



## Telecom Decision CRTC 2011-152

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Ottawa, 4 March 2011

### **Bell Canada – Application for forbearance from the regulation of high-speed intra-exchange digital network access services**

File number: 8640-B2-200909757

*In this decision, the Commission approves Bell Canada's request for forbearance from the regulation of high-speed intra-exchange digital network access services in 10 wire centres in Ontario and Quebec. The Commission denies Bell Canada's request for forbearance in 25 other wire centres in Ontario and Quebec.*

#### **Introduction**

1. The Commission received an application by Bell Canada, dated 26 June 2009, in which the company requested forbearance from the regulation of high-speed intra-exchange digital network access (high-speed DNA) services in 35 exchanges in Ontario and Quebec, pursuant to the high-speed DNA forbearance framework established in Telecom Decision 2007-35. On 24 July and 16 November 2009, Bell Canada filed revised versions of its application.
2. On 1 February 2010, the Commission issued Telecom Regulatory Policy 2010-50. In that decision, the Commission provided clarification to the high-speed DNA services forbearance reporting requirements set out in Telecom Decision 2007-35.
3. By letter dated 28 May 2010, the Commission suspended review of Bell Canada's forbearance application, pending disposition of an application by MTS Allstream Inc. (MTS Allstream) requesting that the Commission review and vary Telecom Regulatory Policy 2010-50.
4. In Telecom Decision 2010-747, the Commission denied MTS Allstream's request to review and vary Telecom Regulatory Policy 2010-50. Subsequent to that decision, on 14 October 2010 the Commission issued a letter resuming review of Bell Canada's high-speed DNA services forbearance application.
5. The Commission received submissions and/or data regarding Bell Canada's revised application from AT&T Global Services Canada Co.; Atria Networks L.P.; Blink Communications Inc.; Cogeco Cable Inc.; Cogent Canada, Inc.; Hydro One Telecom Inc.; MTS Allstream; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Inc.; Shaw Telecom G.P.; TELUS Communications Company; Veridian Energy Inc.; and Verizon Canada Ltd.

6. The public record of this proceeding, which closed on 23 November 2010, 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.

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

7. In Telecom Decision 2007-35, the Commission considered that forbearance from the regulation of high-speed DNA services is warranted in the following circumstances:
  - (a) where 25 or more buildings are connected to an incumbent local exchange carrier's (ILEC) and/or competitors' high-speed DNA-capable networks within the wire centre serving area, and where a competitor network presence of 30 percent or more exists in that serving area;
  - (b) where 25 or more buildings are connected to an ILEC's and/or competitors' high-speed DNA-capable networks within the wire centre serving area and, although competitor network presence is below 30 percent in that serving area, the presence of other factors demonstrates that the serving area is sufficiently competitive to warrant forbearance; and
  - (c) where fewer than 25 buildings are connected to an ILEC's and/or competitors' high-speed DNA-capable networks within the wire centre serving area, and where competitor network presence, complemented with evidence of rivalrous behaviour, demonstrates that there is sufficient competition within the serving area to warrant forbearance.
8. As noted above, Bell Canada sought forbearance in a total of 35 wire centres within the provinces of Ontario and Quebec. The Commission notes that, based on its analysis of the evidence presented by the parties to this proceeding, all 35 of these wire centres have 25 or more buildings connected to Bell Canada's and/or competitors' high-speed DNA-capable networks within the wire centre serving area (large markets).
9. Based on its analysis of the data submitted by all parties to this proceeding, the Commission finds that, pursuant to the criterion described in paragraph 7(a), the competitor network presence in 8 of those large markets is 30 percent or more and therefore is sufficiently competitive to warrant forbearance.
10. Of the remaining 27 large markets, the Commission notes that, pursuant to the criterion described in paragraph 7(b), forbearance is warranted where a combination of other factors<sup>1</sup> demonstrates that the wire centre serving area is sufficiently competitive. The Commission finds that for 2 of these wire centres (1) the proximity to the 30 percent competitor network presence threshold, (2) the total number of buildings

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<sup>1</sup> Examples of such factors were provided in paragraph 108 of Telecom Decision 2007-35.

connected to Bell Canada's and/or the competitors' high-speed DNA-capable networks within the wire centre serving area, and (3) the contiguity to other wire centres where forbearance has been granted, demonstrates that there is a sufficient level of competition to warrant forbearance.

11. Pursuant to subsection 34(1) of the *Telecommunications Act* (the Act), the Commission finds as a question of fact that a determination to forbear, to the extent specified in Telecom Decision 2007-35, from the regulation of high-speed DNA services and future services that fall within the definition of high-speed DNA services, for the 10 wire centres listed in Appendix 1, would be consistent with the Canadian telecommunications policy objectives set out in section 7 of the Act.
12. Pursuant to subsection 34(2) of the Act, the Commission finds as a question of fact that these high-speed DNA services are subject to a level of competition for these 10 wire centres sufficient to protect the interests of users of these services.
13. Pursuant to subsection 34(3) of the Act, the Commission finds as a question of fact that to forbear, to the extent specified in Telecom Decision 2007-35, from regulating these high-speed DNA services for these 10 wire centres would be unlikely to impair unduly the continuance of a competitive market for these services.
14. In light of the above, the Commission **approves** Bell Canada's revised application for forbearance from the regulation of high-speed DNA services and future services that fall within the definition of high-speed DNA services set out in Telecom Decision 2007-35, subject to the powers and duties retained in that decision, for the 10 wire centres listed in Appendix 1.
15. The Commission determines that Bell Canada's revised application regarding the remaining 25 wire centres does not meet the forbearance criteria set out in Telecom Decision 2007-35. Accordingly, the Commission **denies** Bell Canada's revised application for forbearance from the regulation of high-speed DNA services for these 25 wire centres.

### **Disclosure of competitor network presence information**

16. Consistent with the determination set out in its letter dated 13 November 2007, titled *Disclosure of information filed in confidence with the Commission pursuant to Telecom Decision 2007-35*, the Commission is releasing the following information related to Bell Canada's revised application:
  - for four of the large market wire centres in Ontario, namely Alness, Burnhamthorpe, Don Mills, and Ernest, the competitor network presence is between 20 and 30 percent; and
  - for two of the large market wire centres in Quebec, namely Charlesbourg and Sherbrooke, the competitor network presence is between 20 and 30 percent.

Secretary General

## Related documents

- *MTS Allstream Inc. - Application to review and vary part of Telecom Regulatory Policy 2010-50 regarding the high-speed intra-exchange digital network access services forbearance application process*, Telecom Decision CRTC 2010-747, 7 October 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*, Telecom Regulatory Policy CRTC 2010-50, 1 February 2010
- *Framework for forbearance from regulation of high-speed intra-exchange digital network access services*, Telecom Decision CRTC 2007-35, 25 May 2007

## Appendix 1

### Large markets where competition is sufficient to warrant forbearance

<b>Province</b>	<b>Exchange</b>	<b>Wire Centre</b>
Ontario	Guelph	Guelph
	Ottawa-Hull	City View
Quebec	Montréal	Côte-des-Neiges
	Montréal	Dudemaine
	Montréal	Papineau
	Montréal	Sauvé
	Montréal	Saint-Dominique
	Québec	D'Aiguillon
	Québec	Sainte-Foy
	Québec	Saint-Réal