



Telecom Decision CRTC 2011-736

PDF version

Ottawa, 29 November 2011

Michaud Technologies Inc. – Application to review and vary Telecom Regulatory Policy 2011-291 regarding the transferability of subsidy

File number: 8662-M67-201111583

In this decision, the Commission denies Michaud's application to review and vary Telecom Regulatory Policy 2011-291 to reinstate the transferability of subsidy.

Introduction

1. The Commission received an application by Michaud Technologies Inc. (Michaud), dated 3 August 2011, in which the company requested that the Commission review and vary Telecom Regulatory Policy 2011-291 to reinstate the transferability of subsidy by restoring the eligibility of competitive local exchange carriers (CLECs) operating in high-cost serving areas (HCSAs) to receive subsidy.
2. In Decision 2000-745, the Commission established the local service subsidy regime to subsidize the provision of basic residential local telephone service in rural and remote areas of Canada. In that decision, subsidies were made available to both incumbent local exchange carriers (ILECs) and CLECs that provided residential primary exchange service (PES) in HCSAs. This practice of providing subsidy to both ILECs and CLECs is referred to as the transferability of subsidy.
3. In Telecom Notice of Consultation 2009-575, the Commission called for comments regarding the identification, scope, and prioritization of issues related to the obligation to serve, the basic service objective,¹ and the local service subsidy regime.
4. Based on the comments received in response to that notice, the Commission issued Telecom Notice of Consultation 2010-43 to initiate a proceeding to review issues associated with access to basic telecommunications services, including the obligation to serve, the basic service objective, and local service subsidy (the obligation to serve proceeding).
5. The obligation to serve proceeding resulted in Telecom Regulatory Policy 2011-291, in which the Commission concluded, among other things, that subsidies would not

¹ The obligation to serve requires ILECs to provide telephone service to existing customers, new customers requesting service where the ILEC has facilities, and new customers requesting service beyond the limits of the ILEC's facilities. The basic service objective sets out the elements of basic residential local service that carriers must provide in order to be eligible for subsidy.

be available to CLECs, in either the large or small ILECs' territories, effective 1 June 2011. The Commission considered that local service subsidy should only be available to those carriers that have an obligation to serve all customers in a given HCSA and that meet the basic service objective.

6. Michaud submitted that the Commission had committed several administrative errors in the obligation to serve proceeding and had erred in its decision to eliminate the transferability of subsidy. Michaud submitted that those errors required the Commission to reinstate the transferability of subsidy.
7. The Commission received comments supporting Michaud's application from 9144-3036 Québec Inc., operating as Navigue.com; 768812 Ontario Inc., operating as Vianet Internet Solutions/ExaTEL Inc.; the Western James Bay Telecom Network; and Xittel Telecommunications Inc. The Commission received comments opposing Michaud's application from Bell Aliant Regional Communications, Limited Partnership; Bell Canada; Saskatchewan Telecommunications; Télébec, Limited Partnership; and TELUS Communications Company (collectively, the opponents).
8. The public record of this proceeding, which closed on 22 September 2011, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.
9. The Commission considers that Michaud's application raises the following issues:
 - I. Did the Commission commit administrative errors in the obligation to serve proceeding?
 - II. Did the Commission err in its decision to eliminate the transferability of subsidy?
- I. Did the Commission commit administrative errors in the obligation to serve proceeding?**
10. Michaud submitted that the Commission had erred in Telecom Notice of Consultation 2010-43 by not making small CLECs parties to the obligation to serve proceeding. Michaud argued that the small CLECs should have been made parties to the proceeding due to the significant effect the elimination of the transferability of subsidy would have on them and due to the fact that the CLECs would have provided needed input.
11. Further, Michaud submitted that as a participant in the proceeding initiated by Telecom Notice of Consultation 2009-575,² it should have been named as a party to the obligation to serve proceeding. In addition, Michaud argued that the comments it

² Michaud participated as a member of the Coalition of Internet Service Providers Inc.

made in the Telecom Notice of Consultation 2009-575 proceeding should have been considered in the obligation to serve proceeding.

12. Finally, Michaud argued that the Commission had erred by not properly stating in Telecom Notice of Consultation 2010-43 that the obligation to serve proceeding might result in a change to the transferability of subsidy.
13. The opponents argued that the Commission has no legal obligation to designate any individual person or company as a party to a public proceeding and that the onus is on the interested person or company to notify the Commission of its intent to participate.
14. In addition, the opponents submitted that Telecom Notice of Consultation 2010-43 clearly stated that all aspects of the local service subsidy regime were under review, including the transferability of subsidy.

Commission's analysis and determinations

15. The Commission notes that under the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure), the Commission has the discretion to name specific entities as parties to a public proceeding if it so chooses, but is not required to do so. Accordingly, the Commission was not mandated to name all parties that may have had an interest in the proceeding or may have wanted to provide input, and only made the large ILECs, the large cable carriers, and the small ILECs parties to the proceeding.
16. The Rules of Procedure state the following:

26.(1) Any interested person may intervene in a proceeding in writing within 30 days after the day on which the application is posted on the Commission's website or, if a notice of consultation is posted by the Commission on its website, within the time period set out in the notice.
17. The Commission notes, therefore, that the onus is on an entity to consult the Commission's website, read the applications and notices of consultation publicly available on that website, and identify itself as a formal party to any proceeding in which it is interested.
18. Accordingly, the Commission concludes that it did not err by failing to name certain entities as interested persons to the obligation to serve proceeding.
19. With regard to Michaud's comments filed in the Telecom Notice of Consultation 2009-575 proceeding, the Commission notes that comments received in that proceeding were administrative in nature and helped to establish the scope and issues of consideration in the obligation to serve proceeding. The Commission notes that it did not invite arguments for or against specific issues in that notice of consultation. Accordingly, the Commission did not incorporate those comments into the obligation to serve proceeding.

20. Finally, with regard to Michaud's argument that Telecom Notice of Consultation 2010-43 did not properly state that the obligation to serve proceeding might result in a change to the transferability of subsidy, the Commission notes that the notice stated the following:
 26. The Commission hereby initiates a public proceeding to address issues associated with access to basic service, including the obligation to serve [and] local service subsidy....
 28. The Commission notes that the outcome of this proceeding may result in changes to various regulatory regimes, including the national contribution collection mechanism, applicable to some or all TSPs [telecommunications service providers].
21. The Commission further notes that Appendix 4 to that notice, which provided specific questions for discussion in the obligation to serve proceeding, contained the following questions:
 10. Which service providers should be eligible to receive subsidy and under what circumstances?
 11. ...Should there be subsidized competition in high-cost areas, including small ILEC markets? In which markets and under what conditions, if any, should the subsidy be portable [i.e. transferable]?
22. Accordingly, the Commission considers that Telecom Notice of Consultation 2010-43 properly indicated that the obligation to serve proceeding might result in a change to the transferability of subsidy.
23. In light of all the above, the Commission concludes that it did not commit administrative errors in the obligation to serve proceeding.

II. Did the Commission err in its decision to eliminate the transferability of subsidy?

24. Michaud argued that the Commission had wrongly concluded in Telecom Regulatory Policy 2011-291 that local service subsidy was not a critical source of revenue for certain CLECs and accounted for a small percentage of CLECs' total operating revenues. Michaud submitted that small CLECs operating in HCSAs would be significantly affected by the loss of local service subsidy, particularly since some small CLECs chose to operate in those areas based in part on the assumption that their higher operating costs would be offset by those subsidies.
25. Michaud submitted that the transferability of subsidy is essential to sustainable competition in HCSAs. Michaud argued that CLECs would suffer in such areas without access to local service subsidy and that, as a result, affordable broadband

deployment would be slowed, ILEC market power in HCSAs would increase, and local competition in Band G³ exchanges would not occur.

26. The opponents submitted that the Commission's decision to eliminate the transferability of subsidy was based on the fact that CLECs do not incur, as a regulatory requirement, the higher costs associated with the obligation to serve. The opponents argued that the CLECs do not need local service subsidy as compensation because they do not have the same obligation to serve as the ILECs.
27. The opponents also submitted that the Commission eliminated the transferability of subsidy after considering the impact that such a decision would have on the public interest and on the industry as a whole, rather than the impact on a single stakeholder.
28. Finally, the opponents stated that local service subsidy had never been intended or used for broadband deployment.

Commission's analysis and determinations

29. With regard to the argument that affordable broadband deployment in HCSAs will be slowed without local service subsidy, the Commission notes that the local service subsidy regime was established to subsidize the provision of affordable basic residential local telephone service, not broadband service. Further, the Commission notes that in Telecom Regulatory Policy 2011-291, it concluded that it would not be appropriate at that time to subsidize the deployment of broadband Internet access services. Accordingly, the Commission considers that affordable broadband deployment is not linked to the transferability of subsidy.
30. The Commission notes that in Telecom Regulatory Policy 2011-291, it stated that CLECs generally do not offer residential phone services in the higher-cost locations within regulated HCSAs and that only ILECs in regulated exchanges have the obligation to provide these services.
31. The Commission also notes that only ILECs, and not CLECs, are required to incur additional costs as a result of having an obligation to serve every customer in a given HCSA and to meet the basic service objective for each of those customers. Accordingly, the Commission confirms that local service subsidy should only be available to those carriers that have an obligation to serve all customers in a given HCSA and that meet the basic service objective.
32. With regard to the amount of subsidies distributed to the CLECs, the Commission notes that it made its decision by considering the effect that decision would have on all stakeholders, rather than on each affected entity. The Commission notes that eliminating the transferability of subsidy would have a greater effect on small

³ Band G is defined as the remote band (i.e. wire centres or exchanges that do not have year-round road access or that are located in remote parts of an ILEC's serving territory).

CLECs that are dependent on such subsidies, such as Michaud, than it would have on large CLECs. The Commission considers, however, that the fact that its decision affects one service provider more than another does not make the decision erroneous.

33. Accordingly, the Commission concludes that Michaud has not demonstrated that there is substantial doubt as to the correctness of the Commission's decision to eliminate the transferability of subsidy.

Conclusion

34. Based on its consideration of the issues discussed above, the Commission determines that the evidence submitted by Michaud does not raise substantial doubt as to the correctness of its decision in Telecom Regulatory Policy 2011-291 to eliminate the transferability of subsidy. Accordingly, the Commission **denies** Michaud's application to review and vary Telecom Regulatory Policy 2011-291.

Secretary General

Related documents

- *Obligation to serve and other matters*, Telecom Regulatory Policy CRTC 2011-291, 3 May 2011, as amended by Telecom Regulatory Policy CRTC 2011-291-1, 12 May 2011
- *Obligation to serve and other matters* (formerly *Proceeding to review access to basic telecommunications services and other matters*), Telecom Notice of Consultation CRTC 2010-43, 28 January 2010, as amended by Telecom Notice of Consultation CRTC 2010-43-1, 5 March 2010; Telecom Notice of Consultation CRTC 2010-43-2, 30 March 2010; and Telecom Notice of Consultation CRTC 2010-43-3, 23 July 2010
- *Call for comments – Identification, scope, and prioritization of issues regarding obligation to serve, basic service objective, and local service subsidy regime*, Telecom Notice of Consultation CRTC 2009-575, 11 September 2009
- *Changes to the contribution regime*, Decision CRTC 2000-745, 30 November 2000