Telecom Decision CRTC 2012-45

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Tuckersmith Communications Co-operative Limited – Implementation of local competition for Bragg Communications Inc., operating as EastLink

File number: 8663-T7-200909640

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

Introduction

1. The Commission received a local competition implementation plan, dated 20 July 2011, from Tuckersmith Communications Co-operative Limited (Tuckersmith). The plan was filed in response to a formal signed expression of interest from Bragg Communications Inc., operating as EastLink (EastLink), which indicated that it wished to interconnect with Tuckersmith to provide local services as a competitive local exchange carrier (CLEC) in Tuckersmith's serving territory.

2. In its implementation plan, Tuckersmith identified the services and network components that it planned to make available to EastLink. Tuckersmith 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 EastLink. 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 Tuckersmith and EastLink have generally agreed on most elements of the local competition implementation plan, but that issues related to certain implementation matters remain.

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

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

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

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

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

8. Tuckersmith 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, Tuckersmith estimated that it would incur approximately $67,000 in start-up costs and an average of $20,000 per year in ongoing costs to implement local competition in its serving territory.

9. The Commission has reviewed Tuckersmith's proposed start-up and ongoing costs and considers that they are reasonable. Accordingly, the Commission **approves** $67,000 in start-up costs and $20,000 per year in ongoing costs for the implementation of local competition in Tuckersmith's serving territory.[2]

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

10. Two regulatory mechanisms are available to Tuckersmith for the recovery of local competition implementation costs: 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. [4]

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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.

[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] Pursuant to Telecom Regulatory Policy 2011-291, the local competition and wireless number portability start-up costs of small ILECs with 3,000 or fewer total residential and business NAS, including those of all their affiliates and/or their parent company, are to be reimbursed by new entrants. Given that Tuckersmith serves more than 3,000 NAS, this cost recovery mechanism is not available to Tuckersmith.

11. In Telecom Regulatory Policy 2011-291, the Commission 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.

12. The Commission notes that the approved ongoing costs for Tuckersmith are below the maximum of $2 per NAS per month established for ongoing cost recovery. Accordingly, the Commission **approves** a reduction of $0.72 in Tuckersmith's rate component used in its subsidy calculation effective the date that local competition is implemented.

13. Regarding the approved $67,000 in start-up 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.[5] The Commission also adopted this approach for other small ILECs in Telecom Decisions 2007-78 and 2007-93.[6]

14. The Commission notes that an exogenous adjustment would give Tuckersmith the flexibility to increase rates to recover its local competition start-up costs. Therefore, the Commission **approves** an exogenous adjustment of $17,000 per year for a period of five years.[7]

15. Should Tuckersmith 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.[8]

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

16. The Commission notes that Tuckersmith has not yet filed a tariff application to introduce competitor services. Accordingly, Tuckersmith is to file a tariff application for any wholesale services required for the implementation of local competition in its territory.[9]

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5 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.

6 In these decisions, the Commission determined that the affected small ILECs should be allowed to recover their start-up costs over a period of five years.

7 This amount represents Tuckersmith's start-up costs of $67,000 annualized over a period of five years.

8 See Telecom Decisions 2007-78 and 2007-93.

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

17. The Commission notes that Tuckersmith proposed that the company serving a customer should be responsible for inside wire,[10] while EastLink submitted that this was not a desirable arrangement and that transferring responsibility to the customers was the most efficient option.

18. 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.

19. The Commission notes that transferring responsibility for Tuckersmith'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 Tuckersmith to file a Part 1 application to transfer responsibility for inside wire to its customers.

20. 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 Tuckersmith are to be completed by no later than **23 July 2012**, which will constitute the effective date of local competition implementation.[11]

Conclusion

21. In light of the above,

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

    b) The Commission directs Tuckersmith to

        i. file for Commission approval all required wholesale tariffs by **3 February 2012**; and

        ii. provide information and assistance to EastLink in the negotiation process, as required, in order to implement local competition as quickly as possible so that EastLink may begin operating in Tuckersmith's territory by no later than **23 July 2012**.

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[10] Inside wire is the wire inside the customer's home. It is currently owned by Tuckersmith and not by the customer.

[11] This local competition implementation date reflects the 180-day timeline proposed by Tuckersmith and which is consistent with the CISC guidelines for number portability.

c) When implementing all aspects of local competition in its serving territory, including but not limited to technical and network interconnection, Tuckersmith 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

22. The Commission considers that its approval of Tuckersmith'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

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

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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.