



## Telecom Decision CRTC 2008-5

Ottawa, 25 January 2008

### **Andy Shadrack, Director, Area D, Regional District of Central Kootenay – Application to review and vary certain determinations in Telecom Decision 2007-50**

Reference: 8662-R34-200713314

*In this Decision, the Commission approves in part an application by Andy Shadrack, Director, Area D, Regional District of Central Kootenay, to review and vary certain determinations in Telecom Decision 2007-50.*

### **Introduction**

1. On 13 September 2007, Andy Shadrack, Director, Area D, Regional District of Central Kootenay (Mr. Shadrack) filed an application in which he requested that the Commission review and vary certain determinations in Telecom Decision 2007-50. Mr. Shadrack submitted that the Commission had made an error of fact in approving deferral account-funded broadband expansion in certain British Columbia communities already served or planned to be served by Kaslo infoNet Society (KiN).
2. No comments were received on this application. The record closed on 13 October 2007. The public record of this proceeding 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 incumbent local exchange carriers (ILECs)<sup>1</sup> concerning the disposition of funds remaining in the deferral accounts. The Commission determined, among other things, that initiatives to expand broadband services to rural and remote communities would be an appropriate use of funds in the deferral accounts.<sup>2</sup> Accordingly, the Commission directed each ILEC that wished to pursue broadband expansion to file, by 30 June 2006,<sup>3</sup> proposals to expand broadband services to the customer premises in communities located primarily in Rate Bands E and F in high-cost serving areas unlikely to receive such services from any other service provider in the near future. They were also to consult with provincial government agencies responsible for broadband initiatives to ensure that their proposals would take into account provincial priorities.

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<sup>1</sup> The incumbent local exchange carriers referred to in Telecom Decision 2006-9 were Aliant Telecom Inc., now part of Bell Aliant Regional Communications, Limited Partnership; Bell Canada; MTS Allstream Inc.; Saskatchewan Telecommunications; TELUS Communications Inc., now TELUS Communications Company (TCC); Société en commandite Télébec, now known as Télébec, Limited Partnership (Télébec); and TELUS Communications (Québec) Inc. (TCQ), now part of TCC.

<sup>2</sup> Initiatives to improve access to telecommunications services for persons with disabilities were also determined to be an appropriate use of the funds.

<sup>3</sup> The deadline was later extended to 1 September 2006.

4. In Telecom Public Notice 2006-15, the Commission initiated a proceeding to consider the ILECs' proposals. As part of this process, alternative broadband service providers (ABSPs) had the opportunity to file submissions with respect to the exclusion of any community identified in the ILECs' proposals, on the basis that it was already served or likely to be served in the near future. ABSPs were directed to file certain information regarding their current and proposed service areas by 19 January 2007. This date was subsequently extended to 19 February 2007. The Commission, the ILECs, and other interested parties were then able to test the information submitted by the ABSPs through the use of interrogatories and requests for further responses to interrogatories.
5. In Telecom Decision 2007-50, the Commission approved the use of deferral account funds by Bell Aliant Regional Communications, Limited Partnership, Bell Canada, MTS Allstream Inc., and TELUS Communications Company (TCC) to expand broadband services to certain rural and remote communities in Rate Bands E, F, and G in British Columbia, Manitoba, Ontario, and Quebec where no ABSP had indicated, on the record of the Telecom Public Notice 2006-15 proceeding, that it currently provided or had firm plans to provide broadband services in the near future ("uncontested communities").

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

6. In Telecom Public Notice 98-6, the Commission set out the criteria to consider review and vary applications. Specifically, the Commission stated the following:

...applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to: i) an error in law or in fact; ii) a fundamental change in circumstances or facts since the decision; iii) a failure to consider a basic principle which had been raised in the original proceeding; or iv) a new principle which has arisen as a result of the decision.
7. Mr. Shadrack, whose organization provided funds for the installation of KiN's existing broadband service, submitted that the following communities should not have been approved as KiN was providing the service before Telecom Decision 2007-50 was issued:
  - Duncan Lake (Argenta)
  - Duncan Lake (Howser)
  - Duncan Lake (Lardeau)
  - Duncan Lake (Marblehead)
  - Duncan Lake (Meadow Creek)

As well, Mr. Shadrack submitted that the community of Duncan Lake (Johnsons Landing) should not have been approved as KiN had plans to serve it in the near future.

8. The Commission notes that, as part of the Telecom Public Notice 2006-15 proceeding, ABSPs that wished to request the exclusion of any community identified in the ILECs' proposals on the basis that the ABSP was already providing service or had firm plans to provide service to that community in the near future were required to file certain information with the Commission by 19 February 2007. The Commission further notes that, for purposes of Telecom Decision 2007-50, based on the Commission's review of the record of the Telecom Public Notice 2006-15 proceeding, the above Duncan Lake communities were identified as uncontested communities since no ABSP, including KiN, had requested their exclusion within the established time frame.
9. The Commission notes, however, that in a submission made as part of the Telecom Public Notice 2006-15 proceeding on 30 July 2007, after the issuance of Telecom Decision 2007-50, KiN indicated that it was currently offering broadband Internet connectivity in the following four communities:
  - Duncan Lake (Argenta)
  - Duncan Lake (Howser)
  - Duncan Lake (Lardeau)
  - Duncan Lake (Meadow Creek)
10. Although KiN indicated that it was planning to expand its services to all other communities within immediate geographic proximity to those it already served, the Commission notes that Duncan Lake (Johnsons Landing) was not specifically identified in KiN's submission as being part of its expansion plans. The Commission also notes that the community of Duncan Lake (Marblehead), identified in Mr. Shadrack's application as being served by KiN, was not identified as currently served in KiN's 30 July 2007 submission.
11. The Commission notes that, in Telecom Decision 2007-110, it approved an application to review and vary Telecom Decision 2007-50 on the basis of evidence submitted by Mitchell Seaforth Cable T.V. Ltd. that it was already serving the community of Dublin, Ontario as of 19 February 2007. The Commission determined that if Dublin was already being served by an ABSP as of 19 February 2007, within the time frame established as part of the Telecom Public Notice 2006-15 proceeding for the identification of such communities, using deferral account funds to expand an ILEC's service into this community would be contrary to Telecom Decision 2006-9 and the objective of the Telecom Public Notice 2006-15 proceeding.
12. The Commission notes that the evidence on the record of the Telecom Public Notice 2006-15 proceeding is insufficient to conclude that KiN was providing, as of 19 February 2007, broadband services to the general public meeting the criteria established in the proceeding in the various Duncan Lake communities identified as currently served in KiN's submission or in Mr. Shadrack's application. However, the Commission considers that KiN's 30 July 2007 submission, before the close of record in the Telecom Public Notice 2006-15 proceeding, provides some evidence that service is available from an ABSP and that such service was available within the time frames established in that proceeding for the identification of such

communities. Accordingly, consistent with Telecom Decision 2007-110, the Commission considers that KiN should have an opportunity to provide a full record on the service available in the communities identified as currently served in Mr. Shadrack's application, including the community of Duncan Lake (Marblehead).

13. In light of the above, the Commission concludes that there is substantial doubt as to the correctness of Telecom Decision 2007-50 insofar as it relates to the following communities identified in TCC's broadband expansion proposal:
  - Duncan Lake (Argenta)
  - Duncan Lake (Howser)
  - Duncan Lake (Lardeau)
  - Duncan Lake (Marblehead)
  - Duncan Lake (Meadow Creek)
14. Accordingly, the Commission **approves** Mr. Shadrack's application to review and vary Telecom Decision 2007-50 with respect to these communities, and therefore excludes these communities from the list of uncontested communities in the Attachment to Telecom Decision 2007-50. In the interest of fairness, the Commission will consider these communities using the same criteria used for other communities as part of the Telecom Public Notice 2006-15 proceeding.
15. In order to have a full record on which to base the Commission's final decision regarding these particular Duncan Lake communities, KiN is directed to file with the Commission and serve on all parties to the Telecom Public Notice 2006-15 proceeding the information identified in paragraph 9(a) of Telecom Public Notice 2006-15 as well as answers to interrogatories issued concurrent with this Decision by **8 February 2008**.
16. TCC and any other interested party to the Telecom Public Notice 2006-15 proceeding who wishes to comment on KiN's submission or responses to interrogatories may do so, serving a copy on all other parties, by **15 February 2008**.
17. KiN may file reply comments with the Commission, serving a copy on all other parties, by **22 February 2008**.
18. With respect to Duncan Lake (Johnsons Landing), the Commission notes that, in Telecom Decision 2007-111, it denied an application by Barrett Xplore Inc. (BXI) to review and vary Telecom Decision 2007-50 on the basis, in part, that BXI was requesting the removal of two communities which had recently become part of its expansion plans, beyond the time frame established in Telecom Public Notice 2006-15 for the identification of such communities. The Commission concluded that where a community had been approved for broadband expansion in Telecom Decision 2007-50, it would not be appropriate to vary such approval on the basis of an ABSP's late-filed submission that it planned to serve that community.

19. Consistent with Telecom Decision 2007-111, the Commission considers that Mr. Shadrack has failed to show substantial doubt as to the correctness of Telecom Decision 2007-50 with respect to Duncan Lake (Johnsons Landing) and, accordingly, **denies** Mr. Shadrack's request to remove it from the list of communities approved in Telecom Decision 2007-50.

Secretary General

### **Related documents**

- *Barrett Xplore Inc. – Application to review and vary certain determinations in Telecom Decision 2007-50*, Telecom Decision CRTC 2007-111, 22 November 2007
- *Mitchell Seaforth Cable T.V. Ltd. – Application to review and vary the determinations in Telecom Decision 2007-50 with respect to the community of Dublin, Ontario*, Telecom Decision CRTC 2007-110, 22 November 2007
- *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
- *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>*