mechanism was similar to the subsidy mechanism for residential local services in HCSAs. In this regard, Télébec noted that deferral account funds were used to finance various projects relating to the incumbent local exchange carriers' (ILECs) obligation to provide service, such as the service improvement plan (SIP) or providing payphones with teletypewriter (TTY) capability.
12. Télébec considered that the de-averaging restriction unduly favoured competitive local exchange carriers (CLECs) over ILECs. Télébec stated that CLECs could set rates much lower than ILECs' rates by monopolizing high-density areas within an exchange where the costs of providing the service were the lowest, using their own networks, rather than renting local loops from ILECs.
13. Télébec submitted that the general environment under which the company operated had changed significantly since the first price regulation regime was implemented. Télébec stated that the telecommunications industry had undergone consolidation, VoIP technology was a reality that was dramatically changing the competitive environment, and a number of major cable companies had started marketing VoIP services.

TCI

14. In referencing its arguments made in the Public Notice 2005-3 proceeding, TCI considered that the three premises suggested by the Commission in support of its proposal did not justify an extension of its existing regulatory regime.
15. TCI submitted that it was prepared to accept the Commission's proposal on the condition that two changes were made:
 - i) allow ILECs to de-average prices within rate bands for residential services in non-HCSAs and for business services in order to respond to competition; and
 - ii) eliminate the I-X constraint in non-HCSAs.

² The Commission implemented the deferral account mechanism in Decision 2002-43. For more information on the deferral account mechanism, refer to paragraphs 132 to 137 of Decision 2002-43.

³ In Decision 2002-43, the Commission determined that for residential local exchange services, residential optional services and bundles consisting of residential local exchange services or optional local services, single and multi-line business local exchange services and Other capped services, rates should not generally be de-averaged further within a rate band.

16. TCI stated that competition was a reality in its territory, noting that Bell Canada was active in its territory, cable companies had entered into the telephony market, and VoIP services had become a concrete alternative.
17. TCI considered that consumers in non-HCSAs would benefit more from eliminating the I-X constraint entirely, and allowing prices to decline in response to competition, than through continuation of the restriction on rate de-averaging within a band and the deferral account mechanism. TCI also proposed that the Commission cease any further accruals to the deferral accounts.

Calgary

18. Calgary agreed with the Commission's proposal, noting certain significant events in the industry such as the proceeding initiated by Public Notice 2005-2, the recent release of Decision 2005-28, and the Telecommunications Policy Review initiated by the federal government.

Commission's analysis and determinations

19. In several previous decisions, the Commission stated that Télébec and TCI should be subjected to the same regulatory framework as the other large ILECs. In Decision 2002-43, the Commission decided to adopt a regulatory framework for Télébec and TCI which closely resembled the regime established in *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002 for the other large ILECs. The Commission was mindful of these determinations in considering the record of this proceeding.

Extension of the price regulation regime

20. The Commission notes that in Public Notice 2005-4, the proposal to extend the current regime was based principally on three factors: the state of local competition; the need to assess the impact of VoIP services on the local market; and the need to assess the outcome of the Public Notice 2005-2 proceeding.
21. In Decision 2002-43, the Commission established the current price regulation structure based essentially on its analysis of the prospects for the development of local competition in the serving territories of Télébec and TCI. The Commission notes that while there have been some competitive inroads made in the local market, Télébec and TCI continue to dominate.
22. The Commission is hopeful that VoIP technology, utilizing existing cable and ILEC infrastructure, will lead to increased competition, including facilities-based competition, in the local services market and particularly in the residential market. The Commission notes, however, that the use of VoIP technology to provide local services is in its early stages of deployment and that it is too early to assess the impact of VoIP services on the local market.

23. The Commission notes that the Public Notice 2005-2 proceeding is addressing the criteria and framework for forbearance from the regulation of residential and business local exchange services. The Commission considers that the outcome of the Public Notice 2005-2 proceeding has the potential to impact the price regulation regime and that there is merit in resolving the issues in that proceeding prior to establishing the next price regulation regime.
24. The Commission accordingly considers that the existing price regulation regime should be extended beyond 31 July 2006.
25. As to the duration of the extension, the Commission notes that in *Extension of the price regulation regime for Aliant Telecom Inc., Bell Canada, MTS Allstream Inc., Saskatchewan Telecommunications and TELUS Communications Inc.*, Telecom Decision CRTC 2005-69, 16 December 2005 (Decision 2005-69), the price regulation regime for the other large ILECs was extended by one year. In light of that and the fact that a decision in the Public Notice 2005-2 proceeding is expected in early 2006, the Commission extends the current price regulation regime for Télébec and TCI for a period of one year, to 31 July 2007. The Commission intends to initiate a proceeding to review the existing price regulation regime in the first half of 2006 following the release of the decision in the Public Notice 2005-2 proceeding.

Rate de-averaging within a band

26. The Commission notes that its policy with respect to de-averaging was established in Decision 2002-43. The Commission is of the view that allowing Télébec and TCI to respond to market forces within a geographic area of a rate band through de-averaged rates would allow for a degree of targeted pricing which could subject other customers in the rate band to an undue disadvantage, result in rates that were not just and reasonable, and slow the development of fair and sustainable competition.
27. Accordingly, the Commission considers that a review of this policy is not warranted at this time. Therefore, the rate de-averaging policy enunciated in Decision 2002-43 will continue to apply during the one-year extension of the price regulation regime.

Pricing constraints and the deferral account for residential non-HCSAs services

28. The Commission considers Télébec's view incorrect that the deferral account mechanism is similar to the subsidy mechanism for residential local services in HCSAs. The Commission considers that the fact that funds from Télébec's deferral account, to date, have only been applied to SIP and TTY expenditures does not make it similar to the subsidy mechanism for residential local services in HCSAs. The Commission notes that its final determinations with respect to the disposition of the deferral account balances will be made in a separate decision.
29. With regard to the proposals made by Télébec and TCI to remove the I-X constraint on the residential non-HCSA basket, the Commission notes that these ILECs continue to dominate the residential local market. In these circumstances, the Commission considers that removal of the I-X constraint would eliminate a necessary measure of price discipline. The Commission

also considers that removal of this constraint would also remove the incentive for Télébec and TCI to meet the expected productivity target. As for the argument made by TCI that consumers in non-HCSAs would benefit more from eliminating the I-X constraint and allowing prices to decline in response to competition, the Commission notes that Télébec and TCI have the pricing flexibility within the current framework to reduce prices in response to competition.

30. With respect to the proposals by Télébec and TCI to discontinue the deferral account or to stop augmenting the balance in the deferral account, in light of the current state of competition in the residential market, the Commission considers this proposal to be inappropriate.
31. In light of the above, the Commission determines that the I-X constraint and the deferral account mechanism for the non-HCSA residential services basket will be maintained during the one-year extension of the price regulation regime.

Other Matters

32. With regard to the procedural and legal arguments raised by TCI and the Consumer Groups in the Public Notice 2005-3 proceeding and incorporated into this proceeding, the Commission notes that it addressed those issues in Decision 2005-69.

Secretary General

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