



Telecom Decision CRTC 2009-612

Ottawa, 2 October 2009

TELUS Communications Company – Application to review and vary portions of Telecom Decision 2008-107 regarding forbearance from the regulation of business local exchange services in 18 exchanges in Alberta and British Columbia

File number: 8662-T66-200906547

In this decision, the Commission denies an application by TCC to modify the Commission's determinations in Telecom Decision 2008-107 regarding forbearance from the regulation of business local exchange services in 18 exchanges in Alberta and British Columbia.

Introduction

1. The Commission received an application by TELUS Communications Company (TCC), dated 24 April 2009, requesting that the Commission review and vary its determinations in Telecom Decision 2008-107 regarding Shaw Telecom Inc.'s (Shaw) competitive presence in 18 of TCC's exchanges in Alberta and British Columbia. In that decision, the Commission denied forbearance from the regulation of business local exchange services in 52 exchanges because the competitor presence test had not been met.
2. TCC submitted that there were substantial doubts as to the correctness of the decision and that the Commission had erred in law and/or in fact for 18 of these exchanges where Shaw was named as the competitor. A list of these exchanges is set out in the Appendix to this decision.
3. The Commission received comments from Bell Aliant Regional Communications, Limited Partnership, Bell Canada, and Télébec, Limited Partnership (collectively, Bell Canada et al.); MTS Allstream Inc.; Saskatchewan Telecommunications (SaskTel); and Shaw. The public record of this proceeding, which closed on 4 June 2009, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.
4. The Commission has identified the following issues to be addressed in this decision:
 - I. Did the Commission err in law in Telecom Decision 2008-107?
 - II. Did the Commission err in fact in Telecom Decision 2008-107?

Background

5. In Telecom Decision 2008-107, the Commission assessed TCC's business local forbearance application based on the local forbearance test set out 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 Commission denied TCC's application for forbearance in the 18 exchanges at issue because the exchanges did not

meet the competitor presence test, which states that the Commission may grant local forbearance if an incumbent local exchange carrier (ILEC) demonstrates that the following circumstance exists in the relevant market:

... if the ILEC offers business local exchange services, there is, in addition to the ILEC, at least one other independent facilities-based, fixed-line telecommunications service provider that offers local exchange services in the market and is capable of serving at least 75 percent of the number of business local exchange service lines that the ILEC is capable of serving.¹

I. Did the Commission err in law in Telecom Decision 2008-107?

6. TCC submitted that the Commission had erred in law if it made its determination on competitor presence without requesting appropriate data regarding Shaw's capability to serve. TCC, Bell Canada et al., and SaskTel submitted that the Commission's determination in Telecom Decision 2008-107 was made without factual support or sufficient information. They also submitted that the Commission had asked competitors to provide such information in the past and that it is difficult for an ILEC to assess a cable competitor's capability to serve.
7. The Commission notes that, as part of the proceeding leading to Telecom Decision 2008-107, TCC claimed that Shaw offered its Small Office Home Office (SOHO) service, which TCC considers a business service, in the same cable footprint as Shaw's residential digital phone offering. However, the Commission also notes that TCC did not demonstrate that Shaw was capable of serving 75 percent of business lines in the exchanges where forbearance was denied. Instead, TCC requested that Shaw provide the total number of business local lines it is capable of serving in the exchanges where TCC claimed that Shaw had a competitive presence for business local exchange services.
8. The Commission also notes that in its comments during that proceeding, Shaw submitted that it does not provide business local exchange services in the exchanges at issue. It also submitted that the Commission should not allow TCC to include Shaw's SOHO service as evidence of its competitive entry into the business local exchange market since it is offered mainly in residential areas due to lack of Shaw plant in business locations.
9. The Commission notes, with respect to TCC's claim regarding the coverage of Shaw's SOHO service, that in Telecom Decision 2007-70 it rejected the argument that in the case of cable companies that offer both residential and business local exchange services, it would be reasonable to consider the market coverage of their cable networks to be the same in both markets. As the Commission noted, residential and business serving areas may not be in the same locations and, accordingly, it is inappropriate to use residential coverage as a proxy for business coverage.

¹ Paragraph 242 of modified Telecom Decision 2006-15 (the local forbearance framework)

10. The Commission acknowledges that in the past it has requested that competitors submit additional information on their capability to serve. However, it requested such information only when ILECs and competitors submitted different estimates of their coverage for the same exchange or when competitors failed to comment on their capability to serve at least 75 percent of the business lines in a given exchange. In this case, TCC did not submit any estimate of Shaw's capability to serve the exchanges and Shaw did file its comments on its competitor presence.
11. The Commission notes that applicants can, and often do, provide an estimate of the percentage or the number of lines capable of being served by the competitor based on various relevant factors, such as the physical location of the competitor's facilities or market share.
12. In light of the above, the Commission finds that it did not err in law. Its determination to deny forbearance was based on the record of the proceeding, and TCC did not discharge its onus to provide sufficient information with respect to the competitor presence test.

II. Did the Commission err in fact in Telecom Decision 2008-107?

13. TCC submitted that the Commission erred in fact if it based its decision on the "false assertion" that Shaw does not offer business service via its SOHO service. Bell Canada et al. and SaskTel supported this claim.
14. The Commission notes that in Telecom Decision 2008-107, it did not make a determination as to whether Shaw offers business service via its SOHO service. The decision to deny forbearance was based on the fact that TCC had failed to provide evidence that there was a competitor capable of serving 75 percent of the business lines that TCC was capable of serving in the exchanges at issue. In light of the above, the Commission finds that it did not err in fact.

Conclusion

15. In light of the above, the Commission finds that it did not err in law or in fact, and finds that TCC did not raise substantial doubt as to the correctness of the Commission's determinations in Telecom Decision 2008-107. Accordingly, the Commission **denies** TCC's application.
16. The Commission notes that nothing prevents TCC from filing a new forbearance application with more information to demonstrate that the competitor presence test has been met in the exchanges in question. For example, in Telecom Decision 2008-86, the Commission considered various relevant factors that, when taken into account collectively, persuaded it of the presence of a competitor capable of serving at least 75 percent of the number of business local exchange service lines that the ILEC served. Such evidence included market conditions, market share, evidence of competitor capability, significant customer losses throughout the exchange, and the extent of competitor presence in terminal rooms of business buildings.

Secretary General

Related documents

- *TELUS Communications Company – Application for forbearance from the regulation of business local exchange services*, Telecom Decision CRTC 2008-107, 19 November 2008
- *Bell Aliant Regional Communications, Limited Partnership – Application for forbearance from the regulation of business local exchange services*, Telecom Decision CRTC 2008-86, 8 September 2008
- *Bell Aliant – Applications for forbearance from the regulation of business local exchange services*, Telecom Decision CRTC 2007-70, 10 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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Appendix

Exchanges at issue

Alberta

Fort Saskatchewan
Sherwood Park
Spruce Grove
St. Albert

British Columbia

Chemainus
Cobble Hill
Fort Langley
Ganges
Haney
Lakeview Heights
Lantzville
North Kamloops
Pitt Meadows
Rutland
Saanich
Sardis
Summerland
Wellington