



## Telecom Regulatory Policy CRTC 2010-199

Route reference: Telecom Public Notice 2008-9

Ottawa, 31 March 2010

### Revision of the expanded local calling area regulatory framework

File numbers: 8663-C12-200808082 and 8663-T66-200804288

*In this decision, consistent with the Policy Direction, the Commission maintains the framework for expanded local calling areas, with modifications, in markets that contain only regulated exchanges. The dissenting opinion of Commissioner Poirier is attached.*

#### Introduction

1. On 19 March 2008, the Commission received an application from TELUS Communications Company (TCC) to review the regulatory framework for the expansion of local calling areas (LCAs) established in Telecom Decision 2002-56.<sup>1</sup> This framework, which applies to incumbent local exchange carriers (ILECs), sets out criteria and general principles for the expansion of LCAs that encompass two or more exchanges.
2. In Telecom Public Notice 2008-9, the Commission invited parties to comment on the continued appropriateness of the expanded LCA regulatory framework 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). Specifically, the Commission sought comments on whether and how the expanded LCA regulatory framework should be modified to take into consideration the fact that local residential and business services have been forborne from regulation in many exchanges.
3. The Commission received comments from Bell Aliant Regional Communications, Limited Partnership, Bell Canada, and Télébec, Limited Partnership (collectively, Bell Canada et al.); the Federation of Canadian Municipalities and the Township of Edwardsburgh/Cardinal (collectively, the Municipalities); MTS Allstream Inc. (MTS Allstream); Primus Telecommunications Canada Inc. (Primus); and TCC.
4. The public record of this proceeding, which closed on 1 December 2009, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings" or by using the file numbers provided above.

#### Background

5. An LCA is a geographic area, made up of ILEC exchanges, within which residential and business customers can make local telephone calls without incurring toll charges. In order to implement an expanded LCA, after receiving a request from a local government, an ILEC is required to perform an economic study that details the implementation costs of the desired

<sup>1</sup> As amended by Telecom Decisions 2003-27 and 2003-28.

expanded LCA. If the local government decides to proceed with the expansion based on the economic study, the ILEC is then required to file an application for approval with the Commission.

6. When a proposal to expand an LCA results in a material increase in net incremental operating costs, an ILEC may be compensated for the increased costs by applying an exogenous adjustment.<sup>2</sup> In addition, ILECs must apply a three-year temporary surcharge within the expanded LCA in order to recover forgone toll revenues, and other local exchange carriers may or may not apply such a surcharge.

### **Should the expanded LCA regulatory framework be modified and, if so, how?**

7. Bell Canada et al. and TCC submitted that the expanded LCA regulatory framework interferes with competitive market forces and should be eliminated in all local exchange markets. They also submitted that market alternatives are available in both regulated and forborne markets that enable customers to meet their calling needs without an LCA expansion. They further submitted that the expanded LCA regulatory framework distorts the marketplace because applying forgone toll revenue surcharges and exogenous adjustments could raise ILECs' prices above competitive levels, driving subscribers towards competitors.
8. While MTS Allstream and Primus supported the elimination of the expanded LCA regulatory framework in purely forborne local exchange markets, they submitted that the framework remains necessary in LCAs that encompass at least one regulated exchange, given that market forces are insufficient to protect the interests of customers in those areas.
9. The Municipalities submitted that if the existing regulatory framework is not retained, local governments would not have the ability to influence ILECs in order to have an expanded LCA. They also submitted that expanded LCAs provide social and economic benefits, such as connecting small communities with neighbouring cities. The Municipalities expressed concerns regarding outstanding requests for expanded LCAs that ILECs have yet to implement and submitted that the Commission should ensure that expanded LCAs are implemented in a timely fashion.

### **Commission's analysis and determinations**

10. The Commission considers that there have been significant developments in the telecommunications industry, in terms of both competition and technology, that raise concerns regarding the appropriateness of the existing expanded LCA regulatory framework.

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<sup>2</sup> An exogenous adjustment, which could result in a rate increase, reflects the monetary impact associated with events that are not captured by other elements of the price cap regime. Adjustments would be considered for events or initiatives that meet the following criteria:

- a) they are legislative, judicial, or administrative actions beyond the control of the company;
- b) they are addressed specifically to the telecommunications industry; and
- c) they have a material impact on the company.

11. With respect to competition, the Commission notes that forbearance from regulation has been granted for almost 80 percent of residential network access services and over 65 percent of business network access services. The Commission also notes that, due to competitive market forces, the cost of long distance services has substantially decreased since the establishment of the regulatory framework, and customers can now subscribe to toll plans that are relatively inexpensive.
12. With respect to technological development, the Commission considers that Internet, wireless, and voice over Internet protocol services have reduced or eliminated distance barriers and have redefined the way customers communicate among themselves and within their communities.
13. In light of the above, the Commission considers that modifications to the expanded LCA regulatory framework are necessary.
14. In markets that contain one or more forborne exchanges,<sup>3</sup> the Commission considers that the services provided by ILECs and other local exchange carriers, as well as the market alternatives described above, are sufficient to meet the social and economic needs of customers without requiring a regulatory framework for expanding LCAs. The Commission also considers that, given competitive pressures, it is not reasonable to expect ILECs to raise rates in forborne exchanges in order to recover the costs of expanded LCA implementation.
15. Accordingly, the Commission finds it appropriate to eliminate the expanded LCA regulatory framework in markets that include at least one forborne exchange. In addition, the Commission concludes that, for the reasons set out above, it would not be appropriate to require ILECs to implement any previously made request for an expanded LCA that would contain at least one forborne exchange.
16. In markets that contain only regulated exchanges,<sup>4</sup> however, the Commission considers that subscribers would likely not have access to all the services and market alternatives noted above, particularly those provided by other local exchange carriers. Therefore, the Commission considers that market forces alone cannot be relied upon to meet the social and economic needs of customers in these areas.
17. Accordingly, the Commission finds it appropriate to retain the expanded LCA regulatory framework, as modified below, in markets that contain only regulated exchanges.
18. The Commission notes that, under the current expanded LCA regulatory framework, exogenous adjustments to recover expanded LCA implementation costs must be applied on a company-wide basis. However, as noted above, it is not reasonable to expect ILECs to raise rates in forborne exchanges in order to recover these costs. Accordingly, the Commission finds that exogenous adjustments related to future LCA expansion pursuant to the framework are to be used only to adjust the rates of regulated services within the affected LCA.

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<sup>3</sup> In this decision, a forborne exchange refers to an exchange in which local residential and/or business service is forborne from regulation.

<sup>4</sup> In this context, these are exchanges in which local residential and business services are both regulated.

19. With respect to the concern raised by the Municipalities regarding the process for expanded LCA implementation, the Commission considers that timelines should be established to minimize delays in implementation. Accordingly, the Commission finds that expanded LCA implementations are to be subject to the following timelines:
  - (i) ILECs are to provide local governments with the economic study within 90 days of the local government's motion being presented to the ILECs; and
  - (ii) ILECs are to file their applications with the Commission within 90 days of the local government's confirmation to proceed with the desired expanded LCA.
20. In view of these modifications, local governments with outstanding requests for expanded LCA implementation in areas that contain only regulated exchanges are to confirm with the associated ILECs, by way of a motion, their continued interest in the proposed expanded LCA implementation.
21. All expanded LCAs approved by the Commission under the terms of the previous regulatory framework are grandfathered and shall continue under those terms.
22. The Commission considers that the revised expanded LCA framework set out above is consistent with the Policy Direction and advances the telecommunication policy objectives set out in paragraphs 7(a), (b), and (h) of the *Telecommunications Act*.<sup>5</sup> The dissenting opinion of Commissioner Poirier is attached.

Secretary General

### **Related documents**

- *Call for comments on TELUS Communications Company's proposed relief from requirements for the expansion of local calling area regulatory framework*, Telecom Public Notice CRTC 2008-9, 11 June 2008
- *Microcell Telecommunications Inc. – Application to review and vary Telecom Decision CRTC 2002-56*, Telecom Decision CRTC 2003-28, 7 May 2003
- *Follow-up proceeding to Telecom Decision CRTC 2002-56 – Foregone toll revenue compensation for expanded local calling areas*, Telecom Decision CRTC 2003-27, 7 May 2003

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<sup>5</sup> These 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(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; and  
7(h) to respond to the economic and social requirements of users of telecommunications services.

- *Framework for the expansion of local calling areas*, Telecom Decision CRTC 2002-56, 12 September 2002

*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>.*

## **Dissenting opinion of Commissioner Louise Poirier**

Two basic principles are central to my dissent – that of procedural fairness and the fact that, in some cases, a community still needs a regulatory framework to obtain an expanded local calling area (LCA) for the purposes of that community's economic and social development.

Before explaining my reasons, I want to say that I do support some elements of this Commission decision. I agree that the CRTC should continue to provide a regulatory framework for municipalities made up of only regulated exchanges that have made or will make a request to their incumbent local exchange carrier (ILEC) to expand their LCA. I also applaud the fact that a prescribed timeline is being added to the Telecom Decision 2002-56 regulatory framework; in my opinion, such a timeline should always have been included for the regulatory framework to be truly effective. Because of this, the ILECs will have to process related requests much more quickly. Finally, I support the fact that it is no longer necessary to apply a regulatory framework for municipalities in which a very large majority of the exchanges are forborne from regulation, market forces and technological advances having obviated the need for such a regulatory framework.

However, I am opposed to this decision for the two above-mentioned reasons. First of all, in my opinion, out of concern for procedural fairness, we should have allowed all outstanding requests to be processed under the regulatory framework existing at the time they were formulated. Thirty-five requests made to ILECs prior to the date of this decision, and which have not been processed by the Commission, will no longer be able to proceed under the Commission's supervision because they were made for markets containing one or more forborne exchanges. This strikes me as being unfair to the municipalities in question and their citizens.

How can we justify the fact that a city such as Gatineau, which made a request to Bell Canada in 2002, obtained the expansion of its LCA on 16 August 2007, while requests made by the Municipality of Brownsburg (2 August 1999 request), the City of Sarnia (28 November 2000 request), and the Township of South Frontenac (21 November 2002 request), which were all similar and made on similar dates to the same ILEC, never received follow-up? How can we explain the fact that the municipalities of Black River-Matheson and Ramore (request made to NorthernTel), Clear Hills County (request made to TELUS), Tiverton (request made to Bruce Telecom and HuronTel), and Cadillac and Rivière-Héva (request made to Télébec), to name just a few, were successful, while, for 35 other municipalities that proceeded in the same fashion, the process will stop following this Commission decision? These questions remain unanswered.

In my opinion, when the rules are changed along the way, the established procedure at the time these requests were made must be followed, even if this leads to some constraints. The CRTC has, in the past, accepted the principle to which I am subscribing – that of processing requests made under a given regime in accordance with the procedures in place at the time the requests were formulated, even if that regime is modified before the Commission processes those requests. To cite just one example, I refer to Telecom Order 2010-75, paragraph 10, which reads as follows:

*The Commission notes that there are a number of outstanding orders for service that TCC quoted per the current construction charge and ILS tariffs. The Commission considers that it would be inappropriate for these customers to be charged according to the proposed tariff since it was not in effect at the time that they requested service.*

A parallel may be drawn with the above example since a prospective client had to make a request to an ILEC, which then had to do a costs study and give the client a costs estimate. The client then made the final decision as to whether or not to proceed, even though, unlike in the present case, the ILEC did not have to come back to the Commission for approval.

It would have been necessary to follow up quickly on the requests that have yet to be processed, as requested by the Federation of Canadian Municipalities (FCM). Solutions for finalizing these requests could have been developed. For example, without going into detail, we could have allowed these municipalities to review their requests based on recently established competition and technological advances, such as Internet, wireless, and voice over Internet Protocol services. Such services effectively reduce distance obstacles and have redefined how consumers communicate with one another within their communities. Once this review was done, it could then have been left to the municipalities to decide whether or not to continue with their request. À la carte solutions could have been proposed.

The second reason for my dissent is as follows. Although municipalities in markets containing one or more forborne exchanges will be able to continue to make requests for expanded LCAs to their ILEC, they will no longer have a regulatory framework to follow and will therefore be entirely dependent on the good will of the ILECs. Without the negotiating power that the regulatory framework gives municipalities, their chances of success seem, in practice, very slim. I believe the CRTC should provide an amended and improved regulatory framework under which municipalities meeting certain conditions (i.e. a majority of regulated exchanges) would be able to make their requests following a specific procedure with the guarantee of a prescribed timeline.

We should recognize that, in a number of municipalities, there is still very little competition in telephony. Within an amended and improved regulatory framework, we could therefore have created a prerequisite for requests to be processed by the Commission, namely, that there be a specific percentage of regulated exchanges. Moreover, with regard to the outstanding requests, there are examples of municipalities with a high percentage of regulated exchanges, such as the RCM of Témiscouata and the Municipality of Lanoraie-D'Au-tray in Quebec, or the City of Clarence-Rockland and the Municipality of West Grey in Ontario. In theory, there is a competitive market. In practice, however, I wonder whether the market is able to meet the social and economic needs of subscribers in those areas. There is insufficient evidence on the record of the ability of market forces to protect consumers' interests in this type of market. I believe, as do a number of municipalities, that LCA expansion generally allows for the development of a greater feeling of belonging, while better supporting the local economy of the smaller communities dependent on nearby cities.

I will therefore conclude by restating that, with a view to procedural fairness, all LCA expansion requests made by municipalities prior to the date of publication of this new regulatory framework should have been processed by the Commission. In addition, some of the municipalities containing one or more forborne exchanges and meeting certain conditions (i.e. a majority of regulated exchanges) should have been able to benefit from an amended and improved regulatory framework that enables them to implement an expanded LCA within a prescribed timeline.