



Telecom Decision CRTC 2017-457

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Ottawa, 20 December 2017

Public record: 8622-B2-201700469

Bell Canada and Northwestel Inc. – Request for implementation of a traffic stimulation regulatory framework

*The Commission **denies** the application by Bell Canada and Northwestel Inc. proposing the implementation of a traffic stimulation regulatory framework for local network interconnection, on the basis that there is insufficient evidence to demonstrate that such a framework is currently needed.*

Background

1. In Telecom Decision 97-8, the Commission established the local network interconnection regime to enable competitive local exchange carriers (CLECs) to interconnect with incumbent local exchange carriers (ILECs), according to Commission-approved rates, terms, and conditions, in order to exchange local traffic and compete in the local exchange services market. The regime, which has been modified in subsequent Commission decisions, is based on the main principle that CLECs are equal in stature to ILECs as carriers in the local exchange services market.
2. Pursuant to the local network interconnection regime, CLECs and ILECs share the costs for interconnecting trunks. The regime also includes two cost compensation mechanisms for the exchange of traffic between local exchange carriers (LECs): (a) bill and keep, which applies if the traffic exchanged between two LECs is balanced; and (b) mutual compensation, to be applied in the event that traffic is not balanced.¹
3. Under the bill and keep approach, the originating carrier bills its customers for calls and keeps the corresponding revenue, without compensating the terminating carrier for call termination expenses. Under the mutual compensation approach, if an imbalance exists for a significant period of time, the LEC that originates less traffic than it terminates is entitled to compensation from the other LEC. The Commission expected that, over time, there would be a balance in traffic exchanged and the imbalance payments from this compensation mechanism would be reduced or eliminated.

¹ Traffic is considered to be balanced when the difference in the volume of originating traffic between any two LECs is below a certain threshold: 10% in the case of interconnection based on local interconnection region, and 20% in the case of interconnection based on exchange.

4. In Telecom Decision 2010-787, the Commission revised the mutual compensation approach to provide for reductions to compensation payments when there is evidence of a traffic pattern that does not allow for balanced traffic between two LECs.
5. Traffic stimulation, also known as traffic pumping, is a practice by which a telephone carrier inflates, or allows to be inflated, the volume or minutes of calls beyond an anticipated threshold. Such practices may be acceptable; however, depending on the circumstances, they may instead give certain parties an undue preference and subject others to a corresponding undue or unreasonable disadvantage, in contravention of subsection 27(2) of the *Telecommunications Act*. Applications alleging that traffic stimulation is taking place have not often come before the Commission and are addressed on a case-by-case basis when they do arise.
6. For example, on 21 October 2014, Bell Aliant Regional Communications, Limited Partnership (Bell Aliant)² and Bell Canada filed an application alleging that Fibernetics Corporation (Fibernetics) was engaging in traffic stimulation related to the local interconnection regime. In Telecom Decision 2015-353, the Commission determined that the alleged activities did not contravene any existing Commission rules or policies, nor any CLEC obligations. In order to determine whether the application raised a broader issue that must be addressed, however, the Commission initiated a fact-finding process.
7. Following the conclusion of that fact-finding process, Commission staff issued a [letter](#) on 13 April 2016 stating that there was insufficient cause to initiate a review of the imbalance regime or to create a traffic stimulation regulatory framework at that point in time. Commission staff noted, among other things, that traffic exchanged between ILECs and CLECs over bill and keep trunks was becoming increasingly balanced, resulting in a general decline in imbalance payments. Further, staff noted that ILECs could take alternative measures that did not require regulatory approval to reduce the incentive for CLECs to exploit imbalanced traffic patterns.

Application

8. On 31 January 2017, Bell Canada and Northwestel Inc. (the Bell companies) filed an application proposing that the Commission implement a traffic stimulation regulatory framework for local network interconnection. The companies specified that the framework should ban all forms of revenue sharing that are designed to encourage traffic stimulation and should allow LECs to modify their interconnection tariffs in order to address alleged traffic stimulation activities.
9. The Commission received interventions regarding the Bell companies' application from Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); the Canadian Network Operators Consortium Inc. (CNOC); Distributel Communications Limited (Distributel); Freedom Mobile Inc. (Freedom Mobile); Iris Technologies Inc. (Iris Technologies); Quebecor Media Inc., on behalf of Videotron

² Bell Aliant is now a division of Bell Canada.

G.P. (Videotron); Rogers Communications Canada Inc. (RCCI); Shaw Telecom G.P. (Shaw); SSi Micro Ltd. (SSi); and TELUS Communications Inc. (TCI).³

Should the Commission establish a traffic stimulation regulatory framework?

10. In their application, the Bell companies stated that they had long been concerned about the potential of gaming within the local network interconnection regime, as demonstrated by various applications filed with the Commission, including Bell Aliant and Bell Canada's application regarding Fibernetics and an application filed by RCCI on 16 November 2016 alleging traffic stimulation by Iris Technologies and Iristel Inc. (collectively, Iristel).
11. The Bell companies submitted that traffic stimulation has the potential to (a) harm the efficiency of the local network interconnection regime, (b) impose costs on LECs that would result in a marked reduction in investment in other areas such as broadband deployment, and (c) lead to higher long distance charges that would be passed on to consumers. They added that traffic stimulation would be particularly problematic in rural and remote areas of the country, where infrastructure is limited and a proportionately small volume of traffic is exchanged. The Bell companies stated that traffic stimulation would cause extreme increases in traffic in those areas, leading to significant congestion for legitimate traffic and requiring LECs to invest in shared-cost facilities that would not have been needed otherwise.

Bell companies' proposal

12. The Bell companies proposed a regulatory framework to address traffic stimulation for local interconnection that is similar to the regime established by the Federal Communications Commission in the United States. Under the proposed framework, if a LEC is presumed to be engaging in traffic stimulation, based on the presence of revenue sharing paired with a disproportionate growth in traffic, it would have to demonstrate the legitimacy of its traffic increase. The Bell companies also requested a ban on revenue sharing that encourages traffic stimulation and proposed modifications to the language in the LECs' interconnection tariffs in order to address alleged traffic stimulation activities.
13. According to the proposed framework, a LEC that is suspected of traffic stimulation would face two consequences. First, it would cease to be eligible to receive traffic imbalance payments. Second, the interconnecting LEC could refuse to share the cost to augment mutual interconnection capacity to accommodate the increase in traffic.⁴ The LEC that is allegedly engaging in traffic stimulation activity would be

³ In this proceeding, submissions were received from TELUS Communications Company (TCC). However, effective 1 October 2017, TCC's assets were legally transferred to TCI and TCC ceased to exist. For ease of reference, "TCI" is used in this decision.

⁴ This approach would constitute a modification to the local network interconnection regime, which states that ILECs and CLECs must interconnect on a shared-cost basis.

responsible for funding any augmentation required for stimulated traffic, even if another party is acting as an interexchange carrier.⁵

14. The Bell companies indicated that their proposed framework represents a holistic approach that would ensure that modifications to the local network interconnection regime are widely applicable and that LECs can easily implement remedies to address traffic stimulation. They stated that the object of their proposal is to deter apparent traffic stimulation, while allowing the operator with the increased traffic to defend legitimate increases. The Bell companies added that if the situation could not be satisfactorily resolved between the two parties, either party could escalate the issue to the Commission.

Positions of other parties

15. Eastlink, Freedom Mobile, RCCI, Shaw, and TCI generally supported the Bell companies' concern that traffic stimulation is potentially harmful to LECs and their customers. However, while Freedom Mobile and Shaw supported the Bell companies' proposed framework, Eastlink, RCCI, and TCI expressed some concerns about it.
16. CNOC, Distributel, Iris Technologies, and SSI (the opposing companies) opposed the Bell companies' application, arguing that the Bell companies had not demonstrated that traffic stimulation is enough of a problem to require a regulatory remedy. The opposing companies noted that (a) the Commission concluded in Telecom Decision 2015-353 that Fibernetics had not been engaged in traffic stimulation, and (b) in its 2016 fact-finding exercise, the Commission found no evidence of an actual, widespread problem that needed to be addressed.
17. In addition, the opposing companies submitted that the Commission is appropriately reviewing RCCI's separate allegations of traffic stimulation by Iristel through a separate process and, further, that those allegations relate to the toll interconnection regime, not to the local network interconnection regime. In that regard, RCCI, TCI, and Videotron submitted that the Bell companies' proposal should be broadened to provide relief to more companies, at a minimum to interexchange carriers and potentially to all telecommunications service providers.
18. The opposing companies and Eastlink argued that the Bell companies' proposal is too broad and unilateral, in that it would grant powers to the Bell companies and other LECs to implement significant penalties against a LEC based solely on their own judgment of whether an increase in bill and keep traffic is legitimate. They also argued that under the Bell companies' proposal, LECs could be punished for legitimate traffic growth.
19. CNOC submitted that the proposal is ambiguous in terms of what evidence a LEC accused of traffic stimulation would have to provide in order to prove that its traffic

⁵ An interexchange carrier, also known as a long distance carrier, is a telecommunications company that provides connections between local exchanges in different geographic areas.

growth is legitimate. Distributel, Iris Technologies, and TCI noted that revenue-sharing agreements are confidential and that a LEC accused of traffic stimulation would have to defend itself by disclosing confidential information, which would compromise its commercial standing.

Commission's analysis and determinations

20. As noted above, Commission staff issued a [letter](#) to conclude the fact-finding exercise initiated as a result of Telecom Decision 2015-353, stating that there was insufficient cause to review the traffic imbalance regime or to create a traffic stimulation regulatory framework.
21. The Commission notes that the local network interconnection regime has checks and balances in place to correct for significantly imbalanced traffic. For example, in Telecom Decision 2010-787, the Commission implemented a mechanism to cumulatively reduce compensation payable due to traffic imbalance in situations where there is a high level of traffic imbalance between LECs. In addition, as stated in the 13 April 2016 Commission staff [letter](#), there are various non-regulatory options available to ILECs to address traffic imbalance concerns.
22. The Bell companies served copies of their application on all ILECs, CLECs, and proposed CLECs. No party to this proceeding has provided any evidence or allegation of recent traffic stimulation practices, other than those related to RCCI's separate allegations regarding Iristel. The Commission's determinations regarding RCCI's application are set out in Telecom Decision 2017-456, issued concurrently with this decision.
23. In light of the above, the Commission finds that there is insufficient evidence to come to a different conclusion from the one set out in the April 2016 Commission staff [letter](#). That is, there is nothing to suggest that traffic stimulation is affecting local network interconnection and traffic imbalance compensation payments such that additional regulation related to the local network interconnection regime is needed.
24. Accordingly, the Commission **denies** the Bell companies' application requesting the implementation of a traffic stimulation regulatory framework for local network interconnection.

Secretary General

Related documents

- *Rogers Communications Canada Inc. – Allegation of traffic stimulation by Iris Technologies Inc. and Iristel Inc.*, Telecom Decision CRTC 2017-456, 20 December 2017
- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application regarding traffic imbalance payments to Fibernetics Corporation*, Telecom Decision CRTC 2015-353, 4 August 2015

- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Proposed revision to the treatment of imbalance traffic compensation*, Telecom Decision CRTC 2010-787, 25 October 2010, as amended by Telecom Decision CRTC 2010-787-1, 16 August 2011
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997