



Telecom Decision CRTC 2013-100

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Ottawa, 1 March 2013

Canadian Network Operators Consortium Inc. – Application to review and vary Telecom Decision 2012-209 regarding the co-location rule

File number: 8662-C182-201208002

In this decision, the Commission finds that the existing co-location rule is appropriate and that it should not be varied, except with respect to the calculation used to demonstrate compliance with the rule.

Background

1. In Telecom Decision 97-15, the Commission put in place the co-location rule, also referred to as the “primary purpose rule,” to ensure that competitors that lease space from incumbent local exchange carriers (ILECs) and locate their equipment in the ILEC’s central offices¹ do so to primarily interconnect with the ILEC. The co-location rule was put in place to ensure that co-located competitors do not use the ILEC’s facilities primarily to interconnect and exchange traffic with other co-located competitors. To apply the rule, the Commission established a calculation to determine whether the capacity dedicated to the co-located competitor’s interconnection with the ILEC was greater than that dedicated to other co-located competitors.
2. In Telecom Decision 2012-209, the Commission developed a revised calculation (the current calculation) to make it less restrictive than the calculation established in Telecom Decision 97-15. The current calculation states that, for the application of 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 central offices, for that ILEC; and (ii) 64 kilobit-per-second (Kbps) capacity for loops used solely for the provision of voice services.

The application

3. The Commission received an application from the Canadian Network Operators Consortium Inc. (CNOc), dated 4 July 2012, in which CNOc argued that the current calculation was unworkable, and requested that the Commission review and vary Telecom Decision 2012-209 by rescinding the co-location rule or replacing the current calculation with an alternate calculation.

¹ A central office is a building where telephone companies terminate lines belonging to customers and locate switching equipment to interconnect those lines with other networks.

4. The Commission received comments regarding CNOC's application from Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies); Globility Communications Corporation (Globility); MTS Inc. and Allstream Inc. (collectively, MTS Allstream);² and TELUS Communications Company (TCC). The public record of this proceeding, which closed on 1 November 2012, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.
5. The Commission considers that it must address the following issues in this decision:
 - I. Should the Commission vary its finding in Telecom Decision 2012-209 regarding the application of the co-location rule?
 - II. If the Commission's finding should be varied, how can the current calculation be improved?

I. Should the Commission vary its finding in Telecom Decision 2012-209 regarding the application of the co-location rule?

6. CNOC argued that the current calculation introduced a new principle whose correctness is in substantial doubt, because it cannot be efficiently implemented and will lead to an undue lessening of competition. CNOC argued that the current calculation (i) prevents co-located competitors from buying sufficient capacity to accommodate growth, (ii) forces co-located competitors to purchase capacity inefficiently, and (iii) restrains the capacity of co-located competitors in central offices that have above-average peak usage.
7. CNOC, Globility, and MTS Allstream (the co-located carriers) requested that the co-location rule be rescinded. They submitted that the co-location rule was no longer necessary to ensure that the primary purpose of co-location is to interconnect with the ILEC. The co-located carriers further submitted that the co-location rule prevented them from accessing transport services available from co-located carriers other than the ILEC.
8. Each of the co-located carriers also proposed various alternatives to the current calculation, should the Commission not rescind the co-location rule. The co-located carriers proposed, among other things, that the current calculation be varied in one of the following ways: (i) that there not be any exchange of traffic between co-located competitors in an ILEC central office that does not originate at or is not destined for at least one of those co-located carriers' loops³ leased from the ILEC; (ii) that the co-location rule be modified so that co-located competitors would sign affidavits

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

³ A loop is the circuit that connects the customer premises to the edge of the telecommunications service provider's network.

attesting to their compliance with the co-location rule; or (iii) that co-located competitors be allowed to have a fixed capacity limit for interconnecting links,⁴ such as two interconnecting links of 100 megabits per second.

9. The Bell companies and TCC objected to the proposal to rescind the co-location rule, arguing that it ensures that the primary purpose of co-location is to interconnect with the ILEC. The Bell companies and TCC also noted that the co-located carriers did not provide specific examples of when the co-location rule prevented a co-located competitor from obtaining sufficient capacity to meet its requirements, and therefore considered that there is no substantial doubt as to the correctness of the current calculation.
10. The Bell companies and TCC were of the view that the alternatives proposed by the co-located carriers would either circumvent the co-location rule or restrict competition and, as such, should not be implemented.

Commission's analysis and determinations

11. The Commission notes that the co-located carriers did not provide any evidence to support their claim that the co-location rule is no longer required to ensure that the primary purpose of co-location is to interconnect with ILEC networks or to access ILEC services. Further, the Commission considers that the removal of the co-location rule would eliminate an important safeguard that prevents co-located competitors from using the ILEC's facilities primarily to interconnect and exchange traffic with other co-located competitors.
12. In light of the above, the Commission finds that the co-location rule is appropriate and should not be rescinded.
13. With regard to the appropriateness of the current calculation of the co-location rule, the Commission notes that the co-located carriers did not provide any examples of how the current calculation was unworkable, nor did they provide any instances of how the current calculation otherwise constrained their capacity or hindered competition.
14. With regard to CNOC's argument that the co-location rule prevents co-located competitors from buying sufficient capacity to accommodate growth, the Commission notes that the capacity limits for interconnecting links for co-located competitors have improved as a result of the application of the current calculation. Prior to its application, some co-located competitors were limited to claiming a capacity of 64 Kbps per loop, but the current calculation allows co-located competitors to claim a much higher capacity per loop.
15. Regarding CNOC's argument that the current calculation forces co-located competitors to purchase capacity inefficiently, the Commission considers that requests to purchase interconnecting links are infrequent and that no evidence was provided to demonstrate that this represented a widespread problem.

⁴ An interconnecting link provides a connection between two interconnecting carriers (co-locators) in the same central office at a given speed.

16. Accordingly, the Commission determines that the current calculation does not prevent co-located competitors from buying sufficient capacity to accommodate growth, nor does it force co-located competitors to purchase capacity inefficiently.
17. With respect to CNOC's concern that the current calculation restrains the capacity of co-located competitors in central offices that have above-average peak usage, the Commission agrees that the use of a calculation based on an average across central offices could negatively impact certain co-located competitors, as it could prevent some competitors from obtaining sufficient capacity to meet their needs in some instances. Further, the Commission considers that this issue could also produce an undesirable consequence in central offices with below-average peak usage, as co-located competitors may use any excess capacity to interconnect and exchange traffic with other co-located competitors beyond the permitted amount, thereby circumventing the co-location rule.
18. In light of the above, the Commission finds that there is substantial doubt as to the correctness of one component of the current calculation, as it pertains to restraints to the capacity of co-located competitors in those central offices where they have above- or below-average peak usage. As a result, the Commission finds it appropriate to vary its finding in Telecom Decision 2012-209 regarding the application of the co-location rule.

II. If the Commission's finding should be varied, how can the current calculation be improved?

19. With regard to the co-located carriers' proposed alternatives to the current calculation, the Commission considers that the proposed alternatives would restrict competition or would circumvent the co-location rule. Moreover, the Commission considers that the proposed alternatives would not directly address the issue of restraints to the capacity of co-located competitors in those central offices where they have above- or below-average peak usage. The Commission considers, therefore, that it would be inappropriate to implement any of the co-located carriers' proposed alternatives to the current calculation.
20. The Commission notes that it proposed another calculation during the course of the proceeding, using the average peak usage of a co-located carrier's loops for each specific co-located central office, rather than the usage averaged across all co-located central offices (the revised calculation).
21. The Commission considers that the revised calculation would be an improvement over the current calculation, as it would more accurately match the situation in specific central offices by neither substantively underestimating or overestimating peak usage.

22. The Commission notes that the Bell companies and TCC did not object to the revised calculation. The Commission also notes that none of the parties indicated that the revised calculation would be an administrative burden and, further, that Globility and MTS Allstream agreed that the revised calculation would allow for extra capacity in a central office with above-average peak usage.
23. The Commission notes Globility's submission that the revised calculation could not be applied in the case of a competitor establishing a new co-location. The Commission considers, in such a case, that a co-located competitor should initially use its average peak usage across all co-located central offices for that ILEC as a proxy until the average peak usage for the new co-location is determined, after which point the revised calculation is to be used.
24. Accordingly, the Commission finds it appropriate to vary Telecom Decision 2012-209 in order to revise one component of the current calculation such that, for the purpose of calculating capacity, a co-located competitor is to use (i) the average peak usage of its high-speed-access-enabled loops, averaged in the relevant central office only; and (ii) 64 Kbps capacity for loops used solely for the provision of voice services.
25. If a competitor is establishing a new co-location, that competitor should initially use its average usage across all co-located central offices, for that ILEC, as a proxy until the co-located competitor's average peak usage for the new co-location is determined.

Policy Direction

26. The Commission considers that the findings in this decision are consistent with the Policy Direction⁵ and advance the policy objectives set out in paragraphs 7(c) and (f) of the *Telecommunications Act*.⁶ Further, consistent with subparagraph 1(a)(ii) of the Policy Direction, the Commission considers that it has, by revising one component of the current calculation, relied on regulatory 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.

Secretary General

Related documents

- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application to review and vary Telecom Decision 2011-355 pertaining to the co-location rule*, Telecom Decision CRTC 2012-209, 5 April 2012
- *Co-location*, Telecom Decision CRTC 97-15, 16 June 1997

⁵ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

⁶ The cited policy objectives are
7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; and
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.