



Telecom Decision CRTC 2007-82

Ottawa, 7 September 2007

Request for forbearance from the regulation of Bell Canada's and Bell Aliant Regional Communications, Limited Partnership's Managed Internet Protocol Telephony Service and Saskatchewan Telecommunications' Centrex IP Service

Reference: 8640-B2-200703480

In this Decision the Commission denies an application by Bell Canada, Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), and Saskatchewan Telecommunications (SaskTel) to forbear from the regulation of Bell Canada's and Bell Aliant's Managed Internet Protocol Telephony service and SaskTel's Centrex IP service.

Introduction

1. Bell Canada, Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) (collectively, the Bell Companies), and Saskatchewan Telecommunications (SaskTel) (collectively, the applicants) filed an application dated 21 February 2007, requesting that the Commission forbear from regulating the Bell Companies' Managed Internet Protocol Telephony (MIPT) service, and SaskTel's Centrex IP service, consistent with Telecom Circular 2006-10. In this Circular, the Commission stated that certain access-independent Voice over Internet Protocol (VoIP) services were forborne from tariffing requirements, and that any incumbent local exchange carrier (ILEC) that considered that another tariffed service should be similarly forborne from regulation could apply to the Commission with supporting rationale based upon the Governor in Council's *Order Varying Telecom Decision CRTC 2005-28*, P.C. 2006-1314, 9 November 2006 (Order in Council).
2. The applicants submitted that the MIPT and Centrex IP services were VoIP telephony services that met the Governor in Council's requirements for access-independent services in the Order in Council that are forborne from regulation.
3. The Commission received comments from MTS Allstream Inc. (MTS Allstream). The record of this proceeding closed with the applicants' reply comments dated 4 April 2007.

The application

4. The applicants indicated that in its Order in Council, the Governor in Council had considered that retail local access-dependent and access-independent VoIP services were different from each other in the following manner:
 - i) retail local access-dependent VoIP services are services for which access and service are both provided by the same provider, and can be provided by changing the underlying technology of the local access network from circuit-switched to packet-switched;

- ii) for retail local access-independent VoIP services – in which access and service may be provided by distinct providers – the service provider is not required to provide the underlying network on which the service rides and is not required to obtain the permission of the network provider to offer the service to customers on that network; and
 - iii) retail local access-dependent VoIP services are typically indistinguishable from traditional local telephone services, while retail local access-independent VoIP services are very different, as they require high-speed Internet access as well as special handsets, adapters or the use of a computer, and may be more susceptible to service deterioration or disruption.
- 5. The applicants submitted that the MIPT and Centrex IP services were access-independent VoIP services. The applicants noted that the terms for these services stipulated that it was the subscriber's obligation to provide access to the VoIP services, and that the required access arrangements, typically an Ethernet access service, might be acquired from an ILEC under a separate tariff, or from another service provider, which was the fundamental characteristic distinguishing access-dependent from access-independent VoIP services.
- 6. The applicants submitted that a determination to forbear from the regulation of these services would also be consistent with the Governor in Council's *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the Policy Direction), which directed the Commission to rely on market forces to the maximum extent feasible to meet the telecommunications policy objectives set out in the *Telecommunications Act* (the Act).

MTS Allstream's comments

- 7. MTS Allstream submitted that the applicants' request for forbearance should be denied since the MIPT and Centrex IP services did not meet the description of access-independent VoIP services, as set out in the Order in Council or in the applicants' submissions in the proceeding that led to Telecom Decision 2005-28.¹
- 8. MTS Allstream submitted that the applicants' position, that providing the access portion of a VoIP service independently from the VoIP service itself automatically categorized the service as an access-independent VoIP service, was incorrect. MTS Allstream submitted that these services were not accessed via high-speed connections to the Internet, as stipulated in the Order in Council, but were accessed instead using dedicated, secure Ethernet access and transport circuits directly from the customer's premises to the ILECs' service platforms without going over the Internet.

¹ In Telecom Decision 2005-28, the Commission established the regulatory framework for voice communications services using Internet Protocol.

9. MTS Allstream noted that, in the proceeding that led to Telecom Decision 2005-28, Aliant Telecom Inc. (now Bell Aliant), Bell Canada, SaskTel, and Société en commandite Télébec (now Télébec, Limited Partnership) (collectively, Bell Canada et al.) had taken the position that VoIP services should be classified according to four different service categories. MTS Allstream added that Bell Canada et al. had noted that, under Categories 1 and 2, VoIP services were offered as applications either using the Internet or the customer's high-speed Internet connection.
10. MTS Allstream also indicated that Bell Canada et al. had noted that, under Categories 3 and 4, VoIP services were not retail Internet applications as they did not use retail Internet services for connection to the service provider's network, and did not require the customer to have a broadband Internet access service. MTS Allstream submitted that it was clear from Bell Canada et al.'s submissions that managed IP telephony services such as MIPT should be classified as Category 4 VoIP services, i.e., not as retail Internet services.

The Bell Companies' and SaskTel's reply comments

11. The applicants submitted that the required access arrangements for the MIPT and Centrex IP services, typically an Ethernet access service, were high-speed facilities that used IP and were, therefore, Internet facilities.
12. The applicants were of the view that MTS Allstream had misinterpreted the Order in Council and that Internet services were not restricted in the manner suggested by MTS Allstream. According to the applicants, MTS Allstream considered that an access-independent VoIP service was accessed over high-speed Internet facilities only when it applied to a service that could be accessed over retail residence or small business Internet services, such as Bell Canada's and Bell Aliant's Sympatico or SaskTel's High Speed Internet service offerings.
13. The applicants argued that, even under MTS Allstream's incorrect characterization of the Governor in Council's determinations, the Ethernet access services over which the MIPT and Centrex IP services were accessed could provide access to the public Internet as well as to a wide range of IP networks. The applicants submitted that, for enterprise customers targeted by these services, access to the public Internet typically occurred through such Ethernet facilities.
14. The applicants indicated that the Governor in Council never specified that dedicated facilities were not Internet facilities within the scope of the Order in Council directives.
15. The applicants additionally submitted that MTS Allstream had failed to consider the Policy Direction that the Commission was to rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives. In their view, MTS Allstream did not explain how the continued regulation of these services would advance those objectives.

Commission's analysis and determinations

16. In assessing whether the MIPT and Centrex IP services are access-independent VoIP services or not, the Commission considers that it must evaluate these services against the characteristics set out in the Order in Council, and in particular, those quoted in paragraph 4 of this Decision.

17. The Commission notes that, in Telecom Decision 2005-28, it considered that Bell Canada's MIPT service was an example of a Category 4 VoIP service. The Commission also notes that Category 4 VoIP services do not use Internet services for connection to the service provider's network and therefore are not transported over the public Internet. The Commission further notes that in this proceeding, the service definition for SaskTel's Centrex IP service is similar to the Bell Companies' MIPT services. Accordingly, the Commission considers that SaskTel's Centrex IP service also falls within the definition of a Category 4 VoIP service, i.e. not a retail Internet application.
18. The Commission notes that an access-independent VoIP service requires high-speed Internet access. The Commission also notes that high-speed Internet access provides connectivity to the Internet for the provision of Internet services and applications such as e-mail, podcasting, on-line shopping, and secure remote access to corporate databases. The Commission further notes the applicants' statement that the Ethernet access services over which the MIPT and Centrex IP services are accessed can, and do, provide access to the Internet as well as to the other IP services. The Commission considers that Ethernet access may use IP technology and may be used to provide connectivity to the Internet.
19. The Commission notes that in this case, however, the Ethernet access used to provide the MIPT and Centrex IP services, whether provided by the applicants or a third party provider, would be used to connect the customer's premises to the applicants' Category 4 VoIP service's IP network and not to the Internet. The Commission agrees that the Bell Companies' MIPT and SaskTel's Centrex IP services are not transported over the public Internet and do not use high-speed Internet access. The Commission considers that this characteristic, as identified by the Governor in Council, is not met.
20. In light of the above, the Commission concludes that the Bell Companies' MIPT and SaskTel's Centrex IP services are not access-independent VoIP services within the meaning set out in Telecom Circular 2006-10.
21. Regarding the applicants' submission that a determination to forbear from the regulation of these services would be consistent with the Policy Direction, which directed the Commission to rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, the Commission notes that no parties provided a detailed market impact or showed why the Order in Council guidelines should not be followed.
22. In light of the above, the Commission **denies** the applicants' request to forbear from the regulation of Bell Canada's and Bell Aliant's MIPT service and SaskTel's Centrex IP service.
23. The Commission notes that in Telecom Public Notice 2007-14, it initiated a proceeding to address the issue of Centrex and Enhanced Exchange Wide Dial services in relation to applications for forbearance from the regulation of business local exchange services. The Commission further notes that this proceeding includes within its scope the Bell Companies' MIPT and SaskTel's Centrex IP services.

Secretary General

Related documents

- *Examination of the relevant market for Centrex and Enhanced Exchange Wide Dial services for the purposes of forbearance from the regulation of local exchange services*, Telecom Public Notice CRTC 2007-14, 17 August 2007
- *Access-independent VoIP services pursuant to Order in Council P.C. 2006-1314*, Telecom Circular CRTC 2006-10, 16 November 2006
- *Regulatory framework for voice communication services using Internet Protocol*, Telecom Decision CRTC 2005-28, 12 May 2005, as amended by Telecom Decision CRTC 2005-28-1, 30 June 2005

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