



## Telecom Regulatory Policy CRTC 2010-50

Ottawa, 1 February 2010

### **Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application to modify the high-speed intra-exchange digital network access services forbearance application process**

File number: 8640-B54-200909749

*In this decision, the Commission denies Bell Aliant's and Bell Canada's request to modify the high-speed intra-exchange digital network access services forbearance application process, but does provide clarification concerning the reporting requirements for a "connected building."*

#### **Introduction**

1. The Commission received an application from Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies), dated 26 June 2009, seeking a change to the forbearance application process associated with high-speed intra-exchange digital network access (DNA) services set out in Telecom Decision 2007-35.<sup>1</sup>
  2. The Commission received comments from Cogent Canada Inc. (Cogent), MTS Allstream Inc. (MTS Allstream), and Saskatchewan Telecommunications (SaskTel). The record of this proceeding, which closed on 2 October 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 number provided above.
  3. The Commission has identified the following two issues to be addressed in this decision:
    - I. Should the existing high-speed intra-exchange DNA services forbearance application process be modified?
    - II. Should the reporting requirements in Telecom Decision 2007-35 be clarified?
- I. Should the existing high-speed intra-exchange DNA services forbearance application process be modified?**
4. Under the forbearance framework set out in Telecom Decision 2007-35 (the current framework), an incumbent local exchange carrier (ILEC) may file an application, along with supporting information, requesting that high-speed DNA services forbearance be granted in specific wire centres where an ILEC believes that one of the three forbearance tests identified in Telecom Decision 2007-35<sup>2</sup> has been met or is likely to be met in those wire centres. All known

<sup>1</sup> In the proceeding initiated by Telecom Public Notice 2005-8, which culminated in the issuance of Telecom Decision 2007-35, the Commission established a framework for forbearance of intra-exchange high-speed digital services in order to facilitate the future deregulation of these services.

<sup>2</sup> See paragraph 111 of Telecom Decision 2007-35.

competitors in the applicable wire centres must then provide information in confidence to the Commission on the name and addresses of the buildings connected to their high-speed DNA-capable network. When that data is received, the Commission completes its analysis and issues a determination.

5. The Bell companies submitted that the current framework is not symmetrical as it places the burden of proof exclusively on the ILEC. Further, the Bell companies submitted that ILECs must spend considerable time, effort, and resources assessing if a wire centre has high-speed DNA services competitor presence, determining which competitors form that presence, and demonstrating that presence to the Commission. The Bell companies proposed that the Commission augment the current framework such that all high-speed DNA service providers, including the ILECs, would be required to file a report in confidence with the Commission on a semi-annual basis that would provide the building name and addresses of all the buildings connected to their respective high-speed DNA-capable networks in each ILEC's serving territory. The Bell companies proposed that the Commission would then analyze the data provided in the filed reports, determine which ILEC wire centres meet the criteria for forbearance, and issue a decision forbearing from the regulation of high-speed DNA services in those wire centres.
6. The Bell companies submitted that the current framework would be greatly enhanced by the incorporation of the proposed semi-annual reporting process which is similar to that used for interexchange private line services. The Bell companies submitted that the proposed enhancement would reduce the regulatory burden associated with forbearance applications that must currently be dealt with on an individual basis, ensuring that the Commission receives the information it requires in order to make a determination with regard to a particular wire centre on a timely and scheduled basis.
7. With respect to the Policy Direction,<sup>3</sup> the Bell companies submitted that the proposed enhancement would ensure that the forbearance process would be more streamlined and efficient, proportionate to its purpose, and would not place an inordinate and non-symmetrical burden on the ILECs over competitors in the high-speed DNA services market.
8. MTS Allstream submitted that the burden of proof should fall on the party requesting forbearance. MTS Allstream argued that the proposed enhancement would amount to conducting a full high-speed DNA services forbearance process twice a year, involving every ILEC and high-speed DNA services competitor in Canada, which would result in added administrative complexity and regulatory burden while offering no benefit or improvement over the existing process. MTS Allstream further submitted that since ILECs would also still have the option of filing high-speed DNA services forbearance applications following the existing forbearance process, there was no guarantee that the number of future applications would be reduced.

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<sup>3</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006.

9. MTS Allstream submitted that the Bell companies' proposal would increase the Commission's workload significantly, as the Commission would have to dedicate staff to processing, verifying, and analyzing ILEC and competitor reports provided for high-speed DNA services forbearance for thousands of wire centres every six months, in addition to dealing with the high-speed DNA services forbearance applications from time to time. MTS Allstream argued that the proposed enhancement is inconsistent with the Policy Direction as it adds to the complexity of the high-speed DNA services forbearance application process, but provides no benefits in relation to, or improvements over, the existing forbearance process.
10. Cogent submitted that the proposed enhancement would (a) disrupt the burden of proof for ILECs that the Commission established in Telecom Decision 2007-35, (b) place a disproportionate regulatory onus on competitive local exchange carriers (CLECs), and (c) add a significant additional regulatory burden on CLECs. Further, Cogent submitted that preparing semi-annual reports would be a considerable regulatory burden for small CLECs, thus diverting limited CLEC resources best devoted to business development and the establishment of competitive alternatives.
11. SaskTel submitted that there is a small likelihood that it would file a significant number of forbearance applications for wire centres in Saskatchewan in the future. SaskTel submitted that the proposed changes would require development work and ongoing support of an unnecessary reporting process and would therefore add to the administrative burden of SaskTel and all other companies operating in Saskatchewan.

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

12. The Commission notes that with the Bell companies' proposed enhancement, data on all connected buildings in more than 3,000 wire centres nationwide would have to be gathered, analyzed, and submitted by ILECs and competitors and processed, verified, and analyzed by the Commission semi-annually. The Commission further notes SaskTel's submission and, given that for some wire centres forbearance may never be warranted, considers that gathering, analyzing, and submitting the information in such wire centres would represent unnecessary work.
13. Accordingly, the Commission considers that the Bell companies' proposal to gather and process data twice a year would create a significant administrative and financial burden for all parties.
14. With respect to the Bell companies' concerns that the current framework is not symmetrical, the Commission notes that, as set out in Telecom Decision 2007-35, the onus is on the applicant to prove its case. The Commission is of the view that the onus is correctly placed on the party seeking forbearance and that this is already tempered by the requirement that competitors must gather and report information in response to an ILEC application.
15. The Commission further notes that when it publishes a decision related to an ILEC's forbearance application, it also publishes a list of certain wire centres included in an ILEC's forbearance application that did not meet the forbearance criteria but did have some competitor presence in order to assist the ILEC in future forbearance applications. A wire centre is included on the list if the wire centre contains 25 or more buildings connected to the ILEC's and/or competitor's high-speed DNA-capable network(s) and has a competitor presence

between 20 and 30 percent, or if the wire centre is considered a small market (with less than 25 total buildings connected to the ILEC's and/or competitor's high-speed DNA-capable network(s)) with some competitor presence.

16. Accordingly, the Commission considers that the burden of proof remains correctly placed on the party seeking forbearance as set out in Telecom Decision 2007-35.
17. The Commission notes that, in Telecom Decision 2007-35, it considered it necessary to set up an administratively simple and streamlined regulatory framework for high-speed DNA services to ensure that applications are disposed of efficiently and effectively. The Commission considers that the Bell companies' proposal is inconsistent with the Policy Direction because it would create additional burden and would be inefficient, given the large number of wire centres, competitors, and buildings involved.
18. In light of all the above, the Commission **denies** the Bell companies' proposed modification to the current framework.

## **II. Should the reporting requirements in Telecom Decision 2007-35 be clarified?**

19. The Bell companies submitted that the Commission had concluded in Telecom Decision 2007-35 that competitor network presence would be measured based on the number of buildings connected to the competitors' high-speed DNA-capable networks within a wire centre.<sup>4</sup> The Bell companies submitted that some competitors may be misinterpreting the requirement by reporting only those buildings where the competitor actually provides high-speed DNA services, therefore failing to report all buildings that are connected to their networks at speeds of DS-3 or greater and that are equipped to provide DNA services.
20. In an effort to eliminate any misinterpretation of the reporting requirements established in Telecom Decision 2007-35, and consistent with the Commission's determinations set out in that decision, the Bell companies proposed that each carrier must provide the Commission with the addresses of all buildings that are connected to that carrier's network at speeds of DS-3 or greater, irrespective of whether the fibre facilities are lit (commissioned) or dark and irrespective of whether services at speeds of DS-3 or greater are currently being provided to that carrier's customer(s) located in that building, or not.
21. MTS Allstream submitted that the Bell companies' concern that some competitors may potentially be understating the number of buildings connected to their high-speed DNA-capable network was misplaced. MTS Allstream submitted that the existing high-speed DNA services forbearance reporting requirements for ILECs and competitors set out in Telecom Decision 2007-35<sup>5</sup> are clear, concise, and in no need of modification.

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<sup>4</sup> Paragraph 101 of Telecom Decision 2007-35 states "In the Commission's view, an effective and efficient way to measure independently provided competitor network presence in a wire centre is to identify the number of buildings connected to competitors' high-speed DNA-capable networks within a wire centre. The Commission considers that this number is an appropriate indicator of the strength of competition in a market now and in the future, including the ability of competitors to overcome barriers to entry and expansion."

<sup>5</sup> See paragraphs 151, 152, and the Appendix to Telecom Decision 2007-35.

### **Commission's analysis and determination**

22. To provide added clarity to the forbearance reporting requirements set out in Telecom Decision 2007-35, the Commission provides the following clarification to the high-speed DNA services forbearance reporting requirements:

Parties to a high-speed DNA services forbearance application must provide the Commission with the addresses of all buildings that are connected to that carrier's network at speeds of DS-3 or greater irrespective of whether services at speeds of DS-3 or greater are currently being provided to that carrier's customer(s) located in that building and irrespective of whether the fibre facilities are lit (commissioned) or dark. Carriers are required to provide the addresses of the buildings that are so connected, not merely the addresses of the buildings where high-speed DNA services are currently being provided to customers.

Secretary General

### **Related documents**

- *Framework for forbearance from regulation of high-speed intra-exchange digital network access services*, Telecom Decision CRTC 2007-35, 25 May 2007
- *Framework for forbearance from regulation of high-speed intra-exchange digital services*, Telecom Public Notice CRTC 2005-8, 30 June 2005, as amended by Telecom Decision CRTC 2005-8-1, 22 July 2005, and Telecom Public Notice CRTC 2005-8-2, 28 October 2005

*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>.*