



Telecom Decision CRTC 2012-209

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Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application to review and vary Telecom Decision 2011-355 pertaining to the co-location rule

File number: 8662-B54-201109901

In this decision, the Commission reinstates the co-location rule and removes the switching and routing restriction on the tariffs for links between co-located competitors.

As well, the Commission determines that for the capacity to be applied to leased ILEC loops for the purpose of demonstrating adherence to the co-location rule, a co-located competitor should use (i) the average peak usage of its high-speed-access-enabled loops, averaged across all co-located COs, for that ILEC; and (ii) 64 Kbps capacity for loops used solely for the provision of voice services.

Introduction

1. The Commission received an application by Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies), dated 24 June 2011, in which the companies requested that the Commission (i) review and vary its determination in Telecom Decision 2011-355 by reinstating the co-location rule;¹ and (ii) stay the implementation of Telecom Decision 2011-355 while it considered their application.
2. Telecom Decision 2011-355 resulted from an application by Globility Communications Corporation (Globility) in which the company requested that it be allowed to route all of its traffic from an incumbent local exchange carrier's (ILEC) central office (CO) to the company's point of presence outside the CO over transport services leased from other co-located competitors.
3. The Commission received comments regarding the Bell companies' application from the Canadian Network Operators Consortium Inc. (CNOC), Globility, MTS Allstream Inc. (MTS Allstream)² and TELUS Communications Company (TCC). The public record of this proceeding, which closed on 2 December 2011, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

¹ The co-location rule, also referred to as the "primary purpose rule," was put in place in Telecom Decision 97-15 to ensure that competitors using mandated co-location services are doing so primarily to interconnect with the incumbent local exchange carrier, and not primarily to interconnect and exchange traffic with other co-located competitors.

² As of early 2012, MTS Allstream Inc. became known as two separate entities, namely, MTS Inc. and Allstream Inc.

4. As part of its submission, TCC requested that the Commission also review and vary its determination in Telecom Decision 2011-355 by removing the requirement that all traffic carried over interconnection links between co-located competitors must be routed directly to a competitor's point of presence outside the ILEC CO (referred to hereafter as the "switching and routing restriction").
5. The Commission considers that it must address the following issues in its determinations:
 - I. Should the Commission's determinations in Telecom Decision 2011-355 to (i) remove the co-location rule; and (ii) restrict switching and routing be reversed?
 - II. If the co-location rule is reinstated, how should it be applied to competitors?
 - III. Should the Commission stay the implementation of Telecom Decision 2011-355?
- 1. Should the Commission's determinations in Telecom Decision 2011-355 to (i) remove the co-location rule; and (ii) restrict switching and routing be reversed?**
6. The Bell companies submitted that the Commission established the co-location rule in Telecom Decision 97-15 to ensure that competitors used co-location services primarily to connect with the ILEC's facilities. They indicated that since then, co-location services have remained mandated and available to competitors for use for the same primary purpose. However, the Bell companies argued that the Commission's determination in Telecom Decision 2011-355 to remove the co-location rule has taken away the safeguard that prevented competitors from demanding co-location services for the primary or even sole purpose of interconnecting and exchanging traffic with other co-located competitors.
7. The Bell companies submitted that the Commission's determination to remove the co-location rule stemmed from an erroneous interpretation of that rule. Specifically, the Commission inferred that the rule limited a co-located competitor to route less than 50 percent of its traffic from the ILEC CO to that competitor's point of presence outside the CO via links to other co-located competitors. The Bell companies argued that interpreted correctly, the co-location rule requires that the capacity of all services that a co-located competitor leases from an ILEC terminating at that ILEC's CO be greater than the capacity of all the competitor's interconnection links to other co-located competitors in that CO. The Bell companies noted that the services that a co-located competitor leases from the ILEC comprise (i) services that connect the competitor to its end-customers (access services); and (ii) services that connect the competitor to its point of presence outside the ILEC CO (transport services). TCC supported the Bell companies' application.
8. CNOC, Globility, and MTS Allstream submitted that the Bell companies' application should be dismissed. They indicated that the co-location rule is not needed since there is no business case for competitors to co-locate in an ILEC CO solely to interconnect and exchange traffic with other co-located competitors.

9. Globility also submitted that the Commission's removal of the co-location rule in Telecom Decision 2011-355 addressed the concern it had raised in the proceeding that led to that decision, namely that ILECs were applying the co-location rule restrictively, preventing it from using the transport services leased from other co-located competitors to transport all of its traffic out of the ILEC CO to its point of presence.
10. TCC submitted that the Commission had erred in imposing the switching and routing restriction in Telecom Decision 2011-355. TCC noted that the Commission originally imposed a switching and routing restriction in Telecom Decision 97-15, but had subsequently removed the restriction in Order 2001-780. TCC stated that by removing the restriction, the Commission allowed co-located competitors to use the full functionality of their co-located equipment. TCC argued that the Commission's determination in Telecom Decision 2011-355 to re-impose this restriction would cause co-located competitors to either (i) reconfigure their networks and cease using the switching and routing functionality of their co-located equipment; or (ii) depend solely on ILEC transport services and cease using interconnection links to other co-located competitors. TCC indicated that neither option is favourable to the development of competition. TCC also submitted that in Telecom Decision 2011-355, the Commission did not refer to its previous determination in Order 2001-780 or reassess the reasons for that determination.
11. CNOC and Globility supported TCC's request that the Commission remove the switching and routing restriction.

Commission's analysis and determinations

12. In Telecom Decision 2011-355, the Commission determined that competitors, such as Globility, should be permitted to transport all of their traffic through another provider. This determination was based on an understanding that competitors could be put at a disadvantage because (i) the ILEC's rate for competitor digital network services could be increased now that the services were forborne; and (ii) the existing co-location rule required them to obtain over 50 percent of their transport services from the ILEC.
13. The Commission agrees with the Bell companies that the comments they filed in the proceeding leading to Telecom Decision 2011-355 were misstated in paragraph 5 of that decision. Upon reviewing the definition of the co-location rule, the Commission considers that the rule does allow a competitor to route all of its traffic out of the ILEC CO to its point of presence using transport services leased from other co-located competitors, provided it leases sufficient ILEC access services.
14. Given the revised understanding of the co-location rule, the Commission considers that removal of the rule was not required to address Globility's concerns. The Commission also considers that the co-location rule does serve a purpose in ensuring that the primary purpose of co-location is to interconnect to ILEC access and transport services.

15. In light of the above, the Commission finds that there is substantial doubt as to the correctness of its determination in Telecom Decision 2011-355 to approve Globility's request without regard to the co-location rule.
16. Accordingly, the Commission hereby varies Telecom Decision 2011-355 to reinstate the co-location rule. The extent to which a co-located competitor is permitted to access transport services offered by other co-located competitors, via links, must therefore be determined in accordance with the co-location rule.
17. The Commission notes TCC's submission that the switching and routing restriction would result in competitors having to reconfigure their networks or depend solely on ILEC-supplied transport. The Commission agrees with TCC that neither option is favourable to competition.
18. The Commission therefore finds that there is substantial doubt as to the correctness of its determination in Telecom Decision 2011-355 to impose the switching and routing restriction. Accordingly, the Commission hereby varies its determinations in paragraph 23 of Telecom Decision 2011-355 and removes the switching and routing restriction. The Commission considers that its above determination to reinstate the co-location rule serves as a safeguard against competitors using co-location services for the primary purpose of exchanging traffic with other competitors, which eliminates the need for further restrictions on switching and routing.
19. Consequent to its reinstatement of the co-location rule, the Commission considers it necessary to examine the manner in which the co-location rule is applied to competitors.

II. How should the co-location rule be applied to competitors?

20. In the proceeding that led to Telecom Decision 2011-355, Globility submitted that it was being prohibited from using leased transport services from other co-located competitors, for the purpose of transporting its traffic from the ILEC CO to its point of presence, because the ILECs were incorrectly applying the co-location rule. Globility submitted that the ILECs had chosen to apply the co-location rule in a restrictive manner by not considering the higher capacity that results from the loop³ when it is used for the provision of high-speed access services. Specifically, Globility, supported by MTS Allstream, submitted that the ILECs underestimated a co-located competitor's interconnection capacity with the ILEC by applying a capacity of 1 DS0 (or 64 Kbps)⁴ per loop even though many of the loops were used by competitors to provide high-speed access services.
21. In the present proceeding, Commission staff issued interrogatories to all interested parties to solicit their views on the appropriate loop capacity to be used in the application of the co-location rule.

³ A loop is a copper telephone line connecting an end-customer to an ILEC CO, also commonly referred to as an "unbundled local loop."

⁴ Kilobits per second.

22. CNOC, Globility, and MTS Allstream proposed that a co-located competitor seeking to provide transport services to other co-located competitors be required to demonstrate that it leases at least 100 loops or equivalent ILEC access services.
23. The Bell companies proposed a loop capacity of 128 Kbps, based on their end-customers' average peak period usage of the companies' retail high-speed-access-enabled loops. The Bell companies also noted that a percentage of their loops continues to be used solely for the provision of voice services and that, therefore, applying a capacity of 64 Kbps is appropriate for these loops.
24. Although Globility did not favour the reinstatement of the co-location rule, it submitted its average peak period usage⁵ of its leased high-speed-access-enabled loops.
25. TCC proposed that the Commission set the loop capacity using actual loop capacity rather than theoretical estimates. Specifically, the company proposed to set the loop capacity between 64 Kbps and 768 Kbps, based on average loop length in its territory.

Commission's analysis and determinations

26. In 1997, when the co-location rule was established, unbundled loops were exclusively used for voice communications at a capacity of 64 Kbps. The Commission considers that a capacity of 64 Kbps continues to be appropriate for a loop used exclusively for voice communications. However, with newer technologies, these loops can be used to provide a combination of voice and data services, each with differing capacity limits. Accordingly, for the application of the co-location rule, the Commission considers it appropriate to determine the capacity of high-speed-access-enabled loops based on the loop's actual use.
27. The Commission considers that the proposal by CNOC, Globility, and MTS Allstream that a co-located competitor lease a minimum of 100 loops or equivalent ILEC access services would only confirm that the competitor is not co-located solely to interconnect with other carriers. The Commission finds that this proposal would not serve to ensure that the primary purpose of co-location is achieved.
28. The Commission also considers that TCC's capacity proposal, based on average loop length, is not appropriate, since it is unlikely that this capacity is always available in the transport network for an end-customer.
29. The Commission considers that average peak period usage would be a more appropriate measure to estimate the capacity of high-speed-access-enabled loops, since it captures the capacity available to the high-speed access service end-user. The Commission notes that the figures submitted by the Bell companies and by Globility representing average peak period usage of their high-speed-access-enabled loops differ significantly. The Commission considers that, given this variation, setting a fixed capacity for high-speed-access-enabled loops for the purpose of applying the

⁵ Submitted to the Commission in confidence.

co-location rule would be inappropriate. The Commission also considers that applying the co-location rule based on an arbitrary loop capacity could constrain the ability of a competitor to offer its end-customers greater usage during peak periods.

30. In light of the above, the Commission finds that, for the capacity to be applied to leased ILEC loops for the purpose of demonstrating adherence to the co-location rule, a co-located competitor should use (i) the average peak usage of its high-speed-access-enabled loops, averaged across all co-located COs, for that ILEC; and (ii) 64 Kbps capacity for loops used solely for the provision of voice services.
31. Upon receiving a request from a co-located competitor for interconnection links to connect to another co-located competitor, an ILEC may require one or both co-located competitors to demonstrate that they are adhering to the co-location rule.

III. Should the Commission stay the implementation of Telecom Decision 2011-355?

32. The Commission finds that in light of its above determinations, the Bell companies' request to stay the implementation of Telecom Decision 2011-355 is moot.

Secretary General

Related documents

- *Globility Communications Corporation – Application regarding the provision of links between interconnecting carriers in central offices*, Telecom Decision CRTC 2011-355, 31 May 2011
- *The Coalition for Better Co-location – Part VII application for general relief with respect to the co-location regime*, Order CRTC 2001-780, 26 October 2001
- *Co-location*, Telecom Decision CRTC 97-15, 16 June 1997