Canadian Radio-television and Telecommunications Commission | Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2007-18

Ottawa, 27 March 2007

Application for forbearance from the regulation of residential local exchange services in Fort McMurray, Alberta

Reference: 8640-T66-200613069

In this Decision, the Commission approves the introduction of local forbearance in the Fort McMurray residential relevant market once TELUS Communications Company has demonstrated that it has met the competitor quality of service criterion. This criterion will be in effect pursuant to the final determination with respect to the Governor in Council's proposed Order of 16 December 2006 to vary part of Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15,* 6 April 2006.

Introduction

1. TELUS Communications Company (TCC) filed an application dated 19 October 2006, in which it requested that the Commission forbear from the regulation of residential local exchange services in the Fort McMurray exchange in Alberta.

2. TCC submitted that the provision of residential local exchange services in Fort McMurray was subject to sufficient competition to protect the interests of users, and granting forbearance would not likely impair the continuance of the competitive market for residential local exchange services in Fort McMurray.

3. TCC estimated that, as of 30 September 2006, the combined market share of TCC's residential competitors in the Fort McMurray exchange was at least 25 percent.

4. TCC submitted that, in proposing local forbearance in the Fort McMurray exchange, it had identified a different relevant geographic market than the local forbearance region (LFR) adopted by the Commission in *Forbearance from the regulation of retail local exchange services,* Telecom Decision CRTC 2006-15, 6 April 2006 (Decision 2006-15) for the Fort McMurray area.

5. TCC submitted that its application met all the forbearance criteria set out in Decision 2006-15 if the competitor quality of service (CQ of S) criterion was either put aside or was varied to include only those competitor services actually used in the geographic market by the competitive local exchange carriers (CLECs) in that market.

6. The Commission received submissions and/or responses to interrogatories from Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (collectively, the Companies); Cogeco Cable Inc., Quebecor Media Inc. (collectively, the Competitors); Canadian Cable Systems Alliance Inc. (CCSA); MTS Allstream Inc. (MTS Allstream); Primus Canada Inc. (Primus); Rogers Communications Inc.; Saskatchewan Telecommunications (SaskTel);

Shaw Communications Inc. (Shaw); Société en commandite Télébec (Télébec); and Vonage Canada Inc. (Vonage). The record of this proceeding closed with TCC's reply comments dated 11 December 2006.

7. While the positions of parties have necessarily been summarized in this Decision, the Commission has carefully reviewed and considered the submissions of all parties.

8. The Commission considers that TCC's local forbearance application raises the following issues:

   1) Does TCC's application seek to review and vary Decision 2006-15;

   2) What is the relevant market for Fort McMurray; and

   3) Does TCC's application meet the local forbearance criteria established in Decision 2006-15.

Background

9. In Decision 2006-15, the Commission established a framework for forbearance from the regulation of local exchange services (local forbearance), which includes the relevant market, and local forbearance criteria.

10. On 5 October 2006, TCC filed an application to review and vary that part of Decision 2006-15 concerning the application of CQ of S indicators in the determination of local forbearance (TCC's review and vary application).

11. In *Status of certain proceedings in light of proposed Order in Council to vary Telecom Decision CRTC 2006-15,* Telecom Circular CRTC 2006-12, 19 December 2006 (Telecom Circular 2006-12), the Commission noted that on 16 December 2006 the Governor in Council published a proposed Order to vary part of Decision 2006-15 (the proposed Order). The proposed Order set out a revised framework to determine when local forbearance would be granted to the incumbent local exchange carriers (ILECs) and would, among other things, modify the CQ of S criterion. In light of this proposed Order, the Commission, among other things, deferred its consideration of TCC's review and vary application pending a final determination with respect to the proposed Order.

I. Review and Vary Decision 2006-15

12. Shaw, the Competitors, and MTS Allstream argued that the Commission should consider TCC's local forbearance application as a request to review and vary Decision 2006-15 because TCC proposed a local exchange as a relevant geographic market which was rejected by the Commission in Decision 2006-15, and proposed that the Commission disregard or alter the CQ of S local forbearance criterion.

13. TCC responded that its local forbearance application did not constitute a review and vary application because: a) the Commission, in Decision 2006-15, explicitly allowed for an alternative definition of LFR outside of large urban areas; and b) TCC met all the CQ of S indicators used by all CLECs to provide residential local exchange services in Fort McMurray.

14. In Decision 2006-15, the Commission indicated that it was willing to entertain applications for local forbearance outside of large urban areas, which identified different LFRs than those set out in Decision 2006-15, to take into account the varying social, economic and market conditions that would exist in different parts of Canada.

15. The Commission considers that TCC's request for a different LFR for the Fort McMurray residential market is consistent with the Commission's determination in Decision 2006-15.

16. The Commission also notes that TCC's claim that it has met the CQ of S criterion in its local forbearance application is premised on a positive outcome of its review and vary application. The Commission considers that while the success of TCC's local forbearance application is related to the success of its review and vary application, the forbearance application itself is not a review and vary application.

II. Relevant markets

17. In Decision 2006-15, the Commission set out the relevant market as the smallest group of products and geographic area in which a firm with market power can profitably impose a sustainable price increase. Each relevant market, therefore, will have both a product and a geographic component.

Relevant product market

18. TCC submitted that it was seeking local forbearance for 15 existing residential services and any other residential local exchange services to be offered in the future.

19. None of the parties submitted comments with respect to TCC's proposal.

20. The Commission notes that TCC's list of 15 existing tariff services includes:

> Exchange Service, Individual Line Service, Call Management Services, Voice Mail Service, Dual Line Call Manager, Remote Call Forwarding, Residence Value Bundle, Residence No Limits Bundle, Residence Features Bundle, Residence Call Display Plus Bundle, Denial Services, Toll Restriction Services, Temporary Disconnect, Directory Listings, and Special Number Search.

21. The Commission notes that the framework for local forbearance applies to all local exchange services that fall within the definition of local exchange services set out in *Forbearance from regulation of local exchange services,* Telecom Public Notice CRTC 2005-2, 28 April 2005 (Public Notice 2005-2).

22. In light of the above, the Commission determines that local forbearance in the relevant geographic market, if and when granted would apply to: a) the list of 15 existing residential services for which TCC has sought local forbearance; and b) future services that fall within the definition of local exchange services set out in Public Notice 2005-2, subject to the powers and duties that the Commission has retained in Decision 2006-15.

Relevant geographic market

23. In Decision 2006-15, the Commission determined that:

- the geographic component of the relevant market (the relevant geographic market), should reflect an area with a social and economic community of interest, as well as cover an area that has substantially similar local telecommunications market conditions, including common pricing and marketing strategies, local service providers and local service offerings; and

- as a general guideline, the economic region (ER), or a combination of ERs with a minimum population of 100,000 be used for defining the relevant geographic market outside of large urban areas for the purpose of local forbearance.

Positions of parties

24. TCC submitted that:

- the Wood Buffalo – Cold Lake ER (LFR 48-04) was not the appropriate relevant geographic market because it was overly large and did not represent an area of common telecommunications conditions for the purpose of local forbearance;

- the community of interest of Fort McMurray would likely be within the Fort McMurray exchange;

- the Fort McMurray exchange reflected substantially similar local telecommunications market conditions with Shaw's Digital Phone service available to an estimated 96 percent of residents in the Fort McMurray exchange. On the other hand, outside of the exchange, local market conditions were different; and

- its proposal would minimize pockets of uncontested customers.

25. TCC further submitted that the Commission's minimum 100,000 population guideline was not justified because: a) market conditions in rural areas were irrelevant to the question of forbearance in urban areas; b) overly large geographic markets needlessly created vast areas of uncontested customers; and c) concerns regarding competitor scale were inconsistent with the new paradigm of local competition.

26. The Companies, SaskTel, and Télébec supported TCC's proposal.

27. Shaw, the Competitors, MTS Allstream, and Primus opposed TCC's proposal because:

- the population of the remainder of LFR 48-04 would be less than 100,000;
- TCC did not provide any evidence that there was a community of interest in the Fort McMurray exchange; and
- a single exchange was too small and did not satisfy the community of interest principle.

Commission's analysis and determinations

28. The Commission considers that an analysis of the relevant geographic market for the Fort McMurray residential market should assess the social and economic community of interest, including local telecommunications market conditions, and the population size of the market.

29. The Commission considers that economic activities around a region tend to have an impact on the social and economic community of interest because economic activities create employment opportunities and result in population growth. The Commission notes that the construction of oil sands projects is a major driver behind the current level of economic activity in Alberta. The Commission further notes that one such oil sands project overlaps the Wood Buffalo region.

30. The Commission considers that, with the exception of the Anzac and the Fort Mackay exchanges, the other exchanges in LFR 48-04 are too far from the Fort McMurray exchange to have a common community of interest.

31. The Commission considers that although the Anzac and the Fort Mackay exchanges have extended area service with the Fort McMurray exchange, they do not have the same local telecommunications market conditions as the Fort McMurray exchange as Shaw is providing its Digital Phone service in the Fort McMurray exchange only. The Commission notes that although Shaw indicated that oil sands development activities in the region may justify its expansion, the Commission considers that notwithstanding the two major oil sands projects in the Fort Mackay and Anzac areas, Shaw would be unlikely to expand its Digital Phone service into these two exchanges because of their size.

32. With respect to the number of uncontested customers, the Commission notes that Shaw's Digital Phone service is available to 96 percent of network access services in the Fort McMurray exchange, but is not available to other exchanges in LFR 48-04. The Commission considers that the Fort McMurray exchange is a geographic area that will result in significantly fewer uncontested customers than LFR 48-04.

33. Regarding the guideline of a minimum population of 100,000, the Commission notes that TCC's estimate that the population in Fort McMurray is projected to grow to 80,000 by 2010[1] falls short of the guideline.

34. The Commission notes that in Decision 2006-15 it stated that to the extent that an applicant ILEC applied for an LFR with a population below 100,000, a more in-depth review of the economics of that particular proposed relevant market might be required. The Commission considers that such a review would include evidence of economic stability and growth in the relevant geographic market, and evidence of low barriers to entry and low incentives to exit the relevant geographic market.

35. With respect to the economic stability and growth of the Fort McMurray market, the Commission notes that Fort McMurray has undergone a very high rate of economic growth of 8 percent annually from 2000 to 2005 because of the rapid pace of development of the oil sands projects, and the same rate of economic growth is expected for at least another decade.[2] The Commission further notes that this high level of sustained economic growth has generated much infrastructure investment in many sectors of the Fort McMurray market including the telecommunications sector. This is evidenced by the entry of Shaw and Vonage into the residential local exchange services market in Fort McMurray, and the presence of three wireless service providers – Bell Mobility, Rogers Wireless Inc. and TELUS Mobility.

36. With respect to barriers to entry into the market, the Commission notes that Shaw has successfully launched its Digital Phone service in the Fort McMurray exchange. Shaw has already incurred sunk costs to connect most residential customers to its cable telephony network. Further, the Commission considers that Shaw is likely to have overcome customer inertia which is demonstrated by the market share loss suffered by TCC since it began offering its Digital Phone service in Fort McMurray in March 2006.

37. With respect to barriers to exit the market, the Commission notes that Shaw's Digital Phone service and calling features are core components of a bundle of local and long distance services. In addition, Shaw's Internet service and cable television services are used to entice residential customers to subscribe to Shaw's Digital Phone service. The Commission further notes that Shaw is offering Digital Phone service, cable television and Internet service to compete with TCC's wireless, local exchange and Internet services. The Commission is of the view that Shaw would have low incentive to withdraw its Digital Phone service in the Fort McMurray market as such a move could create a gap in its suite of services putting it at a competitive disadvantage.

38. The Commission finds that notwithstanding that the Fort McMurray market is below the 100,000 population threshold, the economics of the market provide a sufficient base for sustainable local competition.

39. In light of the above, the Commission concludes that, on balance, the Fort McMurray exchange better satisfies the Commission's considerations in defining the relevant geographic market.

---

[1] In pages 20-21 of the Wood Buffalo Business Case 2005.

[2] Page 5 of the Wood Buffalo Business Case 2005.

III. Local forbearance criteria

40. In Decision 2006-15, the Commission determined that the applicant ILEC must demonstrate that it had met all of the local forbearance criteria.

Market share loss

41. Shaw and MTS Allstream submitted that based on the record of the proceeding, TCC did not meet the 25 percent market share loss threshold in LFR 48-04 and TCC's market analysis was irrelevant because TCC's geographic market proposal was unjustified.

42. Based on the record of this proceeding, the Commission finds that the market share loss of the Fort McMurray exchange is more than 25 percent.

Competitor quality of service

43. TCC submitted that CQ of S forbearance criteria constituted an irrelevant consideration where a cable company was the primary competitor in a geographic market. TCC argued that only the ILEC's results on CQ of S indicators relating to services that the cable company used should be considered for the purpose of local forbearance. In the case of the Fort McMurray exchange, as Shaw only required local number porting from TCC, only those CQ of S indicators relating to local number portability should be considered.

44. TCC submitted that it met the CQ of S forbearance criterion with respect to all ILEC services provided to all CLECs with respect to residential local exchange services in the Fort McMurray exchange.

45. Shaw argued that TCC's request to either set aside the obligation to meet the CQ of S indicators as an irrelevant consideration or to vary the obligation to only take account of CQ of S indicators that TCC considered relevant to Shaw was flawed and internally inconsistent.

46. Primus argued that the ILECs must meet the CQ of S criterion as directed in Decision 2006-15.

47. CCSA submitted that maintaining the CQ of S criterion was essential to the establishment and sustainability of competition in rural regions of Canada.

48. The Commission notes that in Telecom Circular 2006-12, it deferred its consideration of the issues in the proceeding initiated by TCC's review and vary application pending a final determination with respect to the proposed Order.

49. The Commission notes that TCC has met the minimum standards of the 14 CQ of S indicators only 35.4 percent of the time for the six-month period from April 2006 to September 2006.[3]

50. In light of the above, the Commission concludes that TCC has not met the CQ of S criterion as set out in Decision 2006-15.

---

[3] Pursuant to Decision 2006-15 the relevant period is the six-month period prior to an ILEC's forbearance application.

Access to operational support systems (OSS)

51. No comments were filed concerning access to OSS.

52. Based on the information provided by TCC, the Commission considers that TCC has implemented the provision of CLEC access to its OSS in accordance with *Competitive local exchange carrier access to incumbent local exchange carrier operational support systems*, Telecom Decision CRTC 2005-14, 16 March 2005, and TCC has met the access to OSS criterion.

Competitor Services tariffs

53. The Commission notes that it approved TCC's Wholesale Internet Asymmetric Digital Subscriber Line Service on an interim basis in Telecom Order CRTC 2006-133, 31 May 2006. No comments were filed concerning TCC's Wholesale Internet Service.

54. The Commission finds that TCC has met the Competitor Services tariff criterion.

Rivalrous behaviour

55. Shaw and MTS Allstream submitted that TCC made no attempt to demonstrate rivalrous behaviour in Fort McMurray but instead resorted to describing largely generic activities applicable throughout its territories.

56. The Commission notes that TCC provided information on product launches, marketing and pricing initiatives that it undertook in 2006 to respond to Shaw's Digital Phone service in Alberta and the Fort McMurray exchange. The Commission notes that evidence of rivalrous behaviour filed on the record of this proceeding demonstrates that both TCC and Shaw are competing vigorously for residential local exchange service customers.

57. The Commission finds that TCC has provided sufficient evidence of rivalrous behaviour in the Fort McMurray residential market.

Communications plan

58. The Commission notes that TCC submitted that all local telephone service providers with residential customers in the forbearance area should be required to communicate the same message to their residential customers upon forbearance. TCC proposed that a notice be jointly developed by at least TCC and Shaw, with the input of the Commission, to notify all residential customers in a forborne market in a consistent manner.

59. None of the parties submitted comments with respect to TCC's communications plan.

60. The Commission considers that there is merit for competitive service providers to communicate to all residential customers in a consistent manner prior to local forbearance. The Commission determines that, when local forbearance is granted in the Fort McMurray exchange, a communications plan be jointly developed, and implemented within one month of the date that forbearance is granted, by at least TCC and Shaw to inform all residential customers in a consistent manner. No further approval of the communications plan will be required from the Commission.

Conclusions

61. The Commission finds that if and when local forbearance is granted:

1) the relevant product market is the 15 residential tariffed services proposed by TCC and any future services that fall within the definition of local exchange services set out in Public Notice 2005-2, subject to the powers and duties that the Commission has retained in Decision 2006-15;

2) the relevant geographic market is the Fort McMurray exchange; and

3) the scope of forbearance will be as specified in Decision 2006-15.

62. The Commission concludes that TCC has met all of the local forbearance criteria set out in Decision 2006-15 except the CQ of S criterion.

63. The Commission approves the introduction of local forbearance in the Fort McMurray residential relevant market once TCC has demonstrated that it has met the CQ of S criterion that will be in effect pursuant to the final determination with respect to the Governor in Council's proposed Order.

Secretary General