



## Telecom Decision CRTC 2008-102

Ottawa, 17 October 2008

### **TELUS Communications Company – Application to review and vary part of Telecom Decision 2008-1 related to the use of deferral account funds for broadband expansion**

Reference: 8662-T66-200805989

*In this Decision, the Commission denies an application by TELUS Communications Company to modify Telecom Decision 2008-1 to permit incumbent local exchange carriers to use the remaining deferral account funds for broadband expansion instead of rebating it to residential local subscribers in non-high-cost serving areas.*

### **Introduction**

1. The Commission received an application from TELUS Communications Company (TCC), dated 23 April 2008, requesting that the Commission review and vary<sup>1</sup> Telecom Decision 2008-1 by rescinding paragraphs 113 and 114, which require the incumbent local exchange carriers (ILECs) to refund any remaining deferral account funds to residential local subscribers in non-high-cost service areas (non-HCSAs). Instead, TCC requested that the ILECs be permitted to file additional proposals to use these funds for the purpose of broadband expansion in their respective serving territories in communities where it would be otherwise uneconomic to do so.
2. The Commission received comments from Axia NetMedia Ltd., on behalf of Axia SuperNet Ltd. (Axia); Barrett Xplore Inc. (BXI); Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (collectively, Bell Canada et al.); MTS Allstream Inc. (MTS Allstream); Platinum Communications Corporation (Platinum); the Public Interest Advocacy Centre, the Consumers' Association of Canada, and the National Anti-Poverty Organization (collectively, the Consumer Groups); and Telesat Canada (Telesat). The public record of the proceeding, which closed on 2 June 2008, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca), under "Public Proceedings."

### **Background**

3. In Telecom Decision 2006-9, the Commission set out guidelines for the ILECs<sup>2</sup> concerning the disposition of funds that accumulated in their deferral accounts. The Commission determined that initiatives 1) to expand broadband services to rural and remote communities and 2) to improve accessibility to telecommunications services for persons with disabilities would be appropriate uses of these funds. With respect to the expansion of broadband services, the

<sup>1</sup> The Commission set out the criteria to consider review and vary applications in Telecom Public Notice 98-6.

<sup>2</sup> The ILECs referred to in Telecom Decision 2006-9 were Aliant Telecom Inc., now part of Bell Aliant; Bell Canada; MTS Communications Inc., now MTS Allstream; Saskatchewan Telecommunications; TELUS Communications Inc., now TCC; Société en commandite Télébec, now Télébec, Limited Partnership; and TELUS Communications (Québec) Inc., now part of TCC.

Commission directed each ILEC that planned to pursue broadband expansion to file proposals to expand broadband services to the customer premises in communities in high-cost serving areas, where service was not available and where it was unlikely that those areas would receive such services from any other service provider in the near future.

4. In Telecom Decision 2006-9, the Commission also concluded that any accumulated balance remaining in an ILEC's deferral account after these proposed initiatives had been approved should be rebated to the ILEC's residential local subscribers in non-HCSAs.
5. In Telecom Decisions 2007-50 and 2008-1, the Commission approved the use of deferral account funds by Bell Aliant, Bell Canada, MTS Allstream, and TCC to expand broadband services to certain rural and remote communities in British Columbia, Alberta, Manitoba, Ontario, and Quebec. In Telecom Decision 2008-1, the Commission denied the request of Bell Canada and TCC to allow additional process for the submission of new communities for broadband expansion, and directed the ILECs to rebate any funds remaining in their deferral accounts to their residential subscribers in non-HCSAs of record as of the date of Telecom Decision 2008-1.

## Issues

6. The Commission has identified the following issues to be addressed in this Decision with respect to Telecom Decision 2008-1:
  - I. Is the Commission's determination with respect to the requirement to provide rebates contrary to section 7 of the *Telecommunications Act* (the Act)?
  - II. Is the Commission's determination with respect to the requirement to provide rebates contrary to the Governor in Council's Policy Direction<sup>3</sup> (the Policy Direction)?
  - III. Is the Commission's determination to deny requests for additional processes for the submission of new communities for broadband expansion procedurally unfair?
  - IV. Did the Commission fail to consider a basic principle that had been raised in the original proceeding?

### **I. Is the Commission's determination with respect to the requirement to provide rebates contrary to section 7 of the Act?**

7. TCC submitted that the Commission's requirement that ILECs rebate to consumers any remaining amounts in their deferral accounts in Telecom Decision 2008-1 is contrary to the telecommunications policy objectives for Canada set out in section 7 of the Act and therefore in contravention of paragraph 47(a) of the Act, which requires the Commission to exercise its

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<sup>3</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

powers under the Act with a view to implementing these policy objectives. In particular, TCC argued that the Commission's determination contradicts paragraphs 7(a), (b), and (h) of the Act.<sup>4</sup>

8. With respect to the above objectives, TCC argued that Telecom Decision 2008-1 favoured urban subscribers over rural and remote subscribers by requiring TCC to rebate urban subscribers who already have access to broadband services, instead of using the remaining funds in its deferral account for broadband expansion in unserved rural and remote areas. TCC also submitted that the provision of rebates would increase, rather than reduce, the disparity that exists between urban communities and most rural and remote communities.
9. BXI submitted that the Commission's determinations with respect to the disposition of deferral account funds were a valid exercise of the Commission's powers. BXI submitted that the Commission's determinations struck an appropriate balance between often conflicting objectives in section 7 of the Act and were entirely consistent with the Act. BXI also noted that the Commission has devoted a large proportion of deferral account funds to expand broadband service in rural and remote areas.
10. The Consumer Groups submitted that the provision of rebates is consistent with the Act, since it helps ensure reliable and affordable service to customers and benefits a large percentage of TCC's customer base.
11. In Telecom Decision 2006-9, the Commission emphasized that the deferral accounts were to be cleared with a view to implementing the Canadian telecommunications policy objectives listed in section 7 of the Act. In that Decision, the Commission determined that the policy objectives would be met by allocating deferral account funds to expand broadband services and improve accessibility to telecommunications and rebating any remaining amounts to residential subscribers in non-HCSAs.
12. The Commission considers that a rebate to residential subscribers in non-HCSAs furthers the implementation of the policy objective in paragraph 7(b) of the Act of rendering affordable telecommunications services in urban areas. The Commission notes that a rebate to residential subscribers in urban areas does not imply that they have been favoured over rural subscribers, since deferral account funds originated from rates charged to urban residential subscribers and a large portion of the funds will be returned to them. Further, another large proportion of the funds will still be used for broadband expansion initiatives in rural and remote areas.

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<sup>4</sup> 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;

7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; and

7(h) to respond to the economic and social requirements of users of telecommunications services.

13. The Commission also considers that a residential subscriber rebate ordered by the Commission furthers the implementation of the policy objective in paragraph 7(f) of the Act of ensuring that regulation, where required, is efficient and effective. In Telecom Decision 2006-9, the Commission did not place any restriction on the number of communities for broadband expansion that the ILECs could propose in the follow-up process, and the Commission subsequently received proposals for hundreds of communities and approved the provision of broadband service in more than 350 communities in 5 provinces.
14. In light of the Commission's already comprehensive process in the Public Notice 2006-15 proceeding to review the ILECs' proposals, the Commission's determination in Telecom Decision 2008-1 to order a rebate of the remaining funds, rather than to allow for additional process for the submission of new communities, was consistent with ensuring efficient and effective regulation. In the Commission's view, this negates the regulatory burden and industry uncertainty that would result by initiating another public process to consider new broadband expansion proposals from the ILECs.
15. In light of the foregoing, the Commission concludes that its determination with respect to the requirement to provide rebates is not contrary to the policy objectives of the Act and, therefore, the Commission is not in contravention of paragraph 47(a) of the Act.

## **II. Is the Commission's determination with respect to the requirement to provide rebates contrary to the Policy Direction?**

16. Bell Canada et al. and TCC submitted that the Commission failed to specify the telecommunications policy objective that is advanced by its decision to rebate remaining deferral account funds to residential subscribers in non-HCSAs. TCC acknowledged that the Policy Direction was not in place when the deferral accounts were first established in 2002 and when the Commission approved the use of deferral account funds in Telecom Decision 2006-9. However, TCC noted that the Policy Direction was in place when Telecom Decision 2008-1 was issued.
17. Axia, BXI, Platinum, and Telesat submitted that the Commission's determination not to allow additional process for the submission of new communities for deferral account funding was consistent with the Policy Direction's requirement to rely on market forces, rather than regulatory intervention, to the maximum extent feasible. BXI also submitted that the process initiated by Telecom Decision 2006-9 revealed that competing carriers had already served without subsidy, or had plans to serve without subsidy, a large number of the rural and remote communities that the ILECs claimed were uneconomical to serve in their proposals.
18. The Commission notes that the Policy Direction came into effect after the deferral accounts were established in Telecom Decision 2002-34 and after the Commission determined that any remaining funds would be rebated to customers in Telecom Decision 2006-9. As such, the Commission was not obliged to specifically mention the policy objective furthered by the measure, although the Commission noted that requiring a subscriber rebate was consistent with section 7 of the Act. In any event, the Commission noted above that paragraphs 7(b) and (f) of the Act are advanced by this regulatory measure.

19. The Commission also notes that its decision to require ILECs to rebate any remaining deferral account funds recognizes the growth of alternative broadband service providers' coverage in some rural and remote areas, and therefore places greater reliance on market forces for further expansion of broadband services into those areas where competitors already serve or have indicated an intention to serve. In this way, the Commission's determination facilitates competition and interferes with the market to the minimum extent necessary, consistent with the objectives of the Policy Direction.
20. In light of the foregoing, the Commission concludes that its determination to require rebates is not contrary to the Policy Direction.

### **III. Is the Commission's determination to deny requests for additional processes for the submission of new communities for broadband expansion procedurally unfair?**

21. Bell Canada et al. and TCC submitted that the denial of further consideration of additional communities for broadband expansion in Telecom Decision 2008-1 violates the principles of procedural fairness. These companies claimed that it is contrary to the Commission's intention stated in Telecom Decision 2006-9 that the deferral accounts should be used, to the greatest extent possible, to fund broadband expansion in rural and remote communities. Bell Canada et al. also claimed that there was a legitimate expectation on the part of the ILECs for a follow-up proceeding to propose additional communities, and argued that Commission interrogatories, among other things, created such an expectation.
22. Axia and BXI submitted that the Commission was simply reconfirming its conclusions in Telecom Decision 2006-9 by directing that rebates be provided to residential local subscribers and that there was nothing procedurally unfair about such reconfirmation. BXI further submitted that TCC was made aware of the conditions under which the Commission would approve broadband expansion proposals and was given the opportunity to make its case with respect to each community.
23. The Commission notes that the ILECs were not restricted in the number of communities they could propose and were given an opportunity following Telecom Decision 2006-9, by letter dated 10 March 2006, to propose supplemental communities that could be substituted for communities that would be denied deferral account funding. Each of the involved ILECs filed a supplemental plan in addition to its proposed rollout plan.
24. The Commission further notes that the parties were notified in Telecom Decision 2006-9 that the Commission would require that the ILECs refund any remaining deferral account funds to residential subscribers and that the Decision did not refer to any possibility of additional process for the consideration of new communities.

25. With respect to the submission that the Commission created a legitimate expectation of further process, the Commission considers that its determination in Telecom Decision 2006-9, that any remaining deferral account funds would be refunded, notified the parties and created an expectation of a finite process that would not necessarily result in all deferral account funds being allocated to broadband expansion and telecommunications accessibility initiatives. The Commission also notes that Telecom Public Notice 2006-15 gave no indication of further process.
26. In light of the above, the Commission considers that the ILECs were provided with sufficient opportunity to use their deferral account funds for initiatives to expand broadband services to rural and remote areas to the greatest extent possible.
27. Accordingly, the Commission concludes that it did not make an error of procedural fairness by denying requests for additional processes for the submission of new communities for consideration for broadband expansion in Telecom Decision 2008-1.

**IV. Did the Commission fail to consider a basic principle that had been raised in the original proceeding?**

28. TCC submitted that the Commission, by requiring that the ILECs refund the remaining deferral account funds in Telecom Decision 2008-1, had failed to consider a basic principle that had been raised in the original proceeding, namely the long-standing government policies for the promotion of broadband expansion in rural and remote areas.
29. BXI submitted that Telecom Decision 2008-1 cannot be construed as an abandonment of broadband expansion initiatives since the Commission approved ILEC plans to spend a large amount of deferral account revenues on the subsidization of broadband expansion plans. Axia submitted that the principle of expanding broadband services to rural and remote communities is not the sole objective of Canadian telecommunications policy.
30. The Commission notes that it has recognized the benefits of broadband expansion by approving the use of deferral account funds by ILECs to provide service to hundreds of rural and remote communities where broadband service is unavailable. At the same time, the Commission rejected the ILECs' proposals to expand broadband services to hundreds of other rural and remote communities because broadband expansion is already taking place without the requirement for government or regulatory oversight.
31. The Commission considers that, in the context of determining how deferral account funds should be allocated, this policy to promote broadband expansion must be considered with regard to all of the policy objectives set out in section 7 of the Act. In the Commission's view, its determinations in Telecom Decision 2008-1 satisfy these policy objectives.
32. In light of the above, the Commission is of the view that it did not fail to consider a basic principle that had been raised in the original proceeding as submitted by TCC.

## Conclusion

33. For all the reasons stated above, the Commission **denies** TCC's request to review and vary Telecom Decision 2008-1.

Secretary General

## Related documents

- *Use of deferral account funds to improve access to telecommunications services for persons with disabilities and to expand broadband services to rural and remote communities*, Telecom Decision CRTC 2008-1, 17 January 2008
- *Telecom Public Notice CRTC 2006-15 – Use of deferral account funds to expand broadband services to certain rural and remote communities*, Telecom Decision CRTC 2007-50, 6 July 2007, as amended by Telecom Decision CRTC 2007-50-1, 27 July 2007
- *Review of proposals to dispose of the funds accumulated in the deferral accounts*, Telecom Public Notice CRTC 2006-15, 30 November 2006
- *Disposition of funds in the deferral accounts*, Telecom Decision CRTC 2006-9, 16 February 2006
- *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002, as amended by Telecom Decision CRTC 2002-34-1, 15 July 2002
- *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*