



Telecom Regulatory Policy CRTC 2009-9

Route reference: Telecom Decision 2008-85

Ottawa, 14 January 2009

Follow up to Telecom Decision 2008-85 – Regulation of intra-exchange dark fibre services

File number: 8638-C12-200813552

In this decision, the Commission forbears from the regulation of intra-exchange dark fibre services provided by MTS Allstream, SaskTel, and TCC in their respective serving territories, to the same degree as set out in Telecom Decision 2008-85.

Introduction

1. In Telecom Decision 2008-85, the Commission forbore from the regulation of intra-exchange dark fibre services provided by Bell Aliant Regional Communications, Limited Partnership, Bell Canada, NorthernTel, Limited Partnership, and Télébec, Limited Partnership (collectively, Bell Canada et al.). The Commission also initiated a follow-up proceeding inviting parties to show cause why it should not forbear, to the same degree as provided in that Decision, from regulating intra-exchange dark fibre services provided by MTS Allstream Inc. (MTS Allstream), Saskatchewan Telecommunications (SaskTel), and TELUS Communications Company (TCC) (collectively, the other incumbent local exchange carriers (ILECs)).
2. The Commission received comments from MTS Allstream and TCC.¹ The Commission received no comments opposing forbearance of the other ILECs' intra-exchange dark fibre services. The public record of this proceeding, which closed on 22 October 2008, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Parties' submissions

3. MTS Allstream submitted that the Commission should grant it forbearance from the regulation of the provision of intra-exchange dark fibre services. In support of its request, MTS Allstream noted that it has not supplied intra-exchange dark fibre services in its Manitoba serving territory, nor did it have any plans to develop this market in the future because it has an economic incentive to instead provide higher-value lit services over its fibre facilities. MTS Allstream argued that even if it were to provide such a service in the future, it saw no reason why forbearance should not be granted to the same degree as specified in Telecom Decision 2008-85.

¹ SaskTel did not file comments on the record of this proceeding. However, the company did indicate, in the original proceeding leading to Telecom Decision 2008-85, that its intra-exchange dark fibre services should be forborne for the same reasons and to the same degree as Bell Canada et al.

4. TCC submitted that the circumstances under which forbearance was granted to Bell Canada et al. also applied to it, particularly with respect to the fact that it does not regularly provide intra-exchange dark fibre services because it has an economic incentive to instead provide higher-value lit services over its fibre facilities. TCC submitted that forbearing from the regulation of its intra-exchange dark fibre services would be consistent with section 34 of the *Telecommunications Act* (the Act), the policy objectives set out in section 7 of the Act, and 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).

Commission's analysis and determinations

5. The Commission considers that the circumstances that applied to Bell Canada et al. in regard to the provision of intra-exchange dark fibre services also apply to the other ILECs in their respective serving territories.
6. In this regard, the Commission considers that it is primarily only those customers that have a need to connect distinct locations using their own facilities and that have the significant financial and technical resources needed to operate such facilities that would require dark fibre services.
7. The Commission further considers that the other ILECs do not regularly provision intra-exchange dark fibre services² and that, even in situations where spare intra-exchange dark fibre may be available, the other ILECs have an economic incentive to provide higher-value lit services over these facilities instead of provisioning these facilities to potential competitors.
8. Consequently, the Commission finds that market forces can be relied upon to achieve the telecommunications policy objectives set out in paragraphs 7(a), 7(b), 7(f), 7(g), and 7(h) of the Act.
9. In light of the finding above, the Commission finds, pursuant to subsection 34(1) of the Act, that forbearing to the extent specified below from the regulation of intra-exchange dark fibre services provided by the other ILECs in their respective serving territories would be consistent with the telecommunications policy objectives.
10. The Commission notes that the record associated with Telecom Decision 2008-85 established that competitors have succeeded in provisioning intra-exchange dark fibre services. The Commission considers that competitors operating in the other ILECs' serving territories should be similarly capable of successfully provisioning intra-exchange dark fibre services. The Commission also notes the existence of regulatory frameworks for resolving issues regarding access to support structures, multi-dwelling units, and rights-of-way.

² As noted in footnote 1, SaskTel did not provide comments in this proceeding. However, the Commission notes that SaskTel does not provide intra-exchange dark fibre as part of its General Tariff; SaskTel leases dark fibre only to a single customer through a Special Facilities Tariff, which has been discontinued and is not available to new customers.

11. As such, the Commission finds that with respect to subsection 34(3) of the Act, forbearance to the extent specified below from the regulation of intra-exchange dark fibre services provided by the other ILECs in their respective serving territories will not likely unduly impair the establishment or continuance of a competitive market for those services.
12. In light of the foregoing, the Commission further finds that to forbear to the extent specified below from the regulation of intra-exchange dark fibre services provided by the other ILECs in their respective serving territories would be consistent with the Policy Direction which states that the Commission should rely, to the maximum extent feasible, on market forces as the means to achieving the telecommunications policy objectives.
13. Accordingly, the Commission declares that sections 24, 25, 29, and 31, and subsections 27(1), 27(2), 27(4), 27(5), and 27(6) of the Act do not apply to the other ILECs with regard to the provision of intra-exchange dark fibre services in their respective serving territories.
14. The Commission directs the other ILECs to modify their tariff pages accordingly within 30 days of the date of this decision.

Secretary General

Related document

- *Regulation of intra-exchange dark fibre services*, Telecom Decision CRTC 2008-85, 8 September 2008

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>