



## Telecom Decision CRTC 2008-41

Ottawa, 22 May 2008

### Regulatory policy

#### **Forbearance from the regulation of promotions for retail residential and business local wireline services**

Reference: 8663-C12-200718604

*In this Decision, the Commission forbears, pursuant to subsection 34(1) of the Telecommunications Act, in large part from the regulation of promotions for retail residential and business local wireline services in non-forborne areas that meet certain criteria. Forborne promotions are those where 1) the combined enrolment and benefit period does not exceed 12 months, 2) there is a cooling-off period equal to at least one-half the combined enrolment and benefit period, and 3) there are no existing or recently elapsed promotions that involve any of the same tariffed service(s) or underlying service(s) in the same geographic area.*

#### **Introduction**

1. In Telecom Decision 2006-15, as amended by the Governor in Council's *Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007-532, 4 April 2007 (modified Telecom Decision 2006-15), the competitive safeguards established for incumbent local exchange carrier (ILEC) promotions involving local wireline services were removed.<sup>1</sup>
2. The remaining filing and tariff approval requirements for promotions for residential and business local wireline services apply only to areas which do not meet the criteria for local service forbearance established in modified Telecom Decision 2006-15 (non-forborne areas).
3. In Telecom Public Notice 2007-21, the Commission initiated a proceeding to consider the appropriateness of forbearing, in whole or in part, either conditionally or unconditionally, from the regulation of promotions for retail residential and business local wireline services.
4. The following participated in this proceeding: Bell Aliant Regional Communications, Limited Partnership, Bell Canada, and Télébec, Limited Partnership (collectively, Bell Canada et al.); the Canadian Cable Systems Alliance Inc. (CCSA); MTS Allstream Inc. (MTS Allstream); Quebecor Media Inc. (QMI), on behalf of Videotron Ltd.; and TELUS Communications Company and Saskatchewan Telecommunications (TCC/SaskTel).

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<sup>1</sup> In Telecom Decision 2005-25, the Commission had established the following competitive safeguards with respect to promotions for local wireline services: (i) promotions must be available and equally promoted across one or more entire rate bands; (ii) promotions must not be limited to customers of competitors; (iii) promotions must pass an imputation test for the service, including the impacts of the promotion; (iv) the combined enrolment and benefit period of a promotion cannot exceed six consecutive months; (v) there must be no lock-in requirement beyond the promotion period; and (vi) there must be a minimum six-month waiting period after the expiry of the most recent promotion before offering a new promotion involving the same local wireline service.

5. The record of this proceeding, which closed on 19 February 2008, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."
6. The Commission has identified the following three issues to be addressed in its determinations:
  - A. Is MTS Allstream's proposal that the Commission employ, for tariffing purposes, competitive safeguards substantially similar to those established in Telecom Decision 2005-25 for ILEC promotions involving local wireline services appropriate?
  - B. What are the appropriate criteria for establishing which promotions should be considered for forbearance?
  - C. Is it appropriate to forbear from the regulation of promotions that meet the defined criteria?

**A. Is MTS Allstream's proposal that the Commission employ, for tariffing purposes, competitive safeguards substantially similar to those established in Telecom Decision 2005-25 for ILEC promotions involving local wireline services appropriate?**
7. MTS Allstream submitted that, in disposing of tariff applications for promotions, the Commission should rely on the competitive safeguards established in Telecom Decision 2005-25, with some modifications.
8. The Commission considers that MTS Allstream is proposing to employ safeguards that are substantially similar to those removed by the Governor in Council, as set out in modified Telecom Decision 2006-15, and that employing these safeguards would be inconsistent with that Decision.

**B. What are the appropriate criteria for establishing which promotions should be considered for forbearance?**
9. In Telecom Public Notice 2007-21, parties were asked to propose criteria that the Commission could use to establish which promotions should be considered for forbearance.
10. Bell Canada et al. were of the view that the Commission should forbear from the regulation of local wireline service promotions, pursuant to subsection 34(1) of the *Telecommunications Act* (the Act), if either
  - the promotions relate to a local exchange product market (as defined by the Commission) for which the ILEC has already received forbearance for 75 percent of its customer base in-territory, or
  - the promotion does not have a benefit period exceeding 12 months, and a cooling-off period of at least three months must be observed between identical promotions and be applicable on a customer-by-customer basis in relation to a specific service.

11. TCC/SaskTel proposed that the Commission should forbear from regulating local wireline service promotions with a benefit period of 12 months or less and a cooling-off period of at least three months, on a customer-by-customer basis in relation to a specific service.
12. The CCSA proposed that, in the event that the Commission decided to forbear from the regulation of promotions for local wireline services, promotions eligible for forbearance must be conducted over a period no longer than 12 months, including the benefit period. Further, there shall not have been any previous promotion for the same service and target market such that the cumulative duration, including the benefit period, would exceed 12 months.

*Commission's analysis and determinations*

13. As noted above, Telecom Public Notice 2007-21 initiated a proceeding to consider, among other things, the criteria to be used to establish which promotions should be considered for forbearance in the event forbearance from the regulation of promotions was appropriate. The Commission considers that the ILECs could use promotions to circumvent the tariff approval process if such criteria are not established.
14. The Commission considers inappropriate Bell Canada et al.'s proposal that the Commission forbear for all promotions for local wireline services in non-forborne areas as long as the ILEC had already received forbearance for 75 percent of its customer base in-territory. The Commission considers this would give unlimited flexibility to the ILECs to offer local wireline service promotions in areas where there is insufficient competition to warrant local wireline service forbearance.
15. The Commission notes that the parties, in proposing criteria for promotions that would be considered for forbearance, were to specifically address the duration of promotions and under what circumstances a new promotion should be considered a continuation of a previous promotion. Such a *de facto* continuation might arise in light of factors such as a short interval of time between promotions or minor variations between them.
16. The Commission notes that the parties generally agreed that the duration of promotions was a relevant factor to consider. The Commission notes that TCC/SaskTel, the CCSA (in the event forbearance was appropriate), and Bell Canada et al. (in relation to an ILEC that had not already received forbearance for 75 percent of its customer base) submitted that only promotions not exceeding 12 months should be eligible for forbearance.
17. Bell Canada et al. and TCC/SaskTel expressed the duration solely in relation to the benefit period, arguing that the enrolment period should not be a factor, and that the benefit period for any individual customer must not exceed 12 months.
18. The Commission considers that the enrolment period is also a crucial criterion. The Commission notes that if the only constraint on duration of a promotion eligible for forbearance was the benefit period, the promotion could qualify for forbearance even if it was offered indefinitely. The Commission concludes that promotions to be considered for forbearance should not have a combined enrolment and benefit period exceeding 12 months.

19. It is also necessary for the Commission to take into account the "cooling-off period" between promotions. The Commission notes that a cooling-off period ensures that there is sufficient elapsed time between promotions in order that subsequent offerings would not effectively extend the duration of an existing promotion.
20. TCC/SaskTel and Bell Canada et al. indicated that there should be at least a three-month cooling-off period. Bell Canada et al. proposed that the cooling-off period should apply to identical promotions. The Commission considers inappropriate Bell Canada et al.'s proposal as promotions differentiated by only minor variations would defeat the purpose of having a cooling-off period.
21. The Commission considers that a cooling-off period that is too short would essentially have the effect of extending the duration of the promotion. The Commission considers that for promotions with a longer combined enrolment and benefit period, there should be a relatively longer cooling-off period. The Commission concludes that a cooling-off period that is at least half the length of the combined enrolment and benefit period would be appropriate.
22. The Commission notes that, prior to the end of a promotion, the ILECs may wish to extend it under the same terms and conditions. The Commission considers that an extension to a promotion eligible for forbearance would be part of the original promotion provided that the extension was offered under the same terms and conditions.
23. The Commission considers that promotions with only minor variations between them amount to essentially the same promotional offerings. The Commission notes that it would be impractical and inefficient to attempt to establish rules to determine which variations among promotions would be adequate to constitute different promotions for the purposes of forbearance. The Commission further notes that clear, unambiguous rules result in transparency and efficiency. Accordingly, a promotion would not be considered for forbearance in the event that there is 1) an existing promotion involving any of the same tariffed service(s) or underlying service(s), as identified by tariff item or specific service title, or 2) a recently elapsed promotion involving any of the same tariffed service(s) or underlying service(s) (in this Decision, a "recently elapsed" promotion refers to one for which the cooling-off period has not expired).
24. The Commission notes that Bell Canada et al. and TCC/SaskTel submitted that the "cooling-off period" should apply on a customer-specific basis. The Commission considers that this proposal is not appropriate as it would prove difficult to administer and enforce.
25. The Commission further notes that an ILEC may wish to offer its promotions only in specific geographic areas. The Commission considers it appropriate that its criteria for forbearance from the regulation of promotions similarly apply on a geographic basis. For example, if a promotion is offered only in Gravenhurst, Ontario another promotion involving any of the same tariffed service(s) or underlying service(s) could be offered in Alfred, Ontario at the same time or without waiting for the expiry of the cooling-off period, and still be eligible for forbearance. However, if an ILEC offered a promotion in the geographic area of Bala, Ontario, a further promotion involving any of the same tariffed service(s) or underlying service(s) offered in the Muskoka area (which includes Bala) would not be eligible for forbearance in

Bala, unless the cooling-off period for the initial promotion had expired. Similarly, a new Labrador City promotion would not be eligible for forbearance if another promotion involving any of the same tariffed service(s) or underlying service(s) had been offered throughout Labrador (unless the cooling-off period for the Labrador-wide promotion had expired).

26. Accordingly, the Commission will consider below whether forbearance is appropriate, pursuant to section 34 of the Act, for retail residential or business promotions for local wireline services where 1) the combined enrolment and benefit period does not exceed 12 months, 2) there is a cooling-off period equal to at least one-half the combined enrolment and benefit period, and 3) there are no existing or recently elapsed promotions that involve any of the same tariffed service(s) or underlying service(s) in the same geographic area.

**C. Is it appropriate to forbear from the regulation of promotions that meet the defined criteria?**

27. Bell Canada et al. and TCC/SaskTel submitted that forbearance from the regulation of promotions, subject to the criteria they proposed, would be consistent with the policy objectives set out in paragraphs 7(b), (c), (f), and (h) of the Act and the Governor in Council's *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the Policy Direction).
28. TCC/SaskTel proposed that, pursuant to section 24 of the Act, the ILECs should be required to file in confidence with the Commission, prior to the introduction of a promotion that qualifies for forbearance, a letter of notification providing the terms and conditions of the promotion.
29. TCC/SaskTel further proposed that, for non-forborne promotions, the ILECs would still be required to file a tariff for Commission approval accompanied by supporting evidence that the promotion satisfies the imputation test.
30. The CCSA, MTS Allstream, and QMI submitted that it was not appropriate to forbear from the regulation of local wireline service promotions where there was insufficient competition to warrant local wireline service forbearance.

***Commission's analysis and determinations***

31. Promotions for local wireline service generally (a) permit consumers to benefit from special rates and conditions for a limited duration and (b) are intended to entice customers to try new or additional services, or to enhance customer loyalty. The Commission notes that such offerings enhance the competitiveness in Canadian telecommunications to the benefit of consumers.
32. The Commission notes that, pursuant to subsection 34(1) of the Act, it may make a determination to refrain, in whole or in part, and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to a telecommunications service or class of services provided by a Canadian carrier, where the Commission finds as a question of fact that to refrain would be consistent with the Canadian telecommunications policy objectives set out in section 7 of the Act.

33. Additionally, subsection 34(3) of the Act provides that the Commission shall not make a determination to forbear in relation to a telecommunications service or class of services if the Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.
34. The Commission finds that forbearance, to the extent specified below, from the regulation of promotions for retail residential and business local wireline services that meet the criteria set out in paragraph 26 above would be consistent with the telecommunications policy objectives set out in paragraphs 7(b),<sup>2</sup> 7(c),<sup>3</sup> 7(f),<sup>4</sup> and 7(h)<sup>5</sup> of the Act.
35. Accordingly, the Commission considers that it would be appropriate to forbear pursuant to subsection 34(1) of the Act, to the extent specified below, from the regulation of promotions for retail residential and business local wireline services which meet the criteria set out above. Further, the Commission finds, pursuant to subsection 34(3) of the Act, that to so forbear would not likely impair the establishment or continuance of a competitive market for that service or class of service.
36. The ILECs will continue to be required to file tariff applications for any proposed promotions for residential and business local wireline services which do not meet the criteria set out above.
37. The Commission notes TCC's/SaskTel's proposal to provide information with respect to forborne promotions that are being offered in non-forborne areas in confidence with the Commission. The Commission considers that the above criteria clearly establish which promotions will be forborne from regulation, and is of the view that such reporting would be unnecessary.
38. The Commission notes the CCSA's submission that to forbear from promotions would undermine the protection afforded by the 18-month grace period provided to small-market competitive entrants. The Commission notes that this grace period was established in modified Telecom Decision 2006-15 in relation to areas where local wireline services will be forborne. The Commission notes that the ILECs are currently permitted to offer promotions for local wireline services in non-forborne areas, even where there are small-market competitive entrants. Accordingly, the Commission considers that the effect of forborne promotions on small-market competitive entrants will be minimal and accordingly will not undermine the protection afforded by the grace period.
39. The Commission considers that forbearance from the regulation of promotions for retail residential and business local wireline services in areas where local wireline services are not forborne, to the extent set out in this Decision, is consistent with the Policy Direction, as it relies on market forces to the maximum extent feasible as the means of achieving the

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<sup>2</sup> Paragraph 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.

<sup>3</sup> Paragraph 7(c) – To enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications.

<sup>4</sup> Paragraph 7(f) – To foster increased reliance on market forces for the provisions of telecommunications services, and to ensure that regulation, where required, is efficient and effective.

<sup>5</sup> Paragraph 7(h) – To respond to the economic and social requirements of users of telecommunications services.

telecommunications policy objectives. Further, the Commission considers that to the extent that it is relying on regulation, such measures are efficient and proportionate to their purpose and interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.

## **Conclusion**

40. In light of the above, the Commission finds that it is appropriate to forbear, pursuant to subsection 34(1) of the Act, from the regulation of promotions for retail residential and business local wireline services that are offered in non-forborne areas under sections 25, 29, and 31, and subsections 27(1), 27(5), and 27(6) of the Act which meet the following criteria:
- i) the combined enrolment and benefit period of the promotion does not exceed 12 months,
  - ii) there is a cooling-off period equal to at least one-half the combined enrolment and benefit period, and
  - iii) there are no existing or recently elapsed promotions that involve any of the same tariffed service(s) or underlying service(s) in the same geographic area.

Secretary General

## **Related documents**

- *Regulatory framework for local wireline service promotions of incumbent local exchange service*, Telecom Public Notice CRTC 2007-21, 19 December 2007
- *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006, as amended by the Governor in Council's *Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007-532, 4 April 2007
- *Promotions of local wireline services*, Telecom Decision CRTC 2005-25, 27 April 2005

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