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

Telecom Decision CRTC 2018-18

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Bell Canada – Application to modify the provision of various wholesale services

The Commission mandates the provision of wholesale services, which are the services that telecommunications companies provide to each other, pursuant to the framework that it set out in Telecom Regulatory Policy 2015-326.

Bell Canada submitted an application requesting that two legacy wholesale services, namely line-sharing and unbundled local loop (ULL) Connecting Links, no longer be mandated by the Commission, and that they be forborne. It also requested that the Commission freeze the existing rates for line-sharing and three other legacy wholesale services.

In this decision, the Commission concludes that Bell Canada's line-sharing and ULL Connecting Links do not pass the Essentiality Test, and should therefore cease to be mandated. Specifically, the Commission

- ***approves** Bell Canada's request that line-sharing and ULL Connecting Links cease to be mandated, subject to a two-year phase-out period from the date of the Commission's decision;*

- ***approves** Bell Canada's request for line-sharing and ULL Connecting Links to be immediately forborne where there is no demand; and*

- ***denies** granting forbearance of line-sharing and ULL Connecting Links where demand for either service currently exists.*

With respect to Bell Canada's request for the freezing of rates for certain legacy wholesale services, the Commission

- ***approves** Bell Canada's request to freeze the rates for line-sharing, DS-1 Connecting Links, and competitor digital network (CDN) DS-1 Central Office Links; and*

- ***denies** Bell Canada's request to freeze the rates for the company's legacy Gateway Access Service (GAS) and High-Speed Access (HSA) Dry Loops service.*

Introduction

1. Wholesale telecommunications services (hereafter referred to as wholesale services) are the services that telecommunications companies provide to each other, and are integral to the overall development of the Canadian communications system. Many wholesale

services are provided by the large incumbent telephone and cable companies to smaller competitors at the direction of the Commission.

2. In Telecom Regulatory Policy 2015-326, the Commission established its current framework for mandating wholesale services, which requires the application of an "essentiality test" and an assessment of policy considerations in order to determine whether the Commission should mandate the provision of a wholesale service.

3. The first step in applying the Essentiality Test is to define the relevant markets for the wholesale service, which include product and geographic components. These markets are typically characterized as the smallest group of services and geographic area over which a firm could profitably impose a significant and non-transitory price increase.

4. Once the product and geographic markets are defined, the Commission assesses the wholesale service in question against the three components of its Essentiality Test as described below.[1]

- Input component: The Commission assesses whether the facility[2] associated with the wholesale service is required as an input by another firm to provide a downstream retail service(s).

- Competition component: The Commission examines two elements: (i) the upstream market conditions, specifically, whether a firm[3] or group of firms have market power; and (ii) the impact that any upstream market power might have on competition levels in the associated downstream market(s).

- Duplicability component: The Commission assesses whether it is practical or feasible for competitors to duplicate the functionality of a facility, either through self-supply or third-party supply.

5. In addition to the above, the Commission applies specific policy considerations to inform, support, or possibly reverse a decision to mandate the provision of a wholesale service. These policy considerations are as follows:

- Public Good: There is a need to mandate the service for reasons of social or consumer welfare, public safety, or public convenience.

- Interconnection: The service would promote the efficient deployment of networks and facilitate network interconnection arrangements.

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[1] See Telecom Regulatory Policy 2015-326 for a more detailed description of the three components of the Essentiality Test.

[2] In this decision, a reference to a facility or service may be taken as a reference to a facility, function, or service (or all three), as appropriate in the context.

[3] In the context of this decision, the term "firm" includes a group of firms exercising collective market power.

- Innovation and Investment: Mandating or not mandating the facility or wholesale service could affect the level of innovation/investment in advanced or emerging networks or services for incumbents, competitors, or both, or impact the associated level of adoption of advanced or emerging services by users of telecommunication services.

6. Following its application of the Essentiality Test and the assessment of the policy considerations, the Commission may also establish the terms and conditions pursuant to which a wholesale service should be mandated or no longer mandated, depending on the outcome of its review.

7. The decision to forbear from the regulation of a service is made pursuant to section 34 of the *Telecommunications Act* (the Act). In short, the Commission can forbear if it is satisfied that doing so would be consistent with the policy objectives listed in section 7 of the Act (subsection 34(1)). The Commission must forbear where it is satisfied that there is sufficient competition in the provision of the service to protect the interests of users (subsection 34(2)). However, the Commission must not forbear where it finds that to do so would impair unduly the establishment or continuance of a competitive market (subsection 34(3)).

8. For example, in Telecom Regulatory Policy 2015-326, the Commission applied the Essentiality Test to several wholesale services, including unbundled local loops (ULLs),[4] which are primarily used to support retail competition for local phone services and lower-speed Internet access. It determined that ULLs did not satisfy the Essentiality Test, and that there was no valid policy reason to support its continued mandated provision.

9. The Commission thus decided that ULLs would no longer be mandated, subject to a three-year phase-out period. During this period, ULLs were made available in exchanges where there was demand, based on Commission-approved tariffs. In exchanges where there was no demand, no phase-out period was needed; ULLs were immediately forborne.

The proceeding

10. The Commission received an application from Bell Canada, dated 17 March 2017, in which the company requested that the Commission expand on certain determinations it had made in Telecom Regulatory Policy 2015-326. Specifically, Bell Canada requested that the Commission

    - find its line-sharing[5] wholesale service to be non-essential (i.e. no longer mandated) and forbear from regulating the service (immediately where there is no demand and following a phase-out period where there is demand);

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[4] A ULL is the copper connection path between a premises and a central office (CO). A ULL allows a competitor to provision both voice and Internet access services to its end-customers.

[5] Line-sharing service allows a competitor to provision high-speed access service to its end-customers while the incumbent local exchange carrier (ILEC) provides the voice service, using the same ULL. Line-sharing uses the copper connection path between a premises and a CO.

- find its ULL Connecting Links[6] wholesale service to be non-essential (i.e. no longer mandated) and forbear from regulating the service (immediately where there is no demand and following a phase-out period where there is demand); and

- freeze rates for four of the company's legacy wholesale services: (i) line-sharing; (ii) legacy Gateway Access Service (GAS)[7] and High-Speed Access (HSA)[8] Dry Loops;[9] (iii) DS-1 Connecting Links; and (iv) competitor digital network (CDN)[10] DS-1 Central Office (CO) Links.[11]

11. The following parties participated in the proceeding: the Canadian Network Operators Consortium Inc. (CNOC), the Public Interest Advocacy Centre (PIAC), TekSavvy Solutions Inc. (TekSavvy), and TELUS Communications Inc. (TCI).[12]

12. The Commission's determinations in this proceeding take into account the policy objectives set out in section 7 of the Act, as well as the Policy Direction.[13]

Issues

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

- Should Bell Canada's line-sharing service continue to be mandated by the Commission?[14]

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[6] ULL Connecting Links connect the ILEC's facilities and a competitor's facilities within a CO to enable wholesale services that use the ULL.

[7] GAS is a wholesale high-speed access service, which enables a service provider to establish a high-speed access path between its end-user's premises and a company serving wire centre. GAS allows for the simultaneous use of the end-user's telephone line for voice services (e.g. voice transmission, permissive data, or facsimile).

[8] HSA is a broadband access service, which enables a competitive local exchange carrier (CLEC) or a digital subscriber line service provider (DSLSP), to establish a high-speed data access path between its end-user's premises and a company serving wire centre. HSA allows for the simultaneous use of the end-user's telephone line for voice services (e.g. voice transmission, permissive data, or facsimile).

[9] Dry Loops are ULLs which are leased by a competitor from an ILEC, to provide Internet service.

[10] CDN service provides competitors with a digital access facility and link from an end-user's (predominantly business customers) premises or competitor point-of-presence to an ILEC's serving CO.

[11] DS-1 Connecting Links and CDN DS-1 CO Links connect the ILEC's facilities and a competitor's facilities within a CO to enable the use of low-speed, copper-based data services such as CDN and Asymmetric Digital Subscriber Line (ADSL) access services. ADSL access service is available at ILEC COs and provides a connection to customer premises using the high-frequency bandwidth above the voice band on copper loops (i.e. it is another term for line-sharing). ADSL access service supports the provision of high-speed Internet access service. With ADSL access service, competitors can either provision their own digital subscriber line (DSL) equipment in conjunction with ULLs or use DSL equipment provisioned by the ILECs.

[12] 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.

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

[14] Bell Canada General Tariff CRTC 6716, item 5400.3.a.2.

- Should Bell Canada’s line-sharing service be forborne?
- Should Bell Canada’s ULL Connecting Links service continue to be mandated by the Commission?[15]
- Should Bell Canada’s ULL Connecting Links service be forborne?; and
- Should the Commission freeze rates for line-sharing, legacy GAS and HSA Dry Loops, DS-1 Connecting Links, and CDN DS-1 CO Links?[16]

Should Bell Canada’s line-sharing service continue to be mandated by the Commission?

Positions of parties

Service description

14. In describing line-sharing, Bell Canada referred to Telecom Decision 2016-306, wherein the Commission noted that line-sharing service allows a competitor to provision high-speed access service to its end-customers while the incumbent local exchange carrier (ILEC) provides the voice service, using the same ULL. Bell Canada noted that voice service can also be provided by a competitive local exchange carrier (CLEC). Bell Canada submitted that line-sharing is in effect a partial ULL, as it lacks the local voice functionality available on a full ULL (i.e. it is limited to only the high-speed access functionality).

15. In supporting Bell Canada’s proposal, TCI submitted that line-sharing provides similar functionality to a ULL, in essence a type of ULL, rendering it a functional substitute.

Product market definition

16. Bell Canada submitted that the relevant downstream product market for line-sharing is at least as large as the retail wireline Internet market. The company also submitted that attempting to increase the price of high-speed access provided by line-sharing will be countered by customer migration to other wireline services (either to similarly low-speed services, or to higher-speed services). Further, it recognized that the upstream product market for line-sharing will be smaller than that of ULLs and ULL Connecting Links, since line-sharing only provides the low-speed data transmission channel.

17. TCI submitted that the product market for line-sharing is a subset of the product market for ULLs, due to line-sharing being a type of ULL, and that line-sharing falls within the

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[15] Bell Canada Access Services Tariff CRTC 7516, item 105.4.c); Bell Aliant (now Bell Aliant, a division of Bell Canada [Bell Aliant]) General Tariff CRTC 21491, item 646.3.d)-f); and Télébec, Limited Partnership (Télébec) General Tariff CRTC 25140, item 7.8.4.7.

[16] This applies to Bell Canada’s serving territory for all four services, to Bell Aliant’s serving territory (for legacy GAS and HSA Dry Loops), and to Télébec’s serving territory (for DS-1 Connecting Links and for legacy GAS and HSA Dry Loops).

downstream product market outlined by the Commission for ULLs in Telecom Regulatory Policy 2015-326, which was defined as “the local wireline voice market, including both residential and business markets.”[17]

18. PIAC submitted that Bell Canada’s definition of the downstream product market as being at least as large as the retail wireline Internet market was too broad. PIAC submitted that the downstream product market must focus on the provision of low-cost legacy wireline Internet access service.

Geographic market definition

19. Bell Canada submitted that the geographic market for line-sharing should reflect where the services are purchased and utilized. Given that line-sharing runs over copper, and is purchased on a CO-by-CO basis through co-located[18] spaces, the geographic market should be considered the exchange; this is consistent with the analytical framework used by the Commission for ULLs. Bell Canada noted that the Commission has previously applied its analysis on a more aggregated level (i.e. rate bands).

20. TCI submitted that the geographic market for line-sharing is the same as for ULLs, i.e., the ILEC exchange.

21. PIAC submitted that the geographic market for line-sharing could be as small as households that subscribe to an ILEC wireline voice service. While it was not opposed to defining the geographic market by exchange, PIAC submitted that Bell Canada’s analysis of the Essentiality Test using data relating to the entire retail and wholesale Internet markets was inappropriate. In this regard, PIAC submitted that an exchange-by-exchange analysis may reveal differing demand for line-sharing, particularly in certain rate bands or rural communities.

Input component

22. Bell Canada submitted that line-sharing does not meet the input component of the Essentiality Test, as it is not a meaningful input to the downstream retail Internet market. In particular, the company submitted that

- line-sharing is not an important enabler of the retail Internet market, noting that line-sharing represents a very small percentage of the wholesale Internet market and an even smaller percentage of the overall retail Internet market;

- there are several functional equivalents to line-sharing for the provision of Internet services: self-supply; wireless services; ULLs; and other wholesale access services; and

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[17] See paragraph 174 of Telecom Regulatory Policy 2015-326.

[18] Co-location is an arrangement which provides access to the ILEC's CO space for the purpose of interconnecting Canadian carriers.

- line-sharing is becoming obsolete, noting that the demand for line-sharing declined significantly from 2013 to 2016, whereas demand for services used to provision retail Internet access and self-supply during the same period increased.

23. TCI submitted that, while it does not argue that line-sharing is an input for downstream services, the lack of demand for line-sharing is what causes it to fail the input component of the Essentiality Test.

Competition component

24. Bell Canada submitted that line-sharing also fails the competition component of the Essentiality Test, arguing that the retail Internet market is competitive today, and that the absence of mandated line-sharing would not impact the overall competitiveness of the market. In support of this position, Bell Canada submitted that, while line-sharing has declined significantly from 2013 to 2016, the retail Internet market continued to thrive.

25. TCI submitted that the withdrawal of mandated access to line-sharing will not impact the overall competitiveness of the retail market, due to the availability of substitutes and the already declining demand for the service.

26. PIAC submitted that there is little competition in the wholesale wireline market and that ILECs are able to exercise upstream market power.

Duplicability component

27. Bell Canada and TCI submitted that line-sharing also fails the duplicability component of the Essentiality Test, arguing that the service is duplicable based on the growth of other services such as wholesale HSA.

28. PIAC submitted that since line-sharing relies on a legacy ILEC service, it is unlikely to be duplicable by competitors.

Policy considerations

29. Bell Canada and TCI generally submitted that line-sharing does not stimulate innovation or investment, as it is a legacy technology rendered all but obsolete by the existence of several alternatives. Bell Canada submitted that it would be counterproductive to continue to mandate low-demand, declining, legacy wholesale services that cannot be used to deliver the Commission’s universal service objective of 50 megabits per second (Mbps) for downloads.

30. PIAC submitted that wholesale wireline policies should facilitate competitor access to networks, so that consumers have greater choice in selecting the service provider which best meets their needs. PIAC expressed concern about the continued availability of low-cost legacy wholesale Internet access services, particularly in rural or remote areas, and suggested that line-sharing could be mandated for the public good.

Commission’s analysis and determinations

Service description

31. The Commission considers that both line-sharing and ULL Connecting Links are closely associated with ULLs. The Commission agrees with the characterization that line sharing is effectively a partial ULL, on the basis that line-sharing lacks the local voice functionality available on a full ULL.

Product market definition

32. In Telecom Regulatory Policy 2015-326, the Commission considered that the primary relevant downstream retail market for ULLs was the local wireline voice market, including both residential and business markets. Although the addressable market is the same (since both ULLs and line-sharing have the same footprint), the downstream market for line-sharing is the retail Internet market.

33. In terms of the relevant upstream market, the Commission previously found that ULLs formed their own distinct product market. The Commission considers that this same approach applies to line-sharing, i.e., that it forms its own distinct product market.

Geographic market definition

34. The Commission notes that it applied the Essentiality Test for ULLs in Telecom Regulatory Policy 2015-326 at the rate band[19] level of aggregation, in order to balance meaningful and practical definitions for product and geographic markets, as well as the administrative burden associated with gathering and processing large amounts of data.

35. The Commission considers that, similar to ULLs, the local exchange is the appropriate geographic market for line-sharing; however, an aggregation at the rate band level would be appropriate for the purposes of applying the Essentiality Test.

Application of the Essentiality Test – Input component

36. The demand for Bell Canada’s line-sharing service is low and has been in decline from 2013 to 2016. Further, the number of subscribers to line-sharing in 2016 represented a very small percentage of the number of subscribers to all wholesale wireline Internet services (i.e. line-sharing, GAS, and HSA) provided by Bell Canada. Moreover, functional substitutes to line-sharing are available (e.g. wholesale HSA).

37. In light of the low and declining demand for Bell Canada’s line-sharing service, as well as the availability of other alternative wholesale services, the Commission finds that the input component of the Essentiality Test has not been met.

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[19] 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 ILEC’s serving territories.

Application of the Essentiality Test – Competition component

38. Since line-sharing entails the use of ULLs for a competitor to provide high-speed Internet access to an end-user, and consistent with its findings for ULLs in Telecom Regulatory Policy 2015-326, the Commission considers that ILECs possess upstream market power with respect to the provision of line-sharing.

39. However, given the low and declining demand for Bell Canada's line-sharing service, and the fact that its line-sharing service accounts for a very small percentage of wireline Internet subscribers across Bell Canada's exchanges due to the availability of functional substitutes, the Commission considers that no longer mandating line-sharing would not have a significant impact on competition in the retail wireline Internet market.

40. In light of the above, the Commission finds that line-sharing does not meet the competition component of the Essentiality Test.

Application of the Essentiality Test – Duplicability component

41. In the absence of the provision of line-sharing by ILECs, competitors would have to construct their own wireline networks on a large scale, in order to provide Internet service which duplicates the functionality of line-sharing. The Commission considers that a reasonably efficient competitor could not feasibly duplicate the functionality of line-sharing on a sufficient scale and therefore finds that it meets the duplicability component.

Policy considerations

42. The Commission does not view line-sharing as meeting the criterion for the public good policy consideration, as there is no need to mandate the service for reasons of social or consumer welfare, public safety, or public convenience. Further, line-sharing does not meet the criterion for the interconnection policy consideration, since it is an access service, not an interconnection service.

43. However, similar to ULLs, the innovation and investment policy consideration is relevant to the issue of whether or not to mandate line-sharing. In Telecom Regulatory Policy 2015-326, the Commission determined that a decision to no longer mandate the provision of ULLs could lead to a greater adoption of advanced or emerging services by consumers. The Commission determined that the positive impacts on innovation and investment supported its decision to no longer mandate access to ULLs. The Commission considers that this same rationale applies to line-sharing – it does not stimulate innovation or investment in networks or new technologies and therefore does not meet this policy objective.

44. In light of the above, the review of policy considerations support the conclusions reached by the application of the Essentiality Test.

Conclusions

45. Based on the above, the Commission finds that it would be appropriate to cease mandating the provision of Bell Canada's line-sharing service across all exchanges in Bell Canada's serving territories.

46. Typically, the obligation to provide a service that is no longer mandated is phased-out over a period of time to give competitors time to make alternate arrangements. In light of the relative demand for the service and in order to give subscribers to the service time to consider their options, the Commission implements a two-year phase-out period in exchanges where there is demand, from the date of this decision. In exchanges where there is no existing demand for line-sharing, no phase-out period is required.

Should Bell Canada's line-sharing service be forborne?

Positions of parties

47. Bell Canada considered that line-sharing is non-essential, and that therefore the service should be immediately forborne where there is no demand. Bell Canada submitted that where demand for line-sharing exists, it be forborne at the end of a one-year phase-out period following the release of the Commission's decision.

48. Bell Canada submitted that, while it intends to offer line-sharing on a forborne basis to existing subscribers, existing line-sharing subscribers would be able to migrate to other wholesale high-speed services. Bell Canada submitted that aggregated high-speed service (e.g. GAS) would continue to be available throughout its serving territories.

Commission's analysis and determinations

49. In Telecom Regulatory Policy 2015-326, the Commission rendered its forbearance determinations with respect to ULLs, noting that where there was no current demand for ULLs, forbearance would not likely impair unduly the establishment or continuance of a competitive market.

50. The Commission determines that its findings regarding forbearance of ULLs in exchanges where there is no current demand can also be applied to line-sharing.[20] As a result, pursuant to subsection 34(4) of the Act, the Commission declares that, effective the date of this decision, sections 25, 29, and 31, and subsections 27(1), 27(5), and 27(6) of the Act no longer apply with respect to exchanges where there is no demand for line-sharing. However, subsections 27(2) and 27(4) of the Act continue to apply to address any issues of unjust discrimination or undue preference. Section 24 of the Act will also continue to apply, to enable the Commission to impose conditions on forbearance, if necessary.[21]

[20] See paragraphs 196 and 197 of Telecom Regulatory Policy 2015-326.

[21] Section 24: The offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission.

51. Where demand exists for line-sharing, forbearance following the phase-out period is **denied**. If Bell Canada's intention is to continue to make line-sharing available in concerned exchanges after the expiry of the phase-out period, Bell Canada can choose to file a forbearance application including an appropriate test that the Commission could use to assess forbearance.

52. However, if Bell Canada intends to cease making line-sharing available, it is to provide written notice to its customers and to the Commission one year prior to the end of the phase-out period. This notice should include details on the specific exchanges that will be affected, the date on which line-sharing will no longer be available in those exchanges, and any potential alternate arrangements that may be available to wholesale customers.

Should Bell Canada's ULL Connecting Links service continue to be mandated by the Commission?

Positions of parties

Service description

53. Bell Canada and TCI generally submitted that ULL Connecting Links are only used by competitors in association with ULLs or line-sharing, serving to join the two together, and do not function independently.

Product market definition

54. Bell Canada and TCI both submitted that since ULL Connecting Links only function in conjunction with ULLs, the relevant product market is the same market used by the Commission in Telecom Regulatory Policy 2015-326 to assess the essentiality of ULLs; i.e., the local wireline voice market, including both residential and business markets.

Geographic market definition

55. Bell Canada and TCI submitted that since ULL Connecting Links can only be requested and utilized where ULLs are present, they must be considered to have the same geographic market; therefore, the geographic market for ULL Connecting Links is the exchange.

Input component

56. Bell Canada submitted that while ULLs and ULL Connecting Links may continue to be inputs in certain areas (despite declining demand), there is little or no demand in other areas. The company submitted that as a result of their close association with ULLs, ULL Connecting Links are subject to the same market dynamics as ULLs. The company submitted that ULL Connecting Links are non-essential inputs and that their continued provision is unnecessary to sustain retail competition in any local voice wireline market.

57. Bell Canada also submitted that ULL Connecting Links are not required in order for competitors to provide downstream retail wireline services, given the multiple other facilities (e.g. fibre, cable, wireless) available.

58. Noting the percentage decline in ULLs from 2013 to 2016, Bell Canada submitted that ULL Connecting Links declined by a minimum of one-quarter of the percentage decline in ULLs during the same time period, without harming the wireline market.

59. TCI submitted that the lack of current and expected demand for ULL Connecting Links causes them to fail the input component of the Essentiality Test.

Competition component

60. Bell Canada submitted that ULL Connecting Links are subject to the same functionality and market dynamics as ULLs, and that the wireline market is competitive and would not be impacted by ULL Connecting Links ceasing to be mandated. Bell Canada submitted that in almost every geographic region, residential and small and medium-sized business customers have a choice of several providers for accessing voice services. Further, Bell Canada submitted that large business customers can access voice and data services from an increasing number of facilities-based providers.

61. TCI submitted that since the demand for ULL Connecting Links was small and declining, the withdrawal of mandated ULL Connecting Links would not impact the overall competitiveness of the market.

Duplicability component

62. Bell Canada did not address in its application whether ULL Connecting Links meet the duplicability component of the Essentiality Test.

63. TCI submitted that wholesale HSA subscriptions have increased steadily since 2013, while ULL Connecting Link subscriptions have declined during the same time period. In the company’s view, the shift in demand away from ULL Connecting Links demonstrates duplicability of the functionality provided by ULL Connecting Links on a sufficient scale.

Policy considerations

64. Bell Canada and TCI submitted that ULL Connecting Links are a legacy technology, and that, fundamentally, legacy services do not stimulate innovation or continued investment, particularly when there are several newer alternatives available. As such, they argued that not mandating ULL Connecting Links would be consistent with the innovation and investment policy objective.

Commission’s analysis and determinations

Service description

65. ULL Connecting Links connect the ILEC’s facilities and a competitor’s facilities within a CO to enable ULL and/or line-sharing service and do not function independently of ULLs.

Product market definition

66. In Telecom Regulatory Policy 2015-326, the Commission considered that ULLs form their own distinct upstream product market. Since there are no alternatives to ULL Connecting Links, they also form their own upstream product market.

67. The primary relevant downstream retail market for ULL Connecting Links is the same as for ULLs: the local wireline voice market, including both residential and business markets. When used in conjunction with line-sharing, the relevant downstream market would be retail Internet services.

Geographic market definition

68. Given that ULL Connecting Links are only used where ULLs are present, the Commission considers that the appropriate definition of the geographic market for ULL Connecting Links is the ILEC exchange; however, an aggregation at the rate band level would be appropriate for the purposes of applying the Essentiality Test.

Application of the Essentiality Test – Input component

69. The Commission considers that as a result of their close association with ULLs, ULL Connecting Links are subject to the same market dynamics as ULLs, which were previously deemed to be a non-essential input in the provision of downstream services.

70. Given the decline in demand for Bell Canada’s ULL Connecting Links from 2013 to 2016, and in light of the fact that wireline services supported by ULLs can be provided via alternatives to ULL Connecting Links, the Commission finds that ULL Connecting Links do not meet the input component of the Essentiality Test.

Application of the Essentiality Test – Competition component

71. In Telecom Regulatory Policy 2015-326, the Commission considered that the ILECs possess upstream market power with respect to the provision of ULLs.[22] Given their association with ULLs, the Commission considers that the ILECs also possess upstream market power with respect to the provision of ULL Connecting Links.

72. In assessing whether the withdrawal of mandated access to ULL Connecting Links would likely result in a substantial lessening or prevention of competition, the Commission considered the impact on the local wireline voice and the Internet access services markets.

73. In Telecom Regulatory Policy 2015-326, the Commission considered that ULLs do not meet the competition component of the Essentiality Test, given that 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.[23] Moreover, with respect to the

[22] See paragraph 180 of Telecom Regulatory Policy 2015-326.

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

Internet access services market, the Commission already assessed the competition component of the Essentiality Test in relation to line-sharing service.

74. Given that ULL Connecting Links exist only in conjunction with the provision of ULLs, and given the decline in demand for both ULLs and ULL Connecting Links and the availability of functional substitutes to ULLs, the Commission finds that ULL Connecting Links do not meet the competition component of the Essentiality Test.

Application of the Essentiality Test – Duplicability component

75. In Telecom Regulatory Policy 2015-326, the Commission considered that ULLs meet the duplicability component of the Essentiality Test, given that it is not practical or feasible for competitors to duplicate the functionalities of ULLs.

76. In the absence of ULL Connecting Links, competitors have no means of connecting to an ILEC's ULLs at the ILEC's CO; consequently, a competitor would not be able to duplicate the functionalities associated with ULLs. Therefore, the Commission finds that ULL Connecting Links meet the duplicability component of the Essentiality Test.

Policy considerations

77. In the Commission's view, since ULL Connecting Links are provided by ILECs only in conjunction with ULLs and line-sharing, withdrawal of the mandating of ULL Connecting Links could (similar to ULLs) lead to a greater adoption of advanced or emerging services by competitors (e.g. HSA). Therefore, the Commission finds that ULL Connecting Links do not need to be mandated to support the innovation and investment policy consideration.

78. In light of the above, the review of policy considerations support the conclusions reached by the application of the Essentiality Test.

Conclusions

79. In light of the above, the Commission finds that it would be appropriate to cease mandating the provision of Bell Canada's ULL Connecting Links across all exchanges in the serving territories of Bell Aliant Regional Communications, Limited Partnership (now Bell Aliant, a division of Bell Canada [Bell Aliant]), Bell Canada, and Télébec, Limited Partnership (Télébec).

80. Given that ULL Connecting Links are used for both ULLs and line-sharing, and in order to give competitors sufficient time to make alternate arrangements, the Commission implements a two-year phase-out period from the date of this decision in exchanges where there is demand for Bell Canada's ULL Connecting Links service. In exchanges where there is no existing demand for ULL Connecting Links, no phase-out period is required.

Should Bell Canada’s ULL Connecting Links service be forborne?

Positions of parties

81. Bell Canada considers that ULL Connecting Links should be immediately forborne where there is no demand. Where demand for the service exists, forbearance or withdrawal should be permitted on 22 July 2018, to coincide with the end of the three-year phase-out period for ULLs, as set out in Telecom Regulatory Policy 2015-326.

Commission’s analysis and determinations

82. Given its use and association, the Commission determines that its findings regarding forbearance of ULLs in exchanges where there is no current demand can also be applied to ULL Connecting Links i.e., that forbearance can be immediately granted where no demand for ULL Connecting Links exists, pursuant to subsection 34(1) of the Act.

83. As a result, pursuant to subsection 34(4) of the Act, the Commission declares that, effective the date of this decision, sections 25, 29, and 31, and subsections 27(1), 27(5), and 27(6) of the Act no longer apply with respect to exchanges where there is no demand for ULL Connecting Links. However, subsections 27(2) and 27(4) of the Act continue to apply to address any issues of unjust discrimination or undue preference. Section 24 of the Act will also continue to apply, to enable the Commission to impose conditions on forbearance, if necessary.

84. In areas where there is demand, the Commission previously determined that ULLs were to continue to be made available, based on Commission-approved tariffs for at least the duration of the phase-out period. The Commission considers that the same approach would be appropriate for ULL Connecting Links.

85. In light of the above, the Commission finds that ULL Connecting Links are immediately forborne in exchanges where there is no current demand, in the serving territories of Bell Aliant, Bell Canada, and Télébec.

86. However, in exchanges where demand for ULL Connecting Links exists, forbearance following the phase-out period is **denied**. If Bell Canada’s intention is to continue to make ULL Connecting Links available in concerned exchanges after the expiry of the phase-out period, Bell Canada can choose to file a forbearance application regarding the provision of ULL Connecting Links.

87. However, if Bell Canada intends to cease making ULL Connecting Links available, the company must provide written notice to its customers and to the Commission one year prior to the end of the phase-out period. This notice should include details on the specific exchanges that will be affected, the date on which ULL Connecting Links will no longer be available in those exchanges, and any potential alternate arrangements that may be available to wholesale customers.

Should the Commission freeze rates for line-sharing, legacy GAS and HSA Dry Loops, DS-1 Connecting Links, and CDN DS-1 CO Links?

Positions of parties

88. Bell Canada requested a rate freeze for four legacy wholesale services (line-sharing, legacy GAS and HSA Dry Loops, DS-1 Connecting Links, and CDN DS-1 CO Links) that it considered similar to other legacy services whose rates were frozen by the Commission in Telecom Regulatory Policy 2015-326. The company submitted that demand for these services declined significantly over the period 2013 to 2016.

89. Bell Canada submitted that this decline, and the lack of continued investment in these services, warranted a reduction in its regulatory burden (i.e. the implementation of I-X[24] rates, which require personnel and IT[25] resources). Bell Canada submitted that the current rates charged for these legacy services were already determined to be just and reasonable by the Commission.

90. TCI supported Bell Canada's rate freeze request for these services, submitting that they are legacy services with decreasing demand, that are also functionally equivalent to the services for which rates were frozen as part of Telecom Regulatory Policy 2015-326.

91. CNOC and TekSavvy opposed Bell Canada's request that the Commission freeze the rates for legacy GAS and HSA Dry Loops for the following reasons:

   - Dry loops are a key wholesale input to services such as Internet access, especially in exchanges where neither high-speed cable services (including third-party Internet access) nor fibre-to-the-node (FTTN) are available.

   - Freezing the rates for legacy GAS and HSA Dry Loops would not reduce regulatory burden. FTTN GAS and HSA Dry Loop rates are based on legacy GAS and HSA Dry Loop rates; to give effect to Bell Canada's position, costing dry loops would continue to be necessary.

   - Dry loop costs reflect several assumptions and proxies, some of which merit re-examination.

92. In TekSavvy's view, even if the Commission were to cease to require new cost studies for dry loops, it would still not follow that legacy Dry Loop rates should be frozen. TekSavvy indicated that, for example, a fuller inquiry as to whether Dry Loop rates are just and reasonable, without embarking on new cost studies, and restricted only to the assumptions and proxies on which Dry Loop costs are currently based, may be appropriate.

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[24] In the absence of a rate freeze, ILECs are required, pursuant to Telecom Decision 2007-27, to reduce the price of their services year over year, using the formula I-X (I = rate of inflation; X = productivity offset).

[25] IT stands for Information Technology.

93. Bell Canada replied that freezing the company's legacy GAS and HSA Dry Loop rates would similarly freeze its FTTN GAS and HSA Dry Loop rates. However, since cost studies for FTTN Dry Loops are not currently required, it is not a foregone conclusion that resources need to be allocated to performing a cost study of FTTN Dry Loops. Further, if a cost study of FTTN Dry Loops were performed, their rates may be divorced from the frozen legacy Dry Loop rates.

94. Bell Canada submitted that freezing legacy Dry Loop rates would not require the Commission to reverse its policy if it found it necessary to reassess the FTTN Dry Loop rates, as freezing the legacy rates would not have extended to the FTTN rates.

Commission's analysis and determinations

DS-1 Connecting Links, line-sharing, and CDN DS-1 CO Links

95. The evidence in this proceeding indicates that there was low demand for Bell Canada's DS-1 Connecting Links, line-sharing, and CDN DS-1 CO Links services in 2016, and that demand for each of these legacy services declined significantly over the last few years.

96. The Commission finds that the market conditions for DS-1 Connecting Links, line-sharing, and CDN DS-1 CO Links are such that a rate freeze for these services would lower the regulatory burden while maintaining rates that are just and reasonable.

Legacy GAS and HSA Dry Loops

97. Cost studies are required to be filed whenever an ILEC proposes new rates for services provisioned over Dry Loops.

98. While Bell Canada applied to have the rates for legacy GAS/HSA Dry Loop service frozen, it did not apply to also have FTTN GAS/HSA Dry Loop rates frozen.

99. The Commission considers that Bell Canada has not provided a satisfactory rationale for its request for rates for its legacy GAS and HSA Dry Loops service to be frozen at their current levels. First, despite the stated decline in demand for its legacy GAS and HSA Dry Loops from 2013 to 2016, demand in 2016 for this service remained significant.

100. Further, Bell Canada has not adequately explained how freezing the rates for its legacy GAS and HSA Dry Loops service will reduce its regulatory burden. Currently, the FTTN GAS and HSA Dry Loop rates are based on the tariffed rates for the legacy GAS and HSA Dry Loop service. If the legacy rates were frozen, Bell Canada would likely be required to file new cost studies in order to develop rates for FTTN GAS and HSA Dry Loops that are independent of the legacy GAS and HSA Dry Loop rates. Bell Canada has not explained what alternatives to cost studies would be available to the Commission for determining whether the rates for Bell Canada's FTTN GAS and HSA Dry Loops service are just and reasonable, in accordance with subsection 27(1) of the Act.

101. Accordingly, the Commission is not persuaded that market conditions are such that freezing the rates of Bell Canada's legacy GAS and HSA Dry Loops service would reduce the regulatory burden while maintaining rates that are just and reasonable.

Conclusions

102. In light of the above, the Commission **approves** Bell Canada's request for a rate freeze for its DS-1 Connecting Links service (in the serving territories of Bell Aliant, Bell Canada, and Télébec), line-sharing service (in Bell Canada's serving territories), and CDN DS-1 CO Links service (in Bell Canada's serving territories). However, the Commission **denies** Bell Canada's request for a rate freeze for its legacy GAS and HSA Dry Loops service (in the serving territories of Bell Aliant, Bell Canada, and Télébec).

Policy Direction

103. The determinations made in this decision are consistent with the Policy Direction for the reasons set out below.

104. The Policy Direction states that the Commission, in exercising its powers and performing its duties under the Act, shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(a), (b), and (c) of the Policy Direction.

105. The issues under consideration in this proceeding relate to the provision of the services and the associated impact on competition in the downstream market of retail local exchange services and retail Internet services, including whether the provision of the services should no longer be mandated. Therefore, subparagraphs 1(a)(i) and (ii)[26] and subparagraphs 1(b)(i), (ii), and (iv)[27] of the Policy Direction apply to the Commission's determinations in this proceeding. Consistent with subparagraph 1(a)(i), by ceasing to mandate the provision of line-sharing and ULL Connecting Links, the Commission is relying on market forces to the maximum extent feasible as the means of achieving the objectives set out in section 7 of the Act.

[26] Paragraph 1(a) states that "the Commission should (i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, (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."

[27] Paragraph 1(b) states, among other things, that "the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that (i) specify the telecommunications policy objective that is advanced by those measures and demonstrate their compliance with [the Policy Direction], (ii) if they are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry, ... and (iv) if they relate to network interconnection arrangements or regimes for access to networks, buildings, in-building wiring or support structures, ensure the technological and competitive neutrality of those arrangements or regimes, to the greatest extent possible, to enable competition from new technologies and not to artificially favour either Canadian carriers or resellers."

106. In compliance with subparagraph 1(b)(i) of the Policy Direction, the Commission considers that the policy objectives set out in paragraphs 7(a), (b), (c), and (f) of the Act[28] are advanced by the regulatory measures established in this decision.

107. Consistent with subparagraphs 1(a)(ii) and 1(b)(ii) of the Policy Direction, the Commission considers that the regulatory measures approved in this decision, including its decision to freeze the rates for line-sharing, DS-1 Connecting Links, and CDN DS-1 CO Links, are (i) efficient and proportionate to their purpose, and minimally interfere with market forces, and (ii) neither deter economically efficient competitive entry into the market nor promote economically inefficient entry.

Secretary General

Related documents

- *Bell Canada – Application to expand determinations set out in Telecom Regulatory Policy 2015-326 concerning the unbundled local loop framework and the rates for certain wholesale legacy services*, Telecom Decision CRTC 2016-306, 2 August 2016

- *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

- *Price cap framework for large incumbent local exchange carriers*, Telecom Decision CRTC 2007-27, 30 April 2007

[28] The cited policy objectives of the Act are 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; (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; (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; and (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.