Telecom Decision CRTC 2016-246

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Allstream Inc. – Application to review and vary certain determinations set out in Telecom Regulatory Policy 2015-326 concerning the phase-out of mandated access to unbundled local loops

The Commission ***denies*** *a request from Allstream that the Commission review and vary its finding in Telecom Regulatory Policy 2015-326 to withdraw mandated access to unbundled local loops following a three-year phase-out period.*

Background

Unbundled local loops

1. Unbundled local loops (ULLs) provide a transmission path[1] by means of copper facilities between an end-user's premises and an incumbent local exchange carrier's (ILEC) central office that can be used by competitors to provide local telephony and Internet access services to residential and business customers.

2. In Telecom Decision 97-8, the Commission required the ILECs to unbundle their local access facilities to make ULLs available on a wholesale basis to competitive local exchange carriers to support competition.

3. In Telecom Decision 2008-17, the Commission maintained the existing obligation imposed on the ILECs to provision ULLs. ULLs were classified as a conditional essential service on the basis that competitors did not have any viable wholesale alternatives to the ILEC ULLs and that it would not be practical or feasible for competitors to duplicate the functionality of ULLs.

Telecom Notice of Consultation 2013-551 proceeding

4. In Telecom Notice of Consultation 2013-551, the Commission initiated a proceeding to review issues related to wholesale services and their associated policies. In that proceeding, the Commission examined, among other things, the appropriateness of the previously established wholesale service categories, and what services, if any, should be mandated or continue to be mandated.

[1] In general, there are two types of local loops available (Type A and Type B). A Type A local loop is an analogue transmission path that supports the transmission of a voice-grade signal. A Type B local loop is a digital transmission path that supports the transmission of an Integrated Services Digital Network Basic Rate Interface (ISDN BRI) type signal.

5. The Commission issued its determinations on wholesale wireline services, including ULLs, in Telecom Regulatory Policy 2015-326. These determinations as to whether certain services should be mandated or not were based on the application of the essential services test (hereafter referred to as the Essentiality Test)[2] supplemented by a set of policy considerations.[3]

6. In assessing wholesale wireline services against the three components[4] of the Essentiality Test,[5] the Commission indicated that for a wholesale service to meet the Essentiality Test, all three components must be satisfied. The Commission concluded that ULLs

   - met the input component of the Essentiality Test in rate bands[6] A, B, C, and D within the provinces of Alberta, British Columbia, Ontario, and Quebec, given that ULLs in these areas continue to be an input for competitors to provide voice telecommunications services in the downstream local wireline residential and business markets;

   - met the duplicability component of the Essentiality Test, given that it was not practical or feasible for competitors to duplicate the functionalities of ULLs; and

   - did not meet the competition component[7] of the Essentiality Test, given that the withdrawal of mandated access to ULLs would not have a significant impact now and in the future on competition for residential and business local voice services, regardless of the exchange or the ILEC serving territory.

7. Given that ULLs did not meet all three components of the Essentiality Test across the country, and there was no valid policy reason supporting a need to continue

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[2] As set out in paragraph 36 of Telecom Decision 2008-17, the Commission determined that to be essential, a facility, function, or service must satisfy all of the following conditions: (a) it is required as an input by competitors to provide telecommunications services in a relevant downstream market (the input component of the Essentiality Test); (b) it is controlled by a firm that possesses upstream market power such that withdrawing mandated access, or denying access to the facility, would likely result in a substantial lessening or prevention of competition in the downstream retail market (the competition component of the Essentiality Test); and (c) it is not practical or feasible to duplicate the functionality of the facility (the duplicability component of the Essentiality Test). Also see paragraphs 33 to 46 of Telecom Regulatory Policy 2015-326.

[3] In paragraph 51 of Telecom Regulatory Policy 2015-326, the Commission stated that it would apply the following policy considerations to inform, support, or reverse a decision to mandate the provision of a wholesale service: (i) public good; (ii) interconnection; and (iii) innovation and investment.

[4] See footnote 2.

[5] See paragraphs 172 to 202 of Telecom Regulatory Policy 2015-326.

[6] A rate band represents a group of exchanges or wire centres with similar characteristics, such as number of lines and loop length. While the criteria applied to classify exchanges into bands are uniform across the country, band costs may vary by ILEC or by region within the ILECs' serving territories.

[7] Two elements are assessed in the competition component of the Essentiality Test: (i) the upstream market conditions, specifically whether a firm or group of firms has market power, and (ii) the impact that any upstream market power may have on competition levels in the associated downstream retail market(s).

mandating the provision of these facilities,[8] the Commission found that ULLs were not essential and would no longer be mandated. In exchanges where there were no ULLs in service, the Commission determined that ULLs should be forborne, effective 22 July 2015.

8. However, in exchanges where there was demand for ULLs, the Commission found that a three-year phase-out period (i.e. until 22 July 2018) for ULLs was appropriate to enable competitors to review their provisioning requirements and take appropriate measures. During the phase-out period, ULLs were to continue to be made available in these exchanges. ILECs were provided with two options to implement the phasing-out of ULLs:

- If an ILEC’s intent is to continue to make ULLs available after the expiry of the phase-out period, the ILEC can choose to file a forbearance application regarding the provision of its ULLs, no earlier than one year prior to the end of the phase-out period.

- If an ILEC’s intent is to cease making ULLs available, that ILEC will be required to provide written notice to existing customers and the Commission one year prior to the end of the phase-out period.

Application

9. The Commission received an application from Allstream Inc. (Allstream), dated 21 October 2015, in which the company requested that the Commission review and vary certain aspects of Telecom Regulatory Policy 2015-326. Allstream submitted that there is substantial doubt as to the correctness of the Commission’s determination that mandated access to all ULLs be phased out in three years. Allstream submitted that the Commission made an error in fact by concluding that the withdrawal of mandated access to ULLs in exchanges where there is current demand for ULLs would not have a significant impact on competition for business local voice services.

10. Allstream requested that the Commission vary its determinations with respect to ULLs such that, instead of being phased out, mandated access to ULLs would be grandfathered in exchanges in rate bands A through D which have existing demand for ULLs as of 22 July 2018. Allstream submitted that mandated access to ULLs should then continue to be grandfathered until three years after there is a demonstrated alternative to ULLs or until 10 years after the date of the decision, whichever comes first.

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[8] The Commission noted, among other things, that a decision to no longer mandate the provision of ULLs could lead to a greater adoption of advanced or emerging services by consumers. For example, competitors that migrate their end-users from retail Internet access services provisioned over ULLs to services provisioned over wholesale high-speed access services would enable their end-users to access new content and applications that were previously inaccessible.

11. The Commission received interventions regarding Allstream's application from Bell Canada, OpenMedia.ca, TELUS Communications Company (TCC), and Vaxination Informatique (Vaxination).

12. The public record of this proceeding, which closed on 14 December 2015, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Issues

13. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it would use to assess review and vary applications filed pursuant to section 62 of the *Telecommunications Act* (the Act). Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to (i) an error in law or in fact, (ii) a fundamental change in circumstances or facts since the decision, (iii) a failure to consider a basic principle which had been raised in the original proceeding, or (iv) a new principle which has arisen as a result of the decision.

14. The Commission has identified the following issues to be addressed in this decision:

    - Is there substantial doubt as to the correctness of the Commission's determination that mandated access to ULLs be phased out in three years?

    - If yes, is Allstream's proposed remedy to grandfather ULLs in exchanges in rate bands A through D which have existing demand for ULLs as of 22 July 2018 appropriate?

Is there substantial doubt as to the correctness of the Commission's determination that mandated access to ULLs be phased out in three years?

Positions of parties

15. Allstream submitted that the Commission made an error in fact in Telecom Regulatory Policy 2015-326 in concluding that the withdrawal of mandated access to ULLs in exchanges where there is current demand for ULLs would not have a significant impact on competition for business local voice services.

16. Allstream submitted that it continues to use a substantial number of ULLs, and that other competitors in the business market also continue to rely extensively on ULLs for last-mile access. Allstream also submitted that it is neither practical nor feasible to duplicate ULLs and that, at the current time, there is no economically feasible wholesale alternative to ULLs, nor is there a retail alternative to ULLs that could be used as a fallback.

17. Allstream submitted that there is no ubiquitous second network serving business locations, as there is with the cable carriers' networks in the residential market, and that competition and choice in business voice markets will be diminished without

mandated wholesale access to ULLs, as business customers will face a duopoly in the supply of such services.

18. Allstream submitted that competitors would not know until at most a year before phase-out whether or not ULLs would even continue to be available post phase-out, and that three years was far too short a period for competitors to migrate all their existing customers off ULLs without subjecting those customers to substantial hardship and in many cases depriving them of a choice of service provider. Allstream argued that ULLs should not be phased out until wholesale alternatives that are functionally equivalent to the ILECs’ ULLs are available. Allstream argued that this lack of alternatives raises substantial doubt as to the correctness of the Commission’s decision to phase out mandated wholesale access to ULLs, at least in the business market.

19. Bell Canada submitted that there is no substantial doubt that ULLs are not necessary for continued local wireline voice competition. Bell Canada also submitted that Allstream already made detailed submissions in the proceeding leading up to Telecom Regulatory Policy 2015-326 to the effect that withdrawing mandated access to ULLs would have a significant impact on competition. However, the Commission, having assessed the fulsome evidence before it, did not agree with Allstream.

20. Bell Canada submitted that the three-year phase-out period provided an appropriate balance between the decline in market demand for ULLs and the need for ULL customers to avoid end-customer service issues as they either migrate voice services over other platforms or negotiate long-term supply arrangements past the phase-out period’s three years. Bell Canada argued that nothing prevents Allstream from now starting to pursue supply commitments from ILECs that can come into effect at the end of the phase-out period, or even before, as in the case of off-tariff arrangements.

21. OpenMedia submitted that the Commission had made a risky decision with potentially adverse consequences for competitive choices available to Canadians by phasing out ULLs, as there remains considerable uncertainty about the manner in which the Commission plans to implement the new disaggregated wholesale high-speed access (HSA) framework it adopted in Telecom Regulatory Policy 2015-326.[9]

22. TCC submitted that Allstream did not demonstrate that the Commission interpreted or applied the factual evidence before it erroneously, and that Allstream did not provide any substantive evidence which would cast doubt on the Commission’s findings.

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[9] The Commission determined, among other things, that the model by which ILECs and Cablecos are mandated to provide wholesale HSA services would transition from aggregated to disaggregated wholesale HSA service, and that the transition would begin in Ontario and Quebec, where demand is greatest. Telecom Regulatory Policy 2015-326 applies to the following ILECs: Bell Canada, MTS Inc., Saskatchewan Telecommunications, and TCC. In that same decision, Bragg Communications Incorporated, operating as Eastlink; Cogeco Cable Inc.; Rogers Communications Partnership (now known as Rogers Communications Canada Inc.); Shaw Cablesystems G.P.; and Videotron G.P. were collectively referred to as the Cablecos.

23. Vaxination submitted that the competition provided by the means of ULLs is more important than ever given that the services provided by Internet service providers are no longer competitive until disaggregated wholesale HSA services are implemented.

24. In reply, Allstream argued that services provided over ULLs continue to be important alternatives in many exchanges, and that an analysis of competitive use of ULLs for each of the residential and business markets, on an exchange-by-exchange basis, as is required for local service forbearance, would have provided a far different picture than the blanket determination made in Telecom Regulatory Policy 2015-326.

25. With respect to negotiating arrangements for long-term access to ULLs rather than waiting until phase-out, Allstream submitted that, based on past experience, such an approach is likely to end in competitors paying far higher rates for ULLs during the remainder of the phase-out period and beyond, and/or getting involved in long, drawn out negotiations that consume time and effort at significant cost.

Commission’s analysis and determinations

26. During the proceeding that led to Telecom Regulatory Policy 2015-326, the Commission assessed ULLs based on the facts that were gathered through several rounds of interventions and interrogatories, as well as through an oral hearing. During that proceeding, Allstream provided comments regarding the use of ULLs to provide local wireline business voice services, and these comments were taken into account by the Commission.

27. Based on the record of that proceeding, the Commission concluded that ULLs did not meet the competition component of the Essentiality Test, given that the withdrawal of mandated access to ULLs would not likely result in a substantial lessening or prevention of competition in the local retail wireline residential and business voice services markets, regardless of the exchange or the ILEC serving territory.[10]

28. Allstream did not provide any evidence during the proceeding that led to Telecom Regulatory Policy 2015-326 nor in this proceeding demonstrating that ULLs were relied upon extensively in the downstream business market. Further, Allstream did not provide new facts or new evidence on the record of this proceeding that were not already provided by Allstream as part of the proceeding that led to Telecom Regulatory Policy 2015-326 to demonstrate that not mandating access to ULLs would negatively impact the downstream local wireline business voice services market to a substantial degree.

29. With respect to Allstream’s assertion that an analysis of competitive use of ULLs for each of the downstream residential and business markets, on an exchange-by-exchange basis, would have provided a different determination, the record of this proceeding does not support this assertion.

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[10] See paragraph 185 of Telecom Regulatory Policy 2015-326.

30. The exchanges where ULLs are still provisioned are almost all within rate bands A through D, which are rate bands comprising urban or suburban areas. There is competition in all of those exchanges, not only from service providers relying on ULLs, but also from cable companies and wireless service providers. The impact of phasing out ULLs may potentially be more important in the downstream business market given that cable companies may be seen to have a smaller footprint compared to the ILECs in that market and given that wireless services may not be as widely used as a substitute for business services. However, these considerations do not constitute evidence to demonstrate that the elimination of the mandatory provision of access to ULLs would negatively impact the downstream local wireline business voice services market to a substantial degree. The Commission considers that to the extent that there is any impact, it is likely to be minimal, given the low prevalence of ULLs in the downstream local wireline voice services market. This finding is further supported by the fact that the trend in use of ULLs (i) has been steadily declining over the years (i.e. a decrease of approximately 50% from 2009 to 2013), and (ii) is expected to continue to decline.[11]

31. The Commission considers that Allstream's request that ULLs should not be phased out until wholesale alternatives that are functionally equivalent to the ILECs' ULLs are available is inconsistent with the Commission's finding in Telecom Regulatory Policy 2015-326 that ULLs failed to meet the competition component of the Essentiality Test, i.e., mandated access to ULLs was no longer necessary to ensure continuance of competition in the downstream market. The Commission considers that Allstream has not provided compelling arguments or new evidence to demonstrate that the Commission should change that finding.

32. As such, the Commission considers that it did not make an error in fact by concluding that the withdrawal of mandated access to ULLs would not likely result in a substantial lessening or prevention of competition in local wireline markets.

33. In light of the above, the Commission finds that Allstream has failed to demonstrate substantial doubt as to the correctness of its determination that mandated access to ULLs be phased out in three years.

If yes, is Allstream's proposed remedy to grandfather ULLs in exchanges in rate bands A through D which have existing demand for ULLs as of 22 July 2018 appropriate?

34. As it has concluded above that there is no substantial doubt as to the correctness of its determination in Telecom Regulatory Policy 2015-326 that mandated access to ULLs be phased out in three years, the Commission finds that consideration of Allstream's proposed remedy concerning ULLs is moot.

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[11] See paragraphs 175, 176, and 182 of Telecom Regulatory Policy 2015-326.

Conclusion

35. In light of the foregoing, the Commission **denies** Allstream's application.

Secretary General

Related documents

- *Review of wholesale wireline services and associated policies*, Telecom Regulatory Policy CRTC 2015-326, 22 July 2015, as amended by Telecom Regulatory Policy CRTC 2015-326-1, 9 October 2015

- *Review of wholesale services and associated policies*, Telecom Notice of Consultation CRTC 2013-551, 15 October 2013, as amended by Telecom Notice of Consultation CRTC 2013-551-1, 8 November 2013

- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011

- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008

- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997