



## Telecom Public Notice CRTC 2005-8

Ottawa, 30 June 2005

### **Framework for forbearance from regulation of high-speed intra-exchange digital services**

Reference: 8640-C12-200507618 and 8640-B2-200401506

*In this Public Notice, the Commission initiates a proceeding to seek submissions on a framework for forbearance from the regulation of high-speed intra-exchange digital services. The Commission also invites comments on a Bell Canada forbearance application, with respect to these services.*

#### **Introduction**

1. On 23 February 2004, Bell Canada filed a Part VII application requesting that the Commission make a determination to refrain wholly and unconditionally from exercising its powers and performing its duties under sections 24, 25, 27, 29 and 31 of the *Telecommunications Act* (the Act) with respect to high-speed intra-exchange digital services (intra-exchange HSDS) that Bell Canada currently provides and in the future will provide in 120 specified exchanges.
2. On 5 March 2004, Commission staff suspended Bell Canada's application until further notice.
3. In a letter dated 2 April 2004, Allstream Corp. (now MTS Allstream Inc.) and Call-Net Enterprises Inc. submitted, among other things, that the disposition of Bell Canada's application was better suited to a public notice proceeding than a Part VII process. They argued that such a proceeding would provide opportunity for interested parties to test Bell Canada's evidence and assumptions, and to submit evidence and arguments of their own.
4. The Commission considers that Bell Canada's application raises policy issues that are common to all large incumbent local exchange carriers (ILECs). The Commission further considers that the establishment of a framework for forbearance of intra-exchange HSDS, including clear criteria that it can use to determine when it is appropriate to forbear from regulating such services, would help facilitate the future deregulation of intra-exchange HSDS in an efficient and effective manner. Therefore, the Commission is initiating a proceeding to invite comments on the development of such a framework, in order to dispose of Bell Canada's intra-exchange HSDS forbearance application, as well as any similar applications submitted by the ILECs in the future.

#### **Bell Canada's forbearance application**

5. In its application, Bell Canada claimed that, in recent years, existing and new competitors led by municipal electric utilities had built extensive fibre networks in the business areas of major cities in Bell Canada's territory. In addition, Bell Canada submitted that facilities-based competition in fibre was supplemented by extensive use of Bell Canada's facilities by competitors who benefit from favourable Competitor Digital Network Access rates.

Bell Canada argued that it was facing unprecedented competition in fibre-based services in a number of major cities and submitted, therefore, that an order of forbearance was warranted with respect to intra-exchange HSDS.

6. Bell Canada's application specifically sought forbearance, in 120 exchanges in which a facilities-based competitor was operating a fibre network, for the following services:
  - Digital Network Access (DNA) services at transmission speeds of DS-3 and above;
  - Access Special Routing at transmission speeds of DS-3 and above;
  - High-Speed Metro (HSM) service;
  - various Special Facilities Tariffs, for HSM and OC-12 facilities; and
  - future services in the same class.

## **Background**

7. In *Stentor Resource Centre Inc. - Forbearance from regulation of interexchange private line services*, Telecom Decision CRTC 97-20, 18 December 1997, the Commission noted that interexchange private line (IXPL) services were offered and provided on a route-specific basis, and determined that each route should be considered as a separate market for purposes of forbearance analysis. In Telecom Order CRTC 99-434, 12 May 1999, the Commission determined that forbearance from the regulation of high-capacity and digital data IXPL services would be granted on a particular route if at least one competitor was offering or providing the equivalent of DS-3 bandwidth (or greater) on a private line basis to at least one customer, using terrestrial facilities other than those obtained from the ILEC or its affiliate.
8. In *Commission denies forbearance for digital network access services*, Order CRTC 2000-653, 14 July 2000, the Commission denied applications by the ILECs for forbearance from regulation of the provision of DNA services. The Commission considered that, while a competitive market for these services was emerging, it was not appropriate to forbear from regulating the applicants' DNA services at that time since DNA services constituted a critical input required by competitors. The Commission further considered that forbearance would not be appropriate until further progress had been made in resolving issues, such as access to rights-of-way, buildings and inside wire, that impeded competitors' abilities to expand their networks for DNA services.
9. In *Competitor Digital Network Services*, Telecom Decision CRTC 2005-6, 3 February 2005, the Commission classified DS-3, OC-3 and OC-12 access and intra-exchange competitor digital network services as Category II Competitor Services. The Commission considered that third-party fibre-based suppliers have the potential to supply these higher-speed services to competitors in greater quantities relative to DS-0 and DS-1 access services, which the Commission classified as Category 1 Competitor Services.

## **Analytical framework for forbearance from regulation**

10. Section 34 of the Act states that :

- (1) The Commission may make a determination to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to a telecommunications service or class of services provided by a Canadian carrier, where the Commission finds as a question of fact that to refrain would be consistent with the Canadian telecommunications policy objectives.
- (2) Where the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users, the Commission shall make a determination to refrain, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to the service or class of services.
- (3) The Commission shall not make a determination to refrain under this section in relation to a telecommunications service or class of services if the Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.

11. In *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994 (Decision 94-19), the Commission established a framework for determining whether or not to refrain from regulation of telecommunications services. In that Decision, the Commission adopted the concept of market power as the standard by which to determine whether a market is, or is likely to become, competitive.

12. The Commission considers that a market is not sufficiently competitive if a firm possesses substantial market power in that market. Market power can be demonstrated by the ability of a firm to raise or maintain prices above those that would prevail in a competitive market. Market power may be assessed by examining the following three factors: market shares, demand conditions affecting responses of customers to a change in price of a product or service (such as the availability of economically feasible and practical substitutes), and supply conditions affecting the ability of competitors in the market to respond to a change in the price of the product or service (such as barriers to access to rights-of-way). High market share is a necessary but not sufficient condition for market power; other factors must be present to enable a firm to act anti-competitively.

13. In Decision 94-19, the Commission further indicated that in assessing the degree to which a market may be workably competitive, it may take into account evidence of rivalrous behaviour, such as falling prices, vigorous and aggressive marketing activities, or an expanding scope of competitor activities in terms of products, services, and geographic boundaries.

14. Decision 94-19 outlined a three-step process for considering forbearance applications. The first step is to identify the relevant market. The relevant market is the smallest group of products and geographic area in which a firm with market power can profitably impose a sustainable price increase. The identification of the relevant market is based on the substitutability of the services in question.
15. The second step in the analysis involves determining whether a firm has market power with respect to the relevant market. As indicated in Decision 94-19, there cannot be sustainable competition in a market in which a firm possesses substantial market power.
16. The third step in the analysis is to determine whether, and to what extent, forbearance should be granted for the service or class of services in question.

### **Call for comments**

17. In order to establish the framework and the criteria for forbearance from regulation of intra-exchange HSDS, the Commission invites parties to provide their views, with supporting rationale, with respect to the following issues:
  - the definition of intra-exchange HSDS;
  - the relevant market for forbearance from regulation of intra-exchange HSDS, taking into consideration both service products and geographic areas (e.g., the exchange wire centre, local calling area, etc.);
  - the appropriate qualitative and quantitative criteria (e.g., market share, substitutability, etc.) for determining market power, that will assist the Commission in establishing whether or not competition in the relevant market is, or will be, sufficient to protect the interests of users, and that forbearance would not be likely to unduly impair the establishment or continuance of a competitive market for a service or class of services;
  - the appropriate scope of the Commission's forbearance from its powers and duties;
  - the appropriate process to consider future applications for forbearance of intra-exchange HSDS, bearing in mind that such a process should ease regulatory burden while ensuring that regulation, where required, is efficient and effective;
  - the need to put in place, at the time of forbearance, post-forbearance criteria, conditions or safeguards, including, for example, triggers (such as a time limit) which, if met, would result in either automatic de-forbearance or a review of the appropriateness of ongoing forbearance, and what any such criteria, conditions and safeguards should be; and
  - any other relevant issues within the scope of this proceeding.

18. In this proceeding, the Commission will apply the intra-exchange HSDS forbearance framework and criteria to make a determination on Bell Canada's forbearance application. Interested parties are invited to provide their comments, with supporting rationale, with respect to that application.

### **Procedure**

19. The record of the proceeding associated with Bell Canada's Part VII application for forbearance of intra-exchange HSDS will be included in the record of the proceeding initiated by this Public Notice.
20. Aliant Telecom Inc., Bell Canada, MTS Allstream Inc., Saskatchewan Telecommunications, TELUS Communications Inc. (including the former TELUS Communications (Québec) Inc.), and Société en commandite Télébec are made parties to this proceeding.
21. Other parties who plan to participate in this proceeding are required to notify the Commission of their intention to do so by **8 July 2005** (the registration date) and to provide their contact information. They should do so by contacting the Secretary General by mail at CRTC, Ottawa, Ontario, K1A 0N2, by fax at (819) 994-0218 or by e-mail at [procedure@crtc.gc.ca](mailto:procedure@crtc.gc.ca). They are to indicate in the notice their e-mail address where available. If such parties do not have access to the Internet, they are to indicate in their notice whether they wish to receive disk versions of hard copy filings.
22. The Commission will issue, as soon as possible after the registration date, a complete list of parties and their mailing addresses (including their e-mail addresses, if available), identifying those parties who wish to receive disk versions.
23. Bell Canada is to file with the Commission, serving a copy on all parties, by **22 July 2005** any updates to its Part VII application for forbearance of intra-exchange HSDS.
24. Parties are invited to file written comments with the Commission with respect to the issues described in this Public Notice, serving a copy on all other parties, by **12 August 2005**. Each submission is to include a table of contents and the portion of the submission that addresses the matters identified as issues 1 to 7 in paragraph 17 is to be structured as described in that paragraph. Parties are to include with their comments any supporting evidence, including any research studies or other material to which they wish to refer in this proceeding.
25. Any members of the public who wish to file written comments, without receiving copies of the various submissions, may do so by submitting their comments in writing to the Commission by **12 August 2005**.
26. The Commission and the parties may address interrogatories to the parties identified in paragraph 20 and to any party who filed comments pursuant to paragraph 24. Any such interrogatories must be filed with the Commission and served on the party in question by **2 September 2005**.

27. Responses to those interrogatories are to be filed with the Commission and served on all parties by **23 September 2005**.
28. Requests by parties for further responses to their interrogatories, specifying in each case why a further response is both relevant and necessary, and requests for public disclosure of information for which confidentiality has been claimed, setting out in each case the reasons for disclosure, must be filed with the Commission and served on the relevant party or parties by **30 September 2005**.
29. Written responses to requests for further responses to interrogatories and for public disclosure must be filed with the Commission and served on the party or parties making the request by **14 October 2005**.
30. A determination with respect to requests for further information and for public disclosure will be issued as soon as possible. Any information to be provided pursuant to that determination must be filed with the Commission and served on all parties, by **28 October 2005**.
31. All parties may file final argument with the Commission on matters within the scope of this proceeding, serving a copy on other parties by **18 November 2005**.
32. Parties may file reply comments with the Commission, serving a copy on all other parties by **2 December 2005**.
33. A Decision will be issued within 150 days after the record closes.
34. Where a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date.
35. Where the submission is filed by electronic means, the line **\*\*\*End of document\*\*\*** should be entered following the last paragraph of the document as an indication that the document has not been damaged during electronic transmission.
36. Please note that only those submissions electronically filed will be available on the Commission's website and only in the official language and format in which they are submitted.
37. Each paragraph of all submissions should be numbered.
38. The Commission encourages parties to monitor the record of this proceeding (and/or the Commission's website) for additional information that they may find useful when preparing their submissions.

### **Important**

39. All information submitted, including your name, e-mail address, and any other information not submitted under a claim for confidentiality, will be posted on the Commission's website. Documents received in electronic format will be posted on the Commission's website exactly as you send them, and in the official language and format in which they are received. Documents not received electronically will be available in .pdf format.

## **Location of CRTC offices**

40. Submissions may be examined or will be made available promptly upon request at the Commission offices during normal business hours:

### **Central Building**

Les Terrasses de la Chaudière  
1 Promenade du Portage, Room 206  
Gatineau, Quebec J8X 4B1  
Tel: (819) 997-2429 - TDD: 994-0423  
Fax: (819) 994-0218

### **Metropolitan Place**

99 Wyse Road, Suite 1410  
Dartmouth, Nova Scotia B3A 4S5  
Tel: (902) 426-7997 - TDD: 426-6997  
Fax: (902) 426-2721

205 Viger Avenue West, Suite 504  
Montréal, Quebec H2Z 1G2  
Tel: (514) 283-6607

55 St. Clair Avenue East, Suite 624  
Toronto, Ontario M4T 1M2  
Tel: (416) 952-9096

### **Kensington Building**

275 Portage Avenue, Suite 1810  
Winnipeg, Manitoba R3B 2B3  
Tel: (204) 983-6306 - TDD: 983-8274  
Fax: (204) 983-6317

### **Cornwall Professional Building**

2125 - 11<sup>th</sup> Avenue, Suite 103  
Regina, Saskatchewan S4P 3X3  
Tel: (306) 780-3422

10405 Jasper Avenue, Suite 520  
Edmonton, Alberta T5J 3N4  
Tel: (780) 495-3224

580 Hornby Street, Suite 530  
Vancouver, British Columbia V6C 3B6  
Tel: (604) 666-2111 - TDD: 666-0778  
Fax: (604) 666-8322

Secretary General

*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>*