



## Telecom Decision CRTC 2014-487

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Ottawa, 22 September 2014

*File number: 8663-T66-201403138*

### **TELUS Communications Company (TCC) – Application with respect to the provision and billing of competitor digital network services by TBayTel to TCC**

*The Commission **denies** TCC's application that the phase-out requirements of Telecom Decision 2008-17 apply to TBayTel. The Commission determines that TBayTel's wholesale competitor digital network services were no longer available to TCC upon completion of the applicable phase-out periods set out in the Appendix to Telecom Decision 2010-897.*

#### **Background**

1. In Telecom Decision 2010-897, the Commission, in disposing of an application from TBayTel to withdraw its wholesale competitor digital network (CDN) service tariff, directed the company to continue to provide wholesale CDN services only to MTS Allstream Inc. (MTS Allstream)<sup>1</sup> and TELUS Communications Company (TCC) for existing circuits at existing wholesale CDN rates, subject to the phase-out periods set out in the Appendix to that decision. Any new circuits ordered by new or existing customers were to be provided at digital network access (DNA) rates.<sup>2</sup>
2. In January 2014, TBayTel notified TCC that it would begin applying its tariffed DNA rates to those digital network services it had been providing to TCC at wholesale CDN rates pursuant to Telecom Decision 2010-897. Further, TBayTel indicated that it was calculating the impact of a rate adjustment from its wholesale CDN rates to its DNA rates for the period covering 3 March 2013 to the beginning of the January 2014-billing cycle.

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<sup>1</sup> MTS Allstream Inc. was the entity that participated in the proceeding that led to Telecom Decision 2010-897. However, as of early January 2012, MTS Allstream Inc. became known as two separate entities, namely, MTS Inc. and Allstream Inc.

<sup>2</sup> CDN provides a competitor with a digital access link from the competitor's point-of-presence to an incumbent's central office, while DNA provides for the digital transmission of information from a customer's premise to another premise within an exchange, or from a customer's premise to the Rate Center to connect with other network services.

## Application

3. Having been unable to reach an agreement with TBayTel on the applicable pricing for the digital network services, TCC filed an application with the Commission, dated 11 April 2014, in which TCC submitted that TBayTel had failed to comply with the phase-out requirements outlined in Telecom Decision 2008-17<sup>3</sup> and as specified in Telecom Decision 2010-897, including the requirement to provide six-months' written prospective notice to both the Commission and affected carriers specifying the tariff pages that are being withdrawn.
4. TCC submitted that, due to the failure to comply with these requirements, (a) TBayTel was required to continue to provide TCC with wholesale CDN services at CDN tariffed rates, and (b) TCC should not have to pay for the difference between the wholesale CDN and DNA rates for the period between 3 March 2013 and the beginning of the January 2014 billing cycle.
5. TCC requested that the Commission make the following determinations regarding the rates charged by TBayTel for certain digital network services:
  - confirm that TBayTel is subject to the phase-out requirements outlined in Telecom Decision 2008-17, as specified in Telecom Decision 2010-897;
  - find, as a fact, that TBayTel has failed to comply with the above-referenced phase-out requirements;
  - declare that TBayTel's purported notice of 15 January 2014 is of no force and effect; and
  - declare null and void TBayTel's request for retroactive DNA rates.
6. The Commission received an intervention from TBayTel. The public record of this proceeding, which closed on 22 May 2014, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the file number provided above.

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<sup>3</sup> In Telecom Decision 2008-17, the Commission set out a framework for wholesale services, which included forbearing from the regulation of wholesale services with respect to which the Commission determined that their mandatory provisioning would be phased out in accordance with defined periods. Forbearance from the regulation of these services was to take effect on expiry of the relevant phase-out period. These services were also subject to additional requirements, namely compliance with the "end of transition" direction that all incumbent local exchange carriers (ILECs) subject to that decision are required to follow when services approach the end of their specified phase-out periods.

## Positions of parties

### TCC

7. TCC submitted that, pursuant to paragraph 21 of Telecom Decision 2010-897,<sup>4</sup> TBayTel is obligated to provide wholesale CDN services to MTS Allstream and TCC on an ongoing basis, and, in accordance with its wholesale CDN tariff, until such time as the phase-out related requirements set out in Telecom Decision 2008-17 have been satisfied. TCC submitted that the use of the word “plan” in paragraph 21 of Telecom Decision 2010-897 is evidence that TBayTel is required to follow the phase-out plan for the large incumbent local exchange carriers (ILECs) set out in paragraph 191 of Telecom Decision 2008-17, namely to provide six months’ notice to affected carriers;
  - provide six months’ notice to the Commission of its intention to withdraw the service;
  - identify the tariff pages to be withdrawn; and
  - describe its intention with respect to the continued provision of that service in each geographic market in which it is offered at that time.
8. TCC therefore submitted that, in order for TBayTel to withdraw its wholesale CDN services, TBayTel must begin the process associated with the formal withdrawal of the services.
9. TCC submitted that the purpose of the phase-out period and the end of transition direction was to give customers of wholesale services an opportunity to plan for alternative service arrangements. TCC claimed that in this case it was denied the opportunity to lessen the impact to its business and customers by attempting to negotiate a commercial agreement with TBayTel that would have mitigated the rate increase, or identify locations where TCC could have built fibre to migrate circuits to TCC’s own network.

### TBayTel

10. TBayTel submitted that, since the small ILECs were not made parties to the proceeding leading to Telecom Decision 2008-17, it is not bound by the determinations of that decision. Further, the fact that the Commission incorporated the phase-out periods from Telecom Decision 2008-17 into the Appendix of Telecom Decision 2010-897 does not lead to the conclusion that all of Telecom Decision 2008-17 applied to TBayTel.

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<sup>4</sup> In paragraph 21 of Telecom Decision 2010-897, the Commission (a) noted that it had established phase-out periods for several CDN services provided by the large ILECs in Telecom Decision 2008-17, (b) considered that TBayTel’s CDN services should be phased out, consistent with the large ILECs’ phase-out plan, and (c) indicated that phase-out periods were set out in the Appendix of Telecom Decision 2010-897.

11. TBayTel noted that there was no mention throughout the proceeding resulting in Telecom Decision 2010-897, nor in the decision itself, of the need for a notification process, as contemplated by the end of transition requirements set out in Telecom Decision 2008-17. According to TBayTel, had the Commission deemed it necessary for notification to be given, it would have included wording to that effect in the Appendix to Telecom Decision 2010-897, in the same manner as it did for the phase-out periods.

### **Commission's analysis and determinations**

#### **Is TBayTel subject to the end of transition requirements set out in paragraph 191 of Telecom Decision 2008-17 with respect to the withdrawal of its wholesale CDN services?**

12. The Commission notes that, in Telecom Decision 2010-897, it disposed of TBayTel's application to withdraw its wholesale CDN services and determined that TBayTel's wholesale CDN tariff should continue to be available, but limited to the circuits that TBayTel was provisioning at that time.
13. The Commission further indicated, in paragraph 21 of that same decision, that TBayTel CDN services "... should be phased out, consistent with the large ILECs' phase out plan." However, nowhere in Telecom Decision 2010-897 did the Commission reference the "end of transition" requirements set out in paragraph 191 of Telecom Decision 2008-17.
14. In this regard, the Commission notes below its relevant direction to TBayTel, set out in paragraph 22 of Telecom Decision 2010-897.

(...) the Commission directs TBayTel to continue to provide CDN services only to MTS Allstream and TCC for existing circuits at existing CDN rates, **subject to the phase-out periods provided in the Appendix to this decision**. Any new circuits ordered by new or existing customers should be provided at DNA rates. (emphasis added)

15. The Commission considers that the direction set out in paragraph 22 of Telecom Decision 2010-897 is clear and establishes no requirement for TBayTel to abide by the end of transition requirements set out in paragraph 191 of Telecom Decision 2008-17. Instead, Telecom Decision 2010-897 makes reference to the phase-out periods that the Commission has set out in the Appendix to Telecom Decision 2010-897.
16. In light of the above, the Commission finds that TBayTel is not subject to the end of transition requirements set out in paragraph 191 of Telecom Decision 2008-17 with respect to the withdrawal of its wholesale CDN services.

#### **Is TBayTel entitled to charge DNA rates with respect to circuits provisioned to TCC at the time of the issuance of Telecom Decision 2010-897?**

17. The Commission considers that Telecom Decision 2010-897 resulted in the destandardization of TBayTel's wholesale CDN services and withdrawal of these

services effective upon completion of the applicable phase-out period without the need to comply with any further requirements.

18. Accordingly, as the phase-out period for the CDN services TBayTel was providing TCC was five years from the issuance of Telecom Decision 2008-17, i.e., 3 March 2008, all digital network services provided by TBayTel as of 3 March 2013 should have been provided consistent with TBayTel's DNA tariff.

19. In light of the above, the Commission finds that all digital network services provided by TBayTel to TCC as of 3 March 2013 were and are to be provided at DNA rates.

**Is TBayTel entitled to obtain from TCC payment of the difference between wholesale CDN rates and DNA rates with respect to circuits provisioned to TCC at the time of the issuance of Telecom Decision 2010-897, for the period covering 3 March 2013 to the beginning of the January 2014 billing cycle?**

20. In light of the above, the Commission finds that TBayTel is entitled to obtain from TCC payment of the difference between wholesale CDN rates and DNA rates with respect to digital network services provisioned to TCC for the period covering 3 March 2013 to the beginning of the January 2014 billing cycle, in accordance with TBayTel's tariffed general terms of service. Such payment is to be for circuits in place at the time of the issuance of Telecom Decision 2010-897.

## **Conclusion**

21. In light of all of the above, the Commission **denies** TCC's application.

Secretary General

## **Related documents**

- *TBayTel – Application for relief regarding provision of competitor digital network services*, Telecom Decision CRTC 2010-897, 2 December 2010
- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008