Canadian Radio-television and Telecommunications Commission | Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2012-39

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La Compagnie de Téléphone de Lambton Inc. – Implementation of local competition for Cogeco Cable Inc.

File number: 8663-L2-200813742

In this decision, the Commission approves, by majority vote and with some modifications, Lambton's implementation plan for local competition, which was filed in response to a formal expression of interest from TCC and Cogeco.

Introduction

1. The Commission received a local competition implementation plan, dated 9 June 2011, from La Compagnie de Téléphone de Lambton Inc. (Lambton). The plan was filed in response to a formal signed expression of interest from TELUS Communications Company (TCC) and Cogeco Cable Inc. (Cogeco), which indicated that TCC wished to interconnect with Lambton to allow Cogeco Câble Québec s.e.n.c. (Cogeco Québec) to provide local services as a competitive local exchange carrier (CLEC) in Lambton's serving territory.

2. In its implementation plan, Lambton identified the services and network components that it planned to make available to Cogeco and TCC. Lambton also provided its estimated costs for implementing local competition and local number portability (LNP) [referred to jointly as local competition] in its serving territory.

3. In Telecom Decision 2006-14, the Commission, among other things, set out the framework for local competition implementation in the territories of the small incumbent local exchange carriers (ILECs), including directives that the small ILECs must follow when submitting their implementation plans.

4. The Commission reviewed this framework and determined, in Telecom Regulatory Policy 2011-291, that local competition should continue to be introduced in the territories of all the small ILECs based on the existing framework, subject to the modifications set out in that decision. In particular, the Commission established certain measures to help mitigate the financial impact on small ILECs of implementing local competition.

5. The Commission received comments from TCC and Cogeco. The public record of this proceeding, which closed on 14 November 2011, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Issues

6. The Commission notes that Lambton, Cogeco, and TCC have generally agreed on most elements of the local competition implementation plan, but that issues related to costs and certain implementation matters remain.

7. The Commission has examined the following questions in considering whether to approve Lambton's proposed local competition implementation plan:

   I. Are Lambton's proposed costs for implementing local competition appropriate?

   II. What mechanisms are available to Lambton to recover its local competition costs?

   III. What outstanding matters need to be addressed prior to implementing local competition in Lambton's territory?

I. Are Lambton's proposed costs for implementing local competition appropriate?

8. Lambton proposed start-up and ongoing costs for the components required to implement local competition within its serving territory, including those related to carrier service group (CSG)[1] functions, LNP access, consulting, maintenance, and system modifications, among others. Over the five-year study period, Lambton estimated that it would incur approximately $239,000 in start-up costs and an average of $120,000 per year in ongoing costs to implement local competition in its serving territory.

9. Cogeco and TCC generally considered that the costs proposed by Lambton were overestimated. For example, TCC noted that the company's proposed costs for CSG personnel were high because they included non-CSG functions. TCC also submitted that consulting fees should be excluded from start-up and ongoing costs because they are regulatory expenses that should not be covered according to Phase II costing principles. Cogeco and TCC submitted that since certain local competition implementation costs may be borne by new entrants and/or other telecommunications service providers, they should be diligently reviewed.

10. The Commission notes that the regulatory expenses, including consulting fees, incurred as a result of the Commission's decision to introduce local competition are appropriately included in Lambton's Phase II costs.

11. Based on its review of Lambton's proposed costs, the Commission has made adjustments to the following cost components: CSG, maintenance, system modification, personnel training, CSG accommodation, and LNP database access ongoing expenses; and consulting fees. A summary of the company's proposals, the Commission's adjustments, and the rationale for these adjustments is set out in the Appendix to this decision.

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1 The CSG is functionally separate from a telecommunications company's retail operations. Its role is to liaise and coordinate with CLECs when conducting a variety of inter-carrier activities, primarily with respect to customer transfers.

12. Accordingly, the Commission **approves** $182,000 in start-up costs and $50,000 per year in ongoing costs for the implementation of local competition in Lambton's serving territory.[2]

II. What mechanisms are available to Lambton to recover its local competition costs?

13. Three regulatory mechanisms are available to Lambton for the recovery of local competition implementation costs: the payment of start-up costs by new entrants, the recovery of up to $2 per network access service (NAS)[3] per month of ongoing costs through the National Contribution Fund (NCF), and an exogenous adjustment.

14. In Telecom Regulatory Policy 2011-291, the Commission determined that small ILECs with 3,000 or fewer total residential and business NAS, including those of all their affiliates and/or their parent company, would not be required to pay their start-up costs for local competition and wireless number portability (WNP). Number portability start-up costs, for both LNP and WNP, are to be reimbursed over a period of three years by the CLECs and/or wireless service providers (WSPs) that make use of number portability in the small ILEC's territory. Local competition implementation start-up costs other than those for number portability are to be reimbursed over a period of three years by the CLECs, excluding WSPs, present in the exchange.

15. The Commission notes that Lambton serves less than 3,000 total NAS and that only Cogeco Québec has expressed an interest in providing local services as a CLEC in Lambton's serving territory. Accordingly, the Commission determines that Cogeco Québec should reimburse Lambton for all start-up costs for local competition and number portability. Should any other CLEC or WSP begin operating in Lambton's territory in the three years following the local competition implementation date, that competitor would be required to share start-up implementation costs with Cogeco Québec, in accordance with the Commission's determinations in Telecom Regulatory Policy 2011-291.[4]

16. Based on the start-up costs approved above, the Commission determines that should Cogeco Québec confirm its intention to compete in Lambton's serving territory, it would be required to reimburse Lambton $182,000[5] in start-up costs over three years. The first payment will be due within 45 days of the date of this decision.

17. In Telecom Regulatory Policy 2011-291, the Commission also concluded that the small ILECs that incur ongoing local competition costs will be permitted to lower the primary exchange service (PES) rate component used in calculating their subsidy by an amount equal to the lesser of the approved ongoing costs on a per-NAS, per-month basis or $2 per NAS per month.

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2 Start-up costs are expressed in terms of the present worth of annual costs over the five-year study period, while ongoing annual costs are expressed as annual equivalent costs over the five-year study period.

3 A NAS provides customers with access to the telephone network.

4 See Telecom Regulatory Policy 2011-291, paragraphs 168 to 170.

5 The total amount of start-up costs includes $34,000 in number portability costs and $148,000 in other local competition costs.

18. The Commission notes that the approved ongoing costs for Lambton exceed the maximum of $2 per NAS per month established for ongoing cost recovery. Accordingly, the Commission **approves** a reduction of $2 in Lambton's rate component used in its subsidy calculation effective the date that local competition is implemented.

19. Regarding the remaining $22,000 in ongoing costs, the Commission notes that in Telecom Order 99-239, it considered that it was appropriate to permit the large ILECs to recover their local competition start-up and ongoing costs through the use of an exogenous adjustment.[6] The Commission also adopted this approach for other small ILECs in Telecom Decisions 2007-78 and 2007-93.

20. The Commission notes that an exogenous adjustment would give Lambton the flexibility to increase rates to recover its local competition ongoing costs that are not covered by the ongoing cost recovery mechanism. Therefore, the Commission **approves** an exogenous adjustment of $22,000.

21. Should Lambton choose to take advantage of the exogenous adjustment by filing a tariff application to increase rates, its application should include a proposed cost recovery methodology that (i) complies with the regulatory framework and policies in place at the time of filing, and (ii) is consistent with previous decisions regarding the implementation of local competition for other small ILECs.[7]

III. What are the outstanding matters prior to implementing local competition in Lambton's territory?

22. The Commission notes that Lambton has not yet filed a tariff application to introduce competitor services. Should Cogeco Québec confirm its intention to compete in Lambton's territory, Lambton is to file a tariff application for any wholesale services required for the implementation of local competition in its territory.[8]

23. The Commission notes that the Association des Compagnies de Téléphone du Québec inc., on behalf of Lambton, proposed that the company serving a customer should be responsible for inside wire,[9] while TCC submitted that the rules concerning inside wire currently in place for the large ILECs should also apply to the small ILECs.

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[6] An exogenous adjustment, which could result in a rate increase, reflects the financial 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.

[7] See Telecom Decisions 2007-78 and 2007-93.

[8] The Commission will treat these applications as competitor tariffs based on the procedures summarized in Telecom Information Bulletin 2010-455.

[9] Inside wire is the wire inside the customer's home.

24. The Commission has approved numerous ILEC applications to transfer responsibility for inside wire to their customers in the past, but it has never approved transfer of that responsibility to CLECs. The Commission notes that if CLECs were to assume responsibility for inside wire for their customers, they could choose to transfer that responsibility to their customers or charge for repair service without Commission oversight since their retail operations are not regulated. As a result, the Commission finds that it would not be appropriate to transfer responsibility for inside wire based on which company serves the customer.

25. The Commission notes that transferring responsibility for Lambton's inside wire to its customers would be consistent with the approach approved for the large ILECs and some small ILECs. The Commission considers that transferring responsibility to customers would benefit those customers by allowing them to change local service providers without creating misunderstandings about who is responsible for the inside wire. Accordingly, the Commission encourages Lambton to file a Part 1 application to transfer responsibility for inside wire to its customers, to the extent it has not already transferred that responsibility.[10]

26. Based on the parties' submissions and number portability guidelines set out by the CRTC Interconnection Steering Committee (CISC), the Commission determines that all steps required to allow for local competition to be implemented in the territory of Lambton are to be completed by no later than **1 August 2012**, which will constitute the effective date of local competition implementation.[11]

Conclusion

27. In light of the above,

    a) The Commission **approves, by majority vote,** Lambton's implementation plan as modified above.

    b) Cogeco Québec is to advise the Commission and Lambton, within 10 days of the date of this decision, whether or not it still intends to pursue local competition in Lambton's territory.

    c) If Cogeco Québec confirms its intention to compete in Lambton's territory, the Commission directs Lambton to

        i. file for Commission approval all required wholesale tariffs by **13 February 2012**; and

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[10] Most of Lambton's customers should already be responsible for their inside wire pursuant to Ordonnance générale no. 36 of the Régie des services publics du Québec, which stated that beginning 30 June 1983, once a small ILEC customer connects customer-provided terminal equipment, the customer is responsible for inside wire.

[11] This local competition implementation date reflects the 180-day timeline proposed by Lambton and which is consistent with the CISC guidelines for number portability, plus an additional 10 days to allow Cogeco Québec to confirm its intention to compete in Lambton's territory.

ii. provide information and assistance to Cogeco Québec and TCC in the negotiation process, as required, in order to implement local competition as quickly as possible so that Cogeco Québec may begin operating in Lambton's territory by no later than **1 August 2012**.

d) When implementing all aspects of local competition in its serving territory, including but not limited to technical and network interconnection, Lambton is to abide by the industry consensus items outlined in the various CISC documents related to interconnection, as well as the existing rules as outlined in the various decisions, orders, and letters issued by the Commission pertaining to local competition.

Compliance with the Policy Direction

28. The Commission considers that its approval of Lambton's implementation plan for local competition, as modified above, is consistent with the Policy Direction[12] requirements that the Commission should (i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives; and (ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives. The Commission also considers that its determinations in this decision will advance the policy objectives set out in paragraphs 7(*b*), 7(*f*), and 7(*h*) of the *Telecommunications Act*.[13]

Secretary General

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[12] *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

[13] These objectives are the following: 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; 7(*f*) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and 7(*h*) to respond to the economic and social requirements of users of telecommunications services.

Related documents

- *Obligation to serve and other matters*, Telecom Regulatory Policy CRTC 2011-291, 3 May 2011, as amended by Telecom Regulatory Policy CRTC 2011-291-1, 12 May 2011

- *Approval processes for tariff applications and intercarrier agreements*, Telecom Information Bulletin CRTC 2010-455, 5 July 2010

- *Implementation of local competition in NorthernTel, Limited Partnership's serving territory − ExaTEL Inc. and Ontera*, Telecom Decision CRTC 2007-93, 28 September 2007, as amended by Telecom Decision CRTC 2007-93-1, 1 November 2007

- *Implementation of local competition in TBayTel's serving territory – ExaTEL Inc. and Shaw Communications Inc.*, Telecom Decision CRTC 2007-78, 31 August 2007

- *Revised regulatory framework for the small incumbent local exchange carriers*, Telecom Decision CRTC 2006-14, 29 March 2006

- *Local competition start-up costs proceeding, Telecom Public Notice CRTC 98-10*, Telecom Order CRTC 99-239, 12 March 1999

Appendix

Summary of local competition implementation cost adjustments for Lambton

	Proposal	Commission adjustment	Rationale for adjustment
1.	**CSG (salaries)** Proposed ongoing CSG expenses based on estimate of number of full-time employees (FTEs) and labour unit costs.	Adjusted expenses to reflect use of 25% of an FTE for CSG functions.	Proposed FTE estimate for CSG functions is unreasonable given the company's size and the expected number of disconnect orders. Revised expenses are consistent with those proposed by other small ILECs of similar size.
2.	**Consulting** Proposed start-up and ongoing consulting fees based on time estimates and labour unit costs. Lambton's proposed consulting fees included the preparation of two local competition implementation plans – one in 2008 and one in 2011.	Limited the start-up consulting fees to a maximum amount of $50,000. Limited the ongoing consulting fees to $10,000 per year for the first three years and $5,000 per year for the remaining two years.	Consulting fees should generally be similar among small ILECs; revised fees are more in line with those proposed by other small ILECs. Expect greater efficiencies given the duplicative nature of the work completed by one consultant for several companies, and for two similar implementation plans produced in 2008 and 2011. Need for ongoing consulting services should decrease over time as local competition is implemented.
3.	**Maintenance** Proposed ongoing maintenance expenses based on a given percentage of the associated capital costs.	Limited the maintenance expenses to a maximum of 10% of associated capital costs.	Cost to maintain telecommunications equipment should generally be similar across small ILECs; revised expenses are more in line with those proposed by other small ILECs.
4.	**System modifications** Proposed one-time expenses for modifications to existing systems based on time estimates and labour unit costs.	Limited these expenses to a maximum of $50,000.	Cost to modify existing systems should generally be similar across small ILECs; revised expenses are more in line with those proposed by other small ILECs.

	Proposal	Commission adjustment	Rationale for adjustment
5.	**CSG (personnel training)** Proposed initial one-time and ongoing expenses for CSG personnel training based on number of days of training and third-party hourly training rate.	Limited these expenses to a maximum of $12,500 for initial training and to a maximum of $5,000 for ongoing training (in Year 3).	Revised training expenses are more in line with those proposed by other small ILECs.
6.	**CSG (accommodation)** Proposed ongoing expenses for CSG office space.	Limited these expenses to a maximum of $6,000 per year.	Proposed annual floor space expenses are too high relative to expected amount of office space required and expected costs of office space in rural areas.
7.	**LNP database − ongoing costs** Proposed ongoing expenses for access to LNP database including SS7.	Limited these expenses to a maximum of $44,000.	Revised expenses are more in line with those proposed by other small ILECs.