



Telecom Decision CRTC 2009-596

Ottawa, 25 September 2009

TBayTel – Application for forbearance from the regulation of business local exchange services

File number: 8640-T8-200906167

In this decision, the Commission denies TBayTel's request for forbearance from the regulation of business local exchange services in the exchange of Thunder Bay, Ontario.

Introduction

1. The Commission received an application by TBayTel, dated 8 April 2009, in which the company requested forbearance from the regulation of business local exchange services¹ in the exchange of Thunder Bay, Ontario. TBayTel updated the application on 6 July 2009, following the issuance of Telecom Regulatory Policy 2009-379.
2. The Commission received submissions and/or data regarding TBayTel's application from Shaw Cablesystems Ltd. (Shaw). The public record of this proceeding, which closed on 14 August 2009, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Commission's analysis and determinations

3. The Commission has assessed TBayTel's application based on the local forbearance test set out in Telecom Regulatory Policy 2009-379. In this case, the Commission will first consider the competitor presence test. This includes addressing the issue of whether Shaw's Small Office Home Office (SOHO) service is a business service, since TBayTel submitted that Shaw offers SOHO service, as well as Shaw Business Solutions' Primary Rate Interface (PRI) Trunks to business customers in the Thunder Bay exchange.

Is Shaw's SOHO service a business local exchange service?

4. Shaw submitted that it does not currently offer PRIs or other business local exchange services in Thunder Bay. While Shaw indicated that it had started offering SOHO service in the Thunder Bay exchange in June 2009, it argued that SOHO service is not a business local exchange service because it
 - is provided over a residential network that does not access many business locations or industrial areas;

¹ In this decision, "business local exchange services" refers to local exchange services used by business customers to access the public switched telephone network and any associated service charges, features, and ancillary services.

- does not provide the range of services required to handle the needs of medium, large, or enterprise-size businesses;
 - does not include items such as complex business directory listings that medium to large businesses want;
 - cannot be used in conjunction with private branch exchange (PBX) or IP-PBX systems.
5. The Commission notes that while Shaw submitted that SOHO service is not a business local exchange service for the above-mentioned reasons, it nonetheless submitted that SOHO service is a service “more palatable to home offices or very small businesses within the residential plant reach.”
 6. The Commission has also been made aware that Shaw has recently rebranded SOHO service as “Shaw Business Phone service.” Information on Shaw's website further indicates that “Shaw Business Phone is a full-featured business telephone service” that is “designed to work just like a traditional telephone service” and “is delivered through Shaw's managed digital broadband network.”
 7. The Commission further notes that Shaw Business Phone service provides a number of lines per customer that is sufficient to meet the needs of many businesses. The Commission also notes that Shaw is clearly targeting the business market when it invites potential customers to compare the various Shaw Business Phone plans and to “choose the one that meets your business needs.”
 8. The Commission considers that while SOHO service, now known as Shaw Business Phone, may not meet the needs of all businesses, it is nonetheless a local exchange service that targets the business market and is used by business clients to access the public switched telephone network, making it a business local exchange service.

Does the Thunder Bay exchange meet the competitor presence test?

9. Having determined that SOHO service is a business local exchange service, the Commission must determine whether Shaw is capable of serving at least 75 percent of the number of business local exchange services lines that TBayTel is capable of serving in the exchange of Thunder Bay.
10. TBayTel submitted that Shaw's coverage map shows that Shaw's serviceable area encompasses the boundaries of the city of Thunder Bay, thereby demonstrating that Shaw covers the majority of the Thunder Bay exchange. The Commission notes, however, that coverage maps are not meant to be detailed representations of a service provider's presence in a specific area, but are more of a general overview of the territories they serve. This lack of detail could cause individuals to overestimate a service provider's capability to serve a territory.

11. The Commission reaffirms, as it found in Telecom Decision 2008-109, that coverage maps, or service area maps, do not provide sufficient information to demonstrate that the identified facilities-based, fixed-line telecommunications service provider is capable of serving at least 75 percent of the number of local exchange service lines that the incumbent local exchange carrier is capable of serving.
12. TBayTel also identified the number of business locations for each of the forward sortation areas that make up the Thunder Bay exchange. The Commission notes, however, that the competitor presence test for business local exchange services is a function of the competitor's capability to serve at least 75 percent of the number of business lines (network access services, or NAS), not of the number of business addresses or locations. Unlike in the case of the residential market, it is very difficult to establish an average number of NAS per business address or location since various businesses may require substantially different numbers of NAS. Therefore, while a search of Shaw's availability by forward sortation area may provide the number of businesses Shaw is capable of serving, such a number does not translate into the number of NAS Shaw is capable of serving.
13. TBayTel also indicated that as of April 2009, a number of small business customers had been ported from TBayTel to Shaw. The Commission notes that the total number of all those small business customers only represents a very small percentage of all businesses in the Thunder Bay exchange. The Commission does not consider that this information is sufficient evidence of the presence of a competitor capable of serving at least 75 percent of the number of local exchange service lines that TBayTel is capable of serving.
14. TBayTel further submitted that Shaw's capability to serve at least 75 percent of the number of residential local exchange service lines in the Thunder Bay exchange demonstrates Shaw's capability to serve at least 75 percent of the number of business local exchange service lines. TBayTel argued that "Shaw does have the capability to use the existing coaxial facilities that it leases from TBayTel to provide telephony services to business locations within its serviceable area in the same manner as it does for residential services."
15. The Commission notes that in Telecom Decision 2007-70, it rejected the argument that in the case of cable companies that offer both residential and business local exchange services, it would be reasonable to consider the market coverage of their cable networks to be the same in both markets. The Commission noted that residential and business serving areas may not be in the same locations and, accordingly, it is inappropriate to use residential coverage as a proxy for business coverage.
16. The Commission has also considered the information provided by Shaw. Shaw submitted that considering the coaxial plant it uses, if it offered business local exchange services, it would be capable of serving no more than 65 percent of the business NAS.
17. The Commission notes that pursuant to Telecom Regulatory Policy 2009-379 the competitor presence test threshold may be lowered to 50 percent if the applicant submits evidence that the competitor is targeting the core of the exchange due to the lack of financial

incentive or economic ability to offer services in the outskirts of the exchange. However, the Commission further notes that TBayTel did not request that the competitor presence test threshold be lowered to 50 percent, nor did it provide evidence that would justify the Commission lowering the competitor presence test threshold to 50 percent.

18. While the Commission considers that Shaw does offer business local exchange services in the Thunder Bay exchange via its SOHO service, it concludes that information provided by the parties does not indicate that Shaw is capable of serving at least 75 percent of the number of business local exchange service lines that TBayTel is capable of serving in the Thunder Bay exchange. Accordingly, the Commission determines that the Thunder Bay exchange does not meet the competitor presence test.
19. Despite the information and data submitted by TBayTel, the Commission notes the absence of evidence demonstrating Shaw's true capability to serve at least 75 percent of the business NAS in the Thunder Bay exchange. The Commission further notes that in Telecom Decision 2008-86 it considered that various relevant factors, when taken into account collectively, may in some cases persuade the Commission that the competitor presence test has been met. Such evidence includes market conditions, market share, evidence of competitor capability, significant customer losses throughout the exchange, and the extent of competitor presence in many terminal rooms of business buildings.

Conclusion

20. In light of the above, the Commission notes that it need not address TBayTel's submissions with respect to its product market, competitor quality of service results, or communications plan.
21. The Commission determines that TBayTel's forbearance application for the exchange of Thunder Bay, Ontario does not meet all the local forbearance criteria set out Telecom Regulatory Policy 2009-379. Accordingly, the Commission **denies** TBayTel's application for forbearance from the regulation of the business local exchange services in that exchange.

Secretary General

Related documents

- *Framework for forbearance from regulation of retail local exchange services in the serving territories of the small incumbent local exchange carriers*, Telecom Regulatory Policy CRTC 2009-379, 23 June 2009
- *Saskatchewan Telecommunications – Application for forbearance from the regulation of business local exchange services*, Telecom Decision CRTC 2008-109, 21 November 2008

- *Bell Aliant Regional Communications, Limited Partnership – Application for forbearance from the regulation of business local exchange services, Telecom Decision CRTC 2008-86, 8 September 2008*
- *Bell Aliant – Applications for forbearance from the regulation of business local exchange services, Telecom Decision CRTC 2007-70, 10 August 2007*

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>