



Telecom Decision CRTC 2008-57

Ottawa, 19 June 2008

MTS Allstream Inc.'s request to review and vary two decisions related to Centrex services

Reference: 8662-M59-200803066 and 8680-M59-200803074

In this Decision, the Commission denies an application by MTS Allstream Inc. to review and vary Telecom Decisions 2007-80 and 2008-10.

Introduction

1. On 27 February 2008, MTS Allstream Inc. (MTS Allstream) filed an application requesting the Commission to review and vary Telecom Decision 2007-80 and to review, vary, and stay Telecom Decision 2008-10 (collectively, the Centrex Decisions).
2. MTS Allstream submitted that together, the Centrex Decisions had the effect of foreclosing all possibility of sustainable competition in the Centrex and Enhanced Exchange Wide Dial (EWD) services market (collectively, Centrex services). In its view, maintaining these Decisions would cause irreversible damage to competition in the relevant market.
3. MTS Allstream argued that the incumbent local exchange carriers (ILECs) have significant market power in the Centrex services market and the Commission, in including Centrex services as part of the business local exchange services market, erred by failing to make a finding of significant market power. MTS Allstream claimed that, as a result of this error, the Commission incorrectly relied on market forces rather than regulatory forces to foster competition in the Centrex services market, contrary to the Governor in Council's Policy Direction.¹
4. The Commission received comments from Bell Aliant Regional Communications, Limited Partnership, Bell Canada, and Télébec, Limited Partnership (collectively, the Companies); Saskatchewan Telecommunications (SaskTel); and TELUS Communications Company (TCC). The Companies, SaskTel, and TCC opposed MTS Allstream's application. The record of this proceeding closed on 7 April 2008 with MTS Allstream's reply comments. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
5. The Commission has identified the following five issues to be addressed in its determinations:
 - I. In the Centrex Decisions, did the Commission err in law and in fact by disregarding the evidence put forward by competitors?

¹ The Governor in Council issued *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006.

- II. In Telecom Decision 2008-10, did the Commission fail to consider, as a basic principle, that geographic scope is a distinguishing feature of Centrex services?
- III. In Telecom Decision 2008-10, did the Commission err by finding that there were competitive alternatives to Centrex services?
- IV. In Telecom Decision 2008-10, did the Commission incorrectly place the evidentiary onus on MTS Allstream, instead of on those seeking forbearance?
- V. In Telecom Decision 2008-10, did the Commission err by forbearing from the retail Centrex offering when there is no wholesale alternative?

I. In the Centrex Decisions, did the Commission err in law and in fact by disregarding the evidence put forward by competitors?

- 6. The Commission notes MTS Allstream's position that the Commission erred in fact by disregarding the evidence it submitted in the proceedings that led to the Centrex Decisions. According to MTS Allstream, the evidence showed that the ILECs possessed in excess of 95 percent market share in the provision of business local exchange services to large and very large business customers. In its view, the vast majority of revenues generated by the ILECs, from the provision of these services to large and very large business customers, were derived from the provision of Centrex services.
- 7. The Commission further notes MTS Allstream's submission that ILECs possess significant market power in the Centrex services market as they have been able to sustain price increases as high as 19 percent within a year, with no evidence showing that the ILECs' market share has been affected.
- 8. In Telecom Decision 2007-80, the Commission noted that the market share data submitted by MTS Allstream, and noted above, did not separate the ILECs' in-territory operations from out-of-territory operations where ILECs operate as competitors. The Commission further noted that the market share data was not specific to Centrex services. Further, the Commission stated that it was not persuaded that market share for Centrex services was not affected by Commission-approved Centrex service rate increases.
- 9. The Commission maintains its view that the market share data submitted by MTS Allstream is inconclusive.

10. The Commission remains of the view that market share is but one measure of competition. The Commission considers that competitor presence is widely accepted in economics and competition law as a measure of a market's competitiveness and notes that it was the required test in the local forbearance framework set out in modified Telecom Decision 2006-15.²
11. The Commission notes MTS Allstream's submission that, in the proceeding leading to Telecom Decision 2007-80, the Commission erred by considering only one barrier to entry in the Centrex services market, namely customer migration costs, and failed to consider the other barriers that MTS Allstream had submitted, which included inter-working problems, customer inertia, and penalty provisions in the Centrex services tariffs.
12. The Commission notes that in the proceeding leading to Telecom Decision 2007-80, MTS Allstream listed three barriers for customers intending to migrate from ILEC-provided Centrex services: monetary penalties faced by a customer wishing to migrate; lengthy and highly complex customer transfer processes; and the lack of technical solutions to allow inter-working of ILEC Centrex services with competitor network platforms to offer customers seamless migration to the competing platform.
13. In the Centrex Decisions, the Commission acknowledged that customer migration would be complex, would require a transition period, and could result in customers paying higher rates during the transition. In Telecom Decision 2007-80, the Commission concluded that the record of that proceeding did not demonstrate that the entry barriers cited by MTS Allstream had prevented customers from changing service providers. The Commission notes that no new evidence regarding entry barriers was submitted on the record of the proceeding that led to Telecom Decision 2008-10. In that Decision, the Commission again confirmed its previous findings made in Telecom Decision 2007-80. In this proceeding, the Commission has not been persuaded to change its view on the above findings.
14. In light of the above, the Commission finds that it did not err in law or in fact by disregarding the evidence submitted by competitors concerning the market conditions for Centrex, as alleged by MTS Allstream.

II. In Telecom Decision 2008-10, did the Commission fail to consider, as a basic principle, that geographic scope is a distinguishing feature of Centrex services?

15. The Commission notes that in the proceedings that led to each of the Centrex Decisions, MTS Allstream raised the geographic scope of Centrex services as a basic principle. In MTS Allstream's view, the Commission ignored this principle entirely in Telecom Decision 2008-10, and thereby erred when it concluded that Centrex services were in the same product market as business local exchange services.

² Telecom Decision 2006-15 was amended by the Governor in Council in *Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007-532, 4 April 2007 (modified Telecom Decision 2006-15).

16. The Commission also notes MTS Allstream's argument that Centrex services are provisioned on a multi-wire centre basis such that customers can obtain a service that is fully customized to their needs on a province-wide or territory-wide basis. As such, geographic ubiquity is a feature that is unique to Centrex services and is a feature that distinguishes Centrex services from other business local exchange services.
17. MTS Allstream further argued that the geographic disparity between the ILEC and competitors competing in that ILEC's territory gave rise to unjust discrimination and undue preference since the ILECs could undercut competitor prices in forborne exchanges and cross-subsidize with the higher rates charged to customers in non-forborne areas.
18. In Telecom Decision 2008-10, the Commission distinguished between the competitive alternatives available to a customer operating in multiple exchanges versus a customer operating in a single exchange. The Commission concluded, based on the evidence before it, that suitable functional alternatives were available for customers located in a single exchange as well as for customers with locations in multiple exchanges.
19. Further, in Telecom Decision 2008-10, the Commission concluded that competitors could use their own facilities or lease facilities from one or more service providers to provision Centrex or Centrex-like services in one exchange or across several exchanges.
20. In Telecom Decision 2008-10, the Commission was not persuaded that business local exchange service forbearance in one exchange would unduly hinder competitors in competing for business local exchange services offered to customers across multiple exchanges, including forborne and non-forborne exchanges. In this regard, the Commission noted that Centrex services in non-forborne exchanges would continue to be tariffed at compensatory rates.
21. Accordingly, the Commission is of the view that, as a basic principle, it considered geographic scope in Telecom Decision 2008-10. In that Decision, the Commission did not find that the geographic scope of Centrex services was a distinguishing feature between Centrex and business local exchange services.

III. In Telecom Decision 2008-10, did the Commission err by finding that there were competitive alternatives to Centrex services?

22. The Commission notes MTS Allstream's submission that the Commission erred in Telecom Decision 2008-10 by considering supply conditions ahead of demand conditions. MTS Allstream argued that instead of assessing whether customers were considering alternatives to Centrex services, the Commission assessed the availability of alternatives such as private branch exchange (PBX) for larger customers spread over multiple exchanges, and individual line service (ILS) for smaller customers located in a single exchange. According to MTS Allstream, PBX was not a suitable alternative for customers with many locations due to the high capital costs associated with installing terminal equipment at every customer premise.

23. The Commission further notes MTS Allstream's argument that the examples of business customers switching to other local exchange services, submitted by the Companies in the proceeding that led to Telecom Decision 2008-10, did not support the Commission's conclusion that customers are able and willing to switch. MTS Allstream submitted that the vast majority of the revenues generated by the ILECs in the provision of business local exchange services to large and very large business customers is derived from the provision of Centrex services. In this regard, MTS Allstream argued that the Companies only submitted one example of a large business customer, with locations that were geographically dispersed, that switched from the ILEC's Centrex service to the ILEC's Internet Protocol (IP)-based local service.
24. The Commission also notes MTS Allstream's submission that the Commission erred by assuming that out-of-territory ILECs can directly provision Centrex services. MTS Allstream noted that, as the largest ILEC out-of-territory provider of business services, outside its territory of incumbency it resold Centrex services that it purchased from the local ILEC to its customers.
25. The Commission notes that in Telecom Decision 2008-10, it considered both demand and supply factors in concluding that Centrex services were part of the same market as business local exchange services, including the ability and willingness of customers to switch from Centrex services to other substitutes.
26. In Telecom Decision 2008-10, the Commission, at the outset, noted that if direct evidence is unavailable or inconclusive, it is appropriate to evaluate indirect evidence of substitutability. Accordingly, in the absence of specific direct evidence, the Commission, in its assessment of demand conditions, considered the ability and willingness of customers to switch between Centrex services and other business local exchange services.
27. Specifically, in assessing demand conditions, the Commission considered the functionality, pricing, and switching costs associated with Centrex services. The Commission's assessment and findings, as stated in Telecom Decision 2008-10, were based on the evidence submitted in that proceeding. In regard to functionality, the Commission concluded that it was technically feasible to configure other business local exchange services to offer the same features and functionality as Centrex services. In regard to pricing, the Commission concluded that rates for business local exchange services were competitive with Centrex service rates. Finally, in regard to switching costs, the Commission was not persuaded, by the record, that switching costs had prevented customers from migrating away from Centrex services.
28. In Telecom Decision 2008-10, after having assessed the demand conditions, the Commission looked at supply conditions and concluded that most local exchange carriers were capable of providing Centrex service alternatives. In forborne markets, the Commission noted that customers could choose to combine their own terminal equipment with a carrier's access to the public switched telephone network, use an out-of-territory ILEC's IP-based service or use the services of another competing carrier, such as Primus Telecommunications Canada Inc.'s Hosted PBX service, as an alternative to an ILEC's Centrex service.

29. The Commission notes that with regard to the ability of an out-of-territory ILEC to offer Centrex services, the Companies advised that Bell West, the out-of-territory affiliate of Bell Canada, offers Centrex services over its own facilities in 25 to 50 percent of cases. The Commission further notes that SaskTel indicated that it, Bell Canada, and TCC, outside their territory of incumbency, each offered their customers managed IP-based services that were equivalent to Centrex services.
30. Accordingly, the Commission considers that it did not err in finding that there were competitive alternatives to Centrex services.

IV. In Telecom Decision 2008-10, did the Commission incorrectly place the evidentiary onus on MTS Allstream, instead of on those seeking forbearance?

31. The Commission notes MTS Allstream's submission that the Commission erred by placing the onus on MTS Allstream to prove a negative, rather than placing the onus on those arguing that business local exchange service is in fact a substitute for Centrex services. The Commission further notes MTS Allstream's argument that the onus should lie on the parties seeking forbearance to prove the proposition in question.
32. In regard to the business local exchange services market, in modified Telecom Decision 2006-15, the Commission stated that:

... although the evidence on the record of this proceeding does not definitively establish the need to divide business local exchange services between multiple relevant markets, it equally does not foreclose such a possibility. The Commission, therefore, intends, for the purpose of the local forbearance framework established in this proceeding, to treat all business local exchange services as being in the same relevant market. However, the Commission is willing to entertain applications for forbearance pursuant to that framework as well as interventions with respect to such applications that propose a division of business local exchange services into multiple relevant markets. The Commission will examine the appropriateness of such a division at the time of the application.
33. Subsequent to modified Telecom Decision 2006-15, the Commission received applications from the ILECs for forbearance of business local exchange services markets which included Centrex services, for various exchanges across Canada. MTS Allstream and EastLink challenged the ILECs' inclusion of Centrex services in the same relevant market as other business local exchange services. The Commission initiated Telecom Public Notice 2007-14 to examine whether Centrex services were in the same product market as other business local exchange services. Therefore, the Commission considers that there was a burden on all intervening parties to present their case.

34. The Commission also considers that there was an onus on MTS Allstream to present arguments, with supporting rationale including evidence, as to why Centrex services should be excluded from the business local exchange services market. The Commission considers that in the proceeding that led to Telecom Decision 2008-10, it weighed all the evidence before it, including the evidence submitted by the parties seeking forbearance, in reaching its conclusion that Centrex services should not be excluded from the business local exchange services market.
35. Accordingly, the Commission considers that it did not incorrectly place the evidentiary onus on MTS Allstream instead of on those seeking forbearance.

V. In Telecom Decision 2008-10, did the Commission err by forbearing from the retail Centrex offering when there is no wholesale alternative?

36. The Commission notes MTS Allstream's submission that there was no wholesale Centrex service available to competitors, and therefore, in order to compete with the ILECs in the business local exchange services market, competitors must purchase Centrex services from the ILEC at retail rates and then repackage and resell them to their customers. MTS Allstream argued that, as a result, any determination to forbear from regulating Centrex services at the retail level effectively eliminated the regulated wholesale alternative used by competitors.
37. The Commission further notes MTS Allstream's submission that the absence of a wholesale alternative for Centrex services, in a market where business local exchange services are forborne from regulation, is contrary to the government's policy set out in its order varying Telecom Decision 2006-15. In that order the government recognized that the competitor presence, which was a criterion for local exchange forbearance, may be as a result of a competitor's own facilities combined with facilities leased from other service providers, including the ILEC.
38. MTS Allstream further submitted that in granting forbearance for Centrex services, in the absence of an ILEC-supplied wholesale alternative for Centrex services, the Commission had introduced a new principle that is inconsistent with the competitor presence test of Telecom Decision 2006-15.
39. The Commission notes that in determining that Centrex services are part of the business local exchange services market, it has concluded that other business local exchange services, including IP-based services, are alternatives for Centrex services.
40. The Commission further notes that the forbearance framework for wholesale services, recently revised in Telecom Decision 2008-17, would ensure that competitors have access to the necessary inputs to compete in the relevant retail markets, independent of the regulatory determinations in the retail market.
41. Further, the Commission retained its powers under subsection 27(2) of the *Telecommunications Act* to address issues related to undue preference and unjust discrimination in forborne markets.

Disposition of application

42. In light of the above, the Commission **denies** MTS Allstream's application to review and vary Telecom Decision 2007-80 and/or Telecom Decision 2008-10.

MTS Allstream's request for a stay

43. In view of the determination to deny MTS Allstream's request to review and vary Telecom Decision 2008-10, the Commission concludes that MTS Allstream's request for a stay of Telecom Decision 2008-10 is moot.

Secretary General

Related Documents

- *The relevant product market for Centrex and Enhanced Exchange Wide Dial services for the purposes of forbearance from regulation, Telecom Decision CRTC 2008-10, 31 January 2008*
- *MTS Allstream Inc. – Part VII application regarding the incumbent local exchange carriers' Centrex and Enhanced Exchange Wide Dial services, Telecom Decision CRTC 2007-80, 6 September 2007*
- *Examination of the relevant market for Centrex and Enhanced Exchange Wide Dial services for the purposes of forbearance from the regulation of local exchange services, Telecom Public Notice CRTC 2007-14, 17 August 2007*
- *Forbearance from the regulation of retail local exchange services, Telecom Decision CRTC 2006-15, 6 April 2006, as amended by Order in Council P.C. 2007-532, 4 April 2007*

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