



Telecom Decision CRTC 2008-70

Ottawa, 11 August 2008

Regulatory policy

Review of the basic international telecommunications services licensing regime

Reference: 8663-C12-200803115

In this Decision, the Commission concludes that the basic international telecommunications services licensing regime will continue to apply. The Commission undertakes to combine the two existing classes of licensees.

Introduction

1. In Telecom Decision 2007-51, the Commission issued an action plan indicating its intention to review existing regulatory measures in light of 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). As part of the action plan, the Commission identified the basic international telecommunications services (BITS) licensing regime as a matter to be reviewed.
2. In Telecom Public Notice 2008-3, the Commission initiated a proceeding in which it invited parties to comment on, among other things,¹ the continued appropriateness of the regulatory requirements relating to the BITS licensing regime.
3. The Commission received submissions from Bell Aliant Regional Communications, Limited Partnership, Bell Canada, Saskatchewan Telecommunications, and Télébec, Limited Partnership (collectively, the Companies); MTS Allstream Inc.; Primus Telecommunications Canada Inc. (Primus); Rogers Communications Inc.; and TELUS Communications Company (TCC).
4. The public record of this proceeding, which closed on 14 April 2008, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

¹ In Telecom Public Notice 2008-3, parties were also invited to comment on the continued appropriateness of the regulatory requirements relating to sharing groups and the provision of 9-1-1 service by competitive local exchange carriers.

Background

5. In Telecom Decision 98-17, the Commission set out the BITS licensing regime for telecommunications services providers (TSPs). The Commission considered that a licensing regime was necessary in order to deal with instances of anti-competitive conduct.² The Commission also concluded that TSPs were to pay contribution for international traffic. The reporting and remitting of contribution was made a condition of licence for TSPs who operate telecommunications facilities used in transporting traffic between Canada and another country.
6. There are two classes of international TSPs:
 - Class A licensees: TSPs who operate telecommunications facilities, whether owned by them or leased from a separate facilities provider.
 - Class B licensees: TSPs who do not operate telecommunications facilities, whether owned by them or leased from a separate facilities provider.
7. In Telecom Circular 2005-8, the Commission substantially streamlined the BITS licensing regime by eliminating a number of filing requirements, and by extending the term of the BITS licences to the 10-year maximum allowed under subsection 16.3(4) of the *Telecommunications Act* (the Act). As a result of the amendments made, Class A and Class B licensees are now subject to the same conditions of licence.

Policy Direction test

8. In order to determine whether the BITS licensing regime continues to be appropriate, the Commission will consider the following:
 - What is the purpose of the regulatory measure and what are the telecommunications policy objectives that are relevant to this purpose?
 - Can market forces be relied on to achieve the telecommunications policy objectives?
9. If the Commission determines that market forces cannot be relied on to achieve the telecommunications policy objectives, it will then address the following, as required:
 - Is the regulatory measure efficient and proportionate to its purpose?
 - Does it interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives?

² In Telecom Decision 98-17, the Commission stated that anti-competitive conduct included entering into or continuing to participate in an agreement or an arrangement that has, or is likely to have, the effect of preventing or lessening competition unduly in Canada, or otherwise providing telecommunication services in a manner that has, or is likely to have, the effect of preventing or lessening competition unduly in Canada.

What is the purpose of the regulatory measure and what are the telecommunications policy objectives that are relevant to this purpose?

10. Parties submitted that the BITS licensing regime was implemented to address potential anti-competitive behaviour.
11. Parties further submitted that the BITS licensing regime served to (a) assist the Commission in exercising supervision over TSPs, (b) facilitate enforcement of the mechanism for the reporting and remittance of contribution, and (c) facilitate information gathering.
12. Parties cited paragraphs 7(a), (c), and (f)³ of the Act as being relevant to the purpose of the BITS licensing regime.
13. The Commission agrees with parties' views with respect to the purpose of the regulatory measure and the telecommunications policy objectives that are relevant to this purpose. Accordingly, the Commission concludes that the policy objectives that are relevant to this purpose are paragraphs 7(a), (c), and (f) of the Act.

Can market forces be relied on to achieve the telecommunications policy objectives?

14. The Commission agrees with parties' views that market forces are not sufficient to achieve all of the telecommunications policy objectives. Accordingly, it is necessary to assess the regulatory measure in light of the other criteria specified in the Policy Direction.

Is the regulatory measure efficient and proportionate to its purpose? Does it interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives?

15. In assessing the conditions of licence associated with the BITS licensing regime, the Companies and TCC submitted that the regime could be streamlined and replaced with a registration regime. Primus submitted that, while it considered that the Commission should discontinue the existing licensing regime, it would not object to conditions imposed through a licence or other means to ensure full participation of TSPs in the contribution regime and data collection process.
16. The Companies and TCC questioned the continuing need for affidavits required for BITS licences. TCC also questioned the need for periodic renewals, as required by the licensing regime pursuant to the Act.

³ The policy objectives are:

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(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; and

7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective.

17. With respect to the condition of licence regarding anti-competitive conduct, the Commission notes that this condition applies to all TSPs, which include resellers. If the Commission were to eliminate this condition, it would not be able to effectively deal with anti-competitive conduct by licensees as its powers under section 27 of the Act do not apply to resellers.
18. With respect to the conditions of licence related to compliance with the contribution regime and filing requirements for the Commission's industry data collection process, the Commission considers that these conditions should be retained, rather than implementing a registration regime, to allow for more effective enforcement. The Commission notes that unlike a registration regime, the requirement to obtain a BITS licence under the Act is enforceable through an offence punishable on summary conviction under subsection 73(1) of the Act.
19. Regarding the requirement for affidavits, the Commission notes that an affidavit is required for either the issuance or the renewal of a BITS licence. The Commission considers that filing an affidavit every 10 years does not impose an undue burden on TSPs.
20. In light of the above, the Commission considers that the merits of retaining the licensing regime with its current conditions of licence outweigh its elimination or replacement by a registration regime.
21. However, as the conditions of licence for Class A and B licences are identical, the Commission sees merit in combining the two classes. The Commission will review the documentation relating to issuing a BITS licence and undertakes to merge the two classes in the near future.
22. The Commission concludes, subject to the modification considered above, that the regulatory measure is efficient and proportionate to its purpose, and does not interfere with the operation of market forces.

Conclusion

23. The Commission considers that, with the exception of combining the two classes of licences, the existing BITS licensing regime is efficient and proportionate to its purpose and interferes with the operation of competitive market forces to the minimum extent necessary to meet the telecommunications policy objectives. Accordingly, the Commission concludes that the BITS licensing regime will continue to apply.

Secretary General

Related documents

- *Review of the regulatory requirements pertaining to the BITS licensing regime, sharing groups, and CLEC/Municipality agreements for the provision of 9-1-1 service in light of Telecom Decision 2007-51, Telecom Public Notice CRTC 2008-3, 3 March 2008*

- *Action plan for the review of Commission regulatory measures in light of Order in Council P.C. 2006-1534, Telecom Decision CRTC 2007-51, 11 July 2007*
- *Basic international telecommunications services (BITS) licensing regime – Amendments, Telecom Circular CRTC 2005-8, 23 June 2005*
- *Regulatory regime for the provision of international telecommunications services, Telecom Decision CRTC 98-17, 1 October 1998*

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