



Telecom Decision CRTC 2013-166

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Route reference: Telecom Notice of Consultation 2012-317

Ottawa, 28 March 2013

Forbearance from the regulation of certain wholesale local number portability services and associated matters

File number: 8640-C12-201206540

In this decision, the Commission finds that certain wholesale local number portability database services should be forborne from rate regulation for all competitive local exchange carriers. Further, the Commission finds that, in Telecom Decision 2008-17, port-out cancellation charges were not forborne from rate regulation, and also finds that these charges should be classified as an interconnection service and subject to a Commission-approved tariff.

Background

1. In Telecom Decision 2008-17 (the Essential Services decision), the Commission set out, among other things, a restructured regulatory framework for wholesale services and assigned the wholesale services offered by carriers into six service categories: essential, conditional essential, conditional mandated non-essential, public good, interconnection, and non-essential subject to phase-out. The Commission determined that services classified as non-essential subject to phase-out would be forborne from rate regulation following a phase-out period of three or five years, depending on the service.¹
2. Among the services the Commission assigned to the non-essential subject to phase-out category were certain wholesale local number portability (LNP) database services² provided by Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies), MTS Allstream Inc., Saskatchewan Telecommunications, and TELUS Communications Company (TCC) (collectively, the large incumbent local exchange carriers (ILECs)); and by Cogeco Cable Inc., Rogers Communications Inc., Shaw Cablesystems G.P., and Videotron Ltd.

¹ The term “phase-out” means phasing out mandated access for services assigned to this category at the end of the transition period, at which time the services would be forborne from rate regulation. Once the services are forborne from rate regulation, the carriers are no longer required to obtain Commission approval with respect to the rates, terms, and conditions for their provision. However, the Commission has retained jurisdiction to address instances of unjust discrimination pursuant to subsection 27(2) of the *Telecommunications Act* (the Act) and to impose conditions with respect to the provision of these services under section 24 of the Act, as warranted.

² This specifically refers to LNP query, 10 digit (10D) global title translation, and call routing - location routing number (LRN) absent services. Broadly speaking, these services provide competitors with access to a carrier’s LNP database to obtain information for routing, signaling, and processing of calls.

(collectively, the Cable carriers).³ The Commission granted prospective forbearance for these services, effective 3 March 2011, following a three-year phase-out period.

3. After the specified phase-out period, several of the companies cited above withdrew certain wholesale LNP database services from their respective tariffs.
4. In tariff notices dated 7 March 2012, Bragg Communications Inc., operating as EastLink (EastLink), on behalf of itself and Bluewater TV Cable, proposed to revise each company's General Tariff to remove references to port-out cancellation charges (cancellation charges). EastLink submitted that these applications were consistent with the withdrawal of the Bell companies' cancellation charge tariffs.
5. The Commission's determinations in the Essential Services decision regarding forbearance from the rate regulation of wholesale LNP services applied only to the specific services and tariff items of the large ILECs and Cable carriers listed in the Appendix to that decision. The Commission's decision, however, did not apply to competitive local exchange carriers (CLECs), such as EastLink, nor did it apply to the small ILECs or Northwestel Inc. (Northwestel). Accordingly, the Commission issued Telecom Notice of Consultation 2012-317, seeking comments on whether its findings with respect to the wholesale LNP database services in question should apply to all carriers.
6. The Commission received comments from the Bell companies, EastLink, MTS Inc. and Allstream Inc. (collectively, MTS Allstream), Rogers Communications Partnership (RCP), Shaw Telecom G.P. (Shaw), TCC, and Quebecor Media Inc., on behalf of Videotron G.P. (Videotron). The public record of this proceeding, which closed on 15 October 2012, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Issues

7. The Commission has identified the following issues to be addressed in this decision:
 - I. To what extent, if any, should forbearance for certain wholesale LNP database services be extended to all carriers?
 - II. Were cancellation charges forborne in the Essential Services decision?
 - III. If not forborne, how should cancellation charges be classified pursuant to the Essential Services decision framework?

³ See the Appendix to Telecom Decision 2008-17 for a complete list of tariff item numbers.

I. To what extent, if any, should forbearance for certain wholesale LNP database services be extended to all carriers?

8. In the Essential Services decision, the Commission classified the wholesale LNP database services of the large ILECs and Cable carriers as non-essential subject to phase-out, meaning that they could be provided without prior Commission rate approval, effective 3 March 2011. The Commission's findings were based on evidence that these services are duplicable by competitors, either directly by themselves or through the use of alternative services offered by third-party service providers.
9. Parties generally agreed that wholesale LNP database services should be forborne from regulation for all CLECs, so long as the market is sufficiently competitive. Parties also generally agreed that forbearance should not be extended to small ILECs or Northwestel, as there is no evidence that their respective markets are sufficiently competitive.
10. Parties submitted that applying the same regulatory treatment to CLECs as to the large ILECs would ensure competitive neutrality, and would be consistent with the Policy Direction.⁴
11. Based on the record of the proceeding, the Commission considers that wholesale LNP database services remain duplicable by competitors, and that there is no evidence to suggest that market conditions for these services have changed since the issuance of the Essential Services decision. The Commission also considers that CLECs will only offer wholesale LNP database services in markets where there is a competitive presence, ensuring that there are sufficient market forces to protect the interests of users.
12. Given the above, the Commission finds that it would be appropriate to forbear from the rate regulation of LNP query, 10 digit (10D) global title translation, and call routing – location routing number (LRN) absent services for all CLECs, consistent with the regulatory treatment of those services when provided by the large ILECs and the Cable carriers.
13. The Commission notes the general consensus of parties that its finding in the Essential Services decision to no longer require prior Commission rate approval for the wholesale LNP database services should not be extended to small ILECs and Northwestel. The Commission notes that competition in those territories has only recently been introduced and that the conditions that would justify extending the Commission's finding to these carriers are not present. Accordingly, the Commission finds that it is inappropriate to forbear from the rate regulation of such services in respect of small ILECs and Northwestel at this time.

⁴ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

II. Were cancellation charges forborne in the Essential Services decision?

14. In the Appendix to the Essential Services decision, the Commission identified the complete list of services, and their associated tariff numbers, that were classified as non-essential subject to phase-out, and subject to the Commission's finding that they could be provided without prior Commission rate approval, effective 3 March 2011. The Commission specifically identified LNP query, 10D global title translation, and call routing - LRN absent services as the wholesale LNP database services that would be subject to that regulatory treatment.
15. While the Essential Services proceeding was underway, the Bell companies filed proposed tariffs for cancellation charges, which they grouped under the same tariff numbers used for wholesale LNP database services. The Commission granted final approval to the Bell companies' cancellation charges' tariffs after the issuance of the Essential Services decision, and other ILECs and the Cable carriers subsequently filed their own respective tariffs for the same services.
16. The Bell companies' later withdrew their cancellation charges' tariffs, together with other wholesale tariffs, under the assumption that the charges had been assigned the same classification as the wholesale LNP database services and, hence, could be provided without prior Commission rate approval effective 3 March 2011. Shortly thereafter, Videotron withdrew its own cancellation charges' tariff.
17. In their submission, the Bell companies argued that cancellation charges were subject to the Essential Services decision, and were categorized in that decision as non-essential subject to phase-out along with all the other services in the same tariff item. As such, the Bell companies argued that these charges became automatically forborne from rate regulation in March 2011. For its part, Videotron requested that the Commission clarify the regulatory status of cancellation charges.
18. EastLink, MTS Allstream, RCP, Shaw, and TCC argued that cancellation charges were not subject to the Essential Services decision and therefore continue to be subject to prior Commission rate approval. Some parties submitted that cancellation charges are not a wholesale LNP database service because they do not utilize the LNP database, and, hence, should not be the subject of the Commission's finding in the Essential Services decision with respect to wholesale LNP database services.
19. The Commission notes that cancellation charges did not exist prior to the Essential Services proceeding. Although the Commission granted interim approval to the Bell companies' proposed tariffs for cancellation charges while the proceeding was ongoing, final approval was only granted after the proceeding had concluded. Further, the Commission notes that the list of the services that were classified as non-essential subject to phase-out did not include cancellation charges, and that there was no mention of the service itself in the Essential Services decision. Accordingly, cancellation charges have not been forborne from rate regulation pursuant to the Essential Services decision. As a result, the Commission considers that the

cancellation charge tariffs of the Bell companies and Videotron were mistakenly withdrawn.

III. If not forborne, how should cancellation charges be classified pursuant to the Essential Services decision framework?

20. The Bell companies submitted that cancellation charges should be forborne from rate regulation, as competitors have the ability to avoid paying for the service through their actions. The Bell companies also indicated that, since withdrawing their tariffs, they have applied their cancellation charges under the same rates, terms, and conditions as before, which in their view demonstrated that there is no need for rate regulation.
21. EastLink, MTS Allstream, RCP, Shaw, and TCC submitted that, for reasons of transparency and consistency among all local exchange carriers, cancellation charges should be regulated and subject to a tariff. They argued that they cannot through their actions avoid cancellation charges because number porting is a mandated activity and, as such, requests to cancel the porting of telephone numbers are inevitable. Certain parties indicated that there have been disputes between carriers regarding the application of untariffed cancellation charges.
22. All parties submitted that if cancellation charges were to be tariffed, they should be classified as an interconnection service pursuant to the Essential Services decision.
23. The Commission considers that LNP is fundamental to consumer choice and notes that it is a mandated activity for all carriers operating in Canada. The Commission also notes that the lack of symmetry regarding the regulation of cancellation charges has already led to disputes between carriers. The Commission considers that cancellation charges incent carriers to be efficient in their porting requests and help guard against misuse of the number porting system; however, given the competitive landscape, a certain number of port cancellations are inevitable.
24. The Commission is of the view that making cancellation charges subject to a tariff would ensure that all carriers apply consistent terms and conditions, which would help ensure the above-noted efficiency and help minimize the number of disputes between carriers.
25. The Commission considers that cancellation charges are related to requests to port customers from one carrier to another, and are required for the efficient exchange of information between carriers and the development and sustainment of a competitive marketplace. The Commission considers that cancellation charges are similar in nature to local service request rejection charges, which the Commission previously classified as an interconnection service.⁵ Accordingly, the Commission considers that cancellation charges should be classified as an interconnection service pursuant to the Essential Services framework.

⁵ See Telecom Order 2009-805.

26. In light of the above, the Commission finds that cancellation charges are subject to the Essential Services framework and classified as an interconnection service. Any carrier wishing to apply cancellation charges is directed to file, for Commission approval, a proposed tariff, if it does not already have one in place. This tariff should be consistent with those previously approved by the Commission.

Policy Direction

27. The Policy Direction states that the Commission, in exercising its powers and performing its duties under the *Telecommunications Act* (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.
28. Consistent with subparagraph 1(a)(i) of the Policy Direction, the Commission has, by allowing all CLECs to provide the wholesale LNP database services identified in this decision without prior Commission rate approval, relied to the maximum extent feasible on market forces as the means of ensuring the achievement of the policy objectives set out in paragraphs 7(a), 7(b), 7(c), and 7(f) of the Act.⁶
29. Consistent with subparagraph 1(a)(ii) of the Policy Direction, the Commission considers that the regulatory measures approved in this decision are efficient and proportionate to their purpose, and minimally interfere with market forces. Further, consistent with subparagraph 1(b)(ii) of the Policy Direction, the Commission considers that the findings in this decision will neither deter economically efficient competitive entry into the market nor promote economically inefficient entry.

Secretary General

Related documents

- *Forbearance from the regulation of certain wholesale local number portability services*, Telecom Notice of Consultation CRTC 2012-317, 31 May 2012
- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Introduction of Local Service Request Rejection Charge*, Telecom Order CRTC 2009-805, 23 December 2009
- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008

⁶ 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;
7(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;
7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; and
7(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.