



Telecom Decision CRTC 2008-31

Ottawa, 10 April 2008

Regulatory issues with respect to the provision of interexchange dark fibre – Follow-up to Telecom Decision 2007-101

Reference: 8638-C12-200715120, 8662-T66-200515398, and 8640-T66-200606931

In this Decision, the Commission determines that it will forbear from the regulation of interexchange dark fibre in the serving territories of Bell Aliant Regional Communications, Limited Partnership, Bell Canada, MTS Allstream Inc., Saskatchewan Telecommunications, Télébec, Limited Partnership, and TELUS Communications Company (TCC) [in Quebec], to the same degree as set out for TCC in Telecom Decision 2007-101.

With respect to the intra-exchange portion of the arrangements with Videotron Ltd. which were the subject of Telecom Order 2005-387, the Commission directs TCC to file, within 60 days of the date of this Decision, proposed revisions to TCI¹ General Tariff section 2.07 – Intra-exchange Optical Fibre Service to introduce 20-year rates.

Introduction

1. In Telecom Decision 2007-101, the Commission granted TELUS Communications Company (TCC) forbearance from the regulation of interexchange (IX) dark fibre in its Alberta and British Columbia serving territories.
2. The Commission also initiated a proceeding to show cause why it should not forbear from regulating IX dark fibre, to the same degree as set out in that Decision, for Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, MTS Allstream Inc. (MTS Allstream), Saskatchewan Telecommunications (SaskTel), TCC (in Quebec), and Télébec, Limited Partnership (Télébec).
3. The following participated in the show cause proceeding: Bell Aliant, Bell Canada, NorthernTel, Limited Partnership (NorthernTel), and Télébec (collectively, Bell Canada et al.); MTS Allstream; Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); SaskTel; and TCC (in Quebec). The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

The issues

4. The Commission has identified the following three issues to be addressed in its determinations:
 - A. Is MTS Allstream's position with respect to the process to be followed based on an inaccurate assessment of Telecom Decision 2007-101?

¹ TELUS Communications Inc. (TCI) is now TCC.

- B. Should the Commission forbear from regulating the provision of IX dark fibre for Bell Aliant, Bell Canada, MTS Allstream, SaskTel, TCC (in Quebec), and Télébec to the same degree as set out for TCC in Telecom Decision 2007-101?
- C. Should TCC apply its existing IX dark fibre General Tariff to the two arrangements with Videotron that were the subject of Telecom Order 2005-387?

A. Is MTS Allstream's position with respect to the process to be followed based on an inaccurate assessment of Telecom Decision 2007-101?

- 5. MTS Allstream suggested that forbearance from the regulation of IX dark fibre should be granted once an application had been submitted which demonstrated that the company in question had met the same four conditions that were applied to TCC in Telecom Decision 2007-101.
- 6. Bell Canada et al., SaskTel, and TCC (in Quebec) disagreed with MTS Allstream's position.

Commission's analysis and determinations

- 7. The Commission notes that MTS Allstream's approach is based on its understanding of Telecom Decision 2007-101 that there are four conditions which have to be met before forbearance from the regulation of IX dark fibre can be granted.
- 8. Contrary to MTS Allstream's assertion, the Commission did not establish fixed criteria in Telecom Decision 2007-101 by which it intended to assess forbearance applications with respect to the provisioning of IX dark fibre in the serving territories of the incumbent local exchange carriers (ILECs) made parties to the present proceeding other than TCC's serving territories in Alberta and British Columbia.
- 9. The Commission further notes that in instituting the present follow-up proceeding, it did not contemplate that the ILECs would be required to formally apply for forbearance as suggested by MTS Allstream. To the contrary, the Commission initiated a proceeding of its own motion to consider whether forbearance should be extended to the serving territories of the ILECs other than TCC's Alberta and British Columbia serving territories to the extent that it did in Telecom Decision 2007-101.
- 10. In light of the foregoing, the Commission will proceed to assess whether forbearance from the regulation of IX dark fibre should be extended to the serving territories of the ILECs made party to the present proceeding other than TCC's Alberta and British Columbia serving territories to the extent that it did in Telecom Decision 2007-101.

B. Should the Commission forbear from regulating the provision of IX dark fibre for Bell Aliant, Bell Canada, MTS Allstream, SaskTel, TCC (in Quebec), and Télébec to the same degree as set out for TCC in Telecom Decision 2007-101?

11. No parties to this proceeding objected to forbearance from the regulation of IX dark fibre.

Commission's analysis and determinations

12. The Commission's power to forbear stems from section 34 of the *Telecommunications Act* (the Act).
13. With respect to the application of subsection 34(1) of the Act, the Commission notes that the matter to be determined is whether forbearance would be consistent with the policy objectives set out in section 7 of the Act.
14. The Commission agrees with Bell Canada et al. that the provision of IX dark fibre is characterized by special circumstances in that each arrangement is unique and designed in accordance with specific customer requirements to reflect local conditions.
15. The Commission accepts that Bell Canada and TCC (in Quebec) have little excess dark fibre facilities in place, are not regular suppliers of IX dark fibre, and have no economic incentive to do so as they wish to concentrate on the provision of higher-value services.
16. Based on the record of this proceeding, the Commission is of the view that there is little or no provision of IX dark fibre in the territories of the ILECs which are the subject of this proceeding.
17. The Commission further notes that many requests for IX dark fibre come from large sophisticated retail customers and various government agencies, departments, and organizations.
18. In light of the above, the Commission finds that market forces can be relied upon to achieve the telecommunications policy objectives set out in paragraphs 7(a), 7(b), 7(g), and 7(h) of the Act.
19. The Commission notes that pursuant to subsection 34(1) of the Act, it may forbear where it finds that to do so would be consistent with the telecommunications policy objectives of the Act. In light of the finding above that market forces can be relied upon to achieve the telecommunications policy objectives, the Commission considers that it would be appropriate to forbear from regulating IX dark fibre.
20. The Commission is persuaded that in the circumstances of this case, with respect to subsection 34(3) of the Act, forbearance will not likely unduly impair the establishment or continuance of a competitive market for the provision of IX dark fibre in the serving territories of Bell Aliant, Bell Canada, MTS Allstream, SaskTel, TCC (in Quebec), and Télébec.

21. The Commission further finds in light of the foregoing that to forbear from the regulation of IX dark fibre, to the extent specified in Telecom Decision 2007-101, would be consistent with subparagraph 1(a)(i) of the Governor in Council's Policy Direction² which states that the Commission should "rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives."
22. Accordingly, the Commission declares that sections 24, 25, 29, and 31, and subsections 27(1), 27(2), 27(5), and 27(6) of the Act do not apply with regard to the provision of IX dark fibre in the serving territories of Bell Aliant, Bell Canada, MTS Allstream, SaskTel, TCC (in Quebec), and Télébec.

C. Should TCC apply its existing IX dark fibre General Tariff to the two arrangements with Videotron that were the subject of Telecom Order 2005-387?

23. In Telecom Order 2005-387, the Commission denied TCC's Fibre Swap Agreement and the Dark Fibre Lease Agreement, both with Videotron. The Commission directed the former TELUS Communications Inc. (TCI), now TCC, to apply the rates, terms, and conditions approved under TCI General Tariff sections 2.07 – Intra-exchange Optical Fibre Service, and 3.09 – Inter-exchange Optical Fibre Service, to the provision of the optical fibre to Videotron.
24. However, in Telecom Decision 2007-101, the Commission noted that the arrangements with Videotron involved intra-exchange and IX dark fibre, that they were for 20-year periods, and that TCC does not have 20-year rates in its General Tariff. The Commission indicated that given that the existing General Tariff in TCC's operating territory in Quebec does not specifically contemplate 20-year arrangements, it was persuaded that there was substantial doubt as to the correctness of its direction in Telecom Order 2005-387 that TCC be required to apply the existing IX dark fibre General Tariff to the two arrangements. The Commission also suspended its Telecom Order 2005-387 direction to apply the existing General Tariff rates to the two arrangements with Videotron pending the outcome of this proceeding.
25. In addition, the Commission notes that in Telecom Decision 2007-74, the Commission determined that the tariff approval requirement and other rules³ applicable to Type 2 customer-specific arrangements (CSAs) that consist of both tariffed and non-tariffed services (mixed Type 2 CSAs) do not apply to such CSAs where the price of a mixed Type 2 CSA at least equals the sum of the rates of all its tariffed components.

Commission's analysis and determinations

26. Given the determination above to forbear from the regulation of IX dark fibre in TCC's operating territory in Quebec, the IX portion of the arrangements with Videotron will no longer be subject to Commission approval.

² *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

³ The other rules pertaining to costing of Type 2 CSAs is set out in Telecom Decision 2005-27.

27. With respect to the intra-exchange portion of the arrangements with Videotron, the Commission notes that the combination of the IX and the intra-exchange portions constitutes a bundle for regulatory purposes. The Commission finds that, pursuant to Telecom Decision 2007-74, the two arrangements with Videotron are mixed Type 2 CSAs, as each consists of a forborne and non-forborne service.
28. Further to Telecom Decision 2007-74, if the intra-exchange portion of the dark fibre at issue is provisioned in accordance with the company's General Tariff then no tariff for the CSA is required to be submitted for Commission approval.
29. However, to the extent that the intra-exchange portion of the bundle is not provisioned consistent with the company's General Tariff, then a tariff for the CSA that would need to comply with the requirements set out in Telecom Decision 2005-27 would need to be filed for Commission approval.
30. As noted above, the arrangements under TCC's CSAs with Videotron are for 20 years and therefore the existing tariffs for optical fibre are not applicable.
31. Given the above, the Commission directs TCC to file for Commission approval, within 60 days of the date of this Decision, 20-year rates, terms, and conditions under TCC General Tariff section 2.07 – Intra-exchange Optical Fibre Service.

Secretary General

Related documents

- *TELUS Communications Company – Regulatory issues with respect to the provision of interexchange dark fibre*, Telecom Decision CRTC 2007-101, 26 October 2007
- *Bell Canada – Application to modify the rules for mixed Type 2 customer-specific arrangements*, Telecom Decision CRTC 2007-74, 17 August 2007
- *TELUS Communications (Québec) Inc. fibre agreements with Videotron Télécom ltée*, Telecom Order CRTC 2005-387, 24 November 2005
- *Review of price floor safeguards for retail tariffed services and related issues*, Telecom Decision CRTC 2005-27, 29 April 2005

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