



Telecom Decision CRTC 2009-73

Ottawa, 16 February 2009

Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application for immediate forbearance from the regulation of Wholesale Local Service and Features

File number: 8640-B54-200811663

In this decision, the Commission denies an application by Bell Aliant and Bell Canada seeking immediate forbearance from the regulation of Wholesale Local Service and Features.

Introduction

1. The Commission received an application by Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies), dated 27 August 2008, requesting that the Commission immediately forbear from regulating Wholesale Local Service and Features (WLSF).
2. The Bell companies filed their application following the release of *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008 (Telecom Decision 2008-17), in which, among other things, the Commission revised the definition of an essential service, set out a restructured regulatory framework for wholesale services, and assigned wholesale services within one of six new service categories. In that decision the Commission assigned the Bell companies' WLSF services to the non-essential subject to phase-out category, with a three-year transition period before mandated access is phased out.
3. The Bell companies submitted that the reasons cited by the Commission in Telecom Decision 2008-17 for requiring a transition period prior to forbearance for some services are not applicable to WLSF. The Bell companies also submitted that the Commission's rationale for waiving early termination charges (ETCs) for non-essential services subject to phase-out is not applicable to WLSF. In their view, both the transition period and the ETC waiver are inconsistent with 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).
4. The Commission received comments from Primus Telecommunications Canada Inc. (Primus), Rogers Communications Inc. (RCI), TELUS Communications Company (TCC), and Yak Communications (Canada) Corp. (Yak). The record of this proceeding, which closed on 14 October 2008, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Is the application of the three-year phase-out period and of the waiver of the ETCs with respect to WLSF consistent with the Policy Direction?

5. The Bell companies submitted that since WLSF was a new wholesale service at the time Telecom Decision 2008-17 was issued, potential and existing customers would not have based their business plans upon the expectation of continued availability of the service. Accordingly, the Bell companies submitted that WLSF customers would not require a transition period to make alternative arrangements.
6. In support of their submission, the Bell companies stated that they would abide by the contracts entered into by existing WLSF customers unless alternative arrangements were mutually agreed upon. They submitted that since those contracts cover a minimum period of three years, delaying forbearance by three years is not necessary.
7. In the Bell companies' view, immediate forbearance would be consistent with subparagraphs 1(a)(i) and 1(a)(ii) of the Policy Direction. They further submitted that the ETC waiver is inconsistent with subparagraphs 1(a)(i) and 1(a)(ii) of the Policy Direction because it inappropriately interferes with the operation of a competitive marketplace by overriding commercially negotiated provisions. They submitted that immediate forbearance would resolve the problem caused by the Commission's decision to waive the ETCs.
8. TCC supported the application while the other parties opposed it.
9. In particular, Yak submitted that given the fundamental changes to the wholesale service regulatory framework, it would be unfair to single out WLSF from other services subject to phase-out. Yak submitted that it is as dependent on a transition period as are customers of other services subject to phase-out. Primus submitted that the Commission's original determination in Telecom Decision 2008-17 regarding WLSF was consistent with the Policy Direction.
10. With respect to the waiver of the ETCs, Yak submitted that this measure is appropriate and represents fair compensation to competitors given the changes to the wholesale regulatory framework.

Commission's analysis and determinations

11. The Commission notes that the Bell companies do not dispute the application of the phase-out period and of the ETC waiver in general, but only their application to WLSF.
12. The Commission also notes that the regulatory treatment of WLSF in Telecom Decision 2008-17 is but one element of a complex and detailed regulatory framework for wholesale services. In this respect, the Commission considers that the appropriateness of the phase-out period and of the ETC waiver must be assessed against the backdrop of the various determinations made in Telecom Decision 2008-17, many of which benefit incumbent local exchange carriers such as the Bell companies.

13. The Commission considers that while WLSF was a relatively new service at the time Telecom Decision 2008-17 was issued, customers would likely have made commitments based on the terms and conditions set out in the WLSF tariff. In this respect, the Commission considers that WLSF customers are as dependent on a phase-out period as are customers of other non-essential services subject to phase-out.
14. The Commission notes that although the Bell companies submitted that they would continue to provide service under existing three-year contracts if immediate forbearance were granted, under their proposal competitors would be subject to ETCs. This situation would be contrary to the Commission's determination in Telecom Decision 2008-17 that ETCs are to be waived for customers of services subject to phase-out.
15. The Commission notes that the purpose of the phase-out period is to provide competitors with flexibility to make new provisioning arrangements. The Commission considers that the rationale for waiving the ETCs stipulated in Telecom Decision 2008-17 – that, given the regulatory changes to the framework for non-essential services, ETCs should not be a bargaining item when negotiating competitor agreements – applies equally to WLSF customers and customers of other services subject to phase-out. Without the waiver, the Commission considers that WLSF customers would be unduly disadvantaged in their negotiations to make new arrangements pending forbearance from regulation of WLSF.
16. In light of the above, the Commission considers that the application of the three-year phase-out period and of the ETC waiver is consistent with the Policy Direction. The Commission considers that market forces cannot be relied on at this time to advance the policy objectives relevant to this proceeding, namely paragraphs 7(a), (c), (f), and (h) of the *Telecommunications Act*.
17. Further, the Commission considers that the phase-out period and the ETC waiver advance the policy objectives identified above. The Commission finds that these measures are efficient and proportionate to their purpose, interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives, and neither deter economically efficient competitive entry nor promote economically inefficient entry.
18. Accordingly, the Commission **denies** the Bell companies' application.

Secretary General

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