



Telecom Decision CRTC 2006-21

Ottawa, 25 April 2006

Aliant Telecom Inc.'s application for forbearance from regulation of single-line inside wire services

Reference: 8640-A53-200511875

In this Decision, the Commission forbears, with some conditions, from regulating single-line inside wire services provided by Aliant Telecom Inc. Customers without a jack-ended demarcation device will not be required to pay for diagnostic, repair, or maintenance services to their inside wiring when reporting transmission problems.

1. The Commission received an application under Part VII of the *CRTC Telecommunications Rules of Procedure*, dated 13 October 2005, by Aliant Telecom Inc. (Aliant Telecom), requesting that the Commission make a determination pursuant to section 34 of the *Telecommunications Act* (the Act) to refrain wholly and unconditionally from exercising its powers and performing its duties under sections 24 (in part) and 25; subsections 27(1), 27(2), 27(3) (in part), 27(4), 27(5) and 27(6); and sections 29 and 31 of the Act in relation to all residential and business single-line inside wire services in Aliant Telecom's territory.
2. The Commission received no comments with respect to this application. Commission staff issued a letter to Aliant Telecom, dated 9 December 2005, requesting further information. Aliant Telecom replied on 22 December 2005.

Regulatory background

3. The Commission's power to forbear from regulating a telecommunications service or class of services provided by a Canadian carrier originates from section 34 of the Act, which reads as follows:

34. (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.

(4) The Commission shall declare that sections 24, 25, 27, 29 and 31 do not apply to a Canadian carrier to the extent that those sections are inconsistent with a determination of the Commission under this section.

4. The Canadian telecommunications policy objectives set out at section 7 of the Act include the following:

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

...

(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; and

...

(h) to respond to the economic and social requirements of users of telecommunications services.

5. The Commission established a framework for considering whether or not to forbear in *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994 (Decision 94-19). In that Decision, the Commission noted that the first step in assessing whether it is appropriate to forbear involves defining the relevant market. The relevant market is essentially the smallest group of products and geographic area in which a firm with market power can profitably impose a sustainable price increase.

6. In Decision 94-19, the Commission established a number of criteria to be examined when determining whether a market was competitive. These criteria include the market shares of the dominant and competing firms, demand and supply conditions, the likelihood of entry into the market, barriers to entry into the market, and evidence of rivalrous behaviour.

7. The Commission found in the following decisions that the market for single-line inside wire services in various geographic territories was sufficiently competitive and, accordingly, forbore from regulating the inside wire services provided by the following telephone companies:

- Télébec ltée, now known as Société en commandite Télébec (Télébec), in Telecom Order CRTC 98-856, 27 August 1998;
- Bell Canada, in *Bell Canada – Forbearance from Regulation of Single Line Inside Wiring Services*, Telecom Order CRTC 99-1016, 22 October 1999;

- Hurontario Telephones Limited, now known as Execulink Telecom Inc. (Execulink Telecom), in *Forbearance for single-line inside wiring granted for Hurontario*, Order CRTC 2000-881, 26 September 2000;
- TELUS Québec Inc., now TELUS Communications Inc., in *Forbearance for single-line inside wiring granted for TELUS Québec*, Order CRTC 2001-416, 25 May 2001;
- Saskatchewan Telecommunications, in *Saskatchewan Telecommunications' application for forbearance from regulation of single-line inside wiring services*, Telecom Decision CRTC 2003-38, 17 June 2003;
- TELUS Communications Inc., in *TELUS' application for forbearance from regulation of single-line inside wire services*, Telecom Decision CRTC 2003-69, 17 October 2003; and
- People's Telephone Company of Forest Inc., in *People's Telephone Company of Forest Inc.'s application for forbearance from regulation of single-line inside wiring services*, Telecom Decision CRTC 2004-1, 8 January 2004.

The application

8. In its application, Aliant Telecom requested forbearance from regulation of all residential and business single-line inside wire services on the customer side of the demarcation point, including installation and repair services provided by Aliant Telecom as outlined in its General Tariff item 340.1, and new applications and similar services that could be characterized as single-line inside wire services.
9. Aliant Telecom submitted that customers in Nova Scotia had been responsible for installation, moves, maintenance, and repair of single-line inside wire since September 1996 pursuant to Telecom Order CRTC 96-123, 13 February 1996, while Aliant Telecom's single-line business and residence customers in New Brunswick, Prince Edward Island, and Newfoundland and Labrador had been responsible for prewire, installation, moves and changes, and repair of inside wire on the customer's side of the demarcation point since June 2002 pursuant to *Aliant Telecom Inc. – Transfer of inside wire*, Order CRTC 2001-673, 27 August 2001, and *Aliant Telecom Inc. – New structure for inside wire and service charges*, Telecom Order CRTC 2002-228, 31 May 2002.
10. Aliant Telecom noted that the transfer of responsibility for single-line inside wire and jacks beyond the demarcation point to the customer was indicated in its Terms of Service. The company further noted that its customers were informed through bill messages that they had acquired a choice for installation/repair of the phone wire inside their residences. Aliant Telecom submitted that its web page both informed customers that they were responsible for single-line inside wire installation and repair, and included a comprehensive wiring guide that provided customers with detailed information on installation, maintenance, and repair of their single-line inside wire.

11. Aliant Telecom submitted that competition was well-established in the single-line inside wire market in New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island. The company noted that inside wiring work could be provided by electricians, electrical contractors, security companies, telephone equipment suppliers, and cable companies. Aliant Telecom further submitted that residential and business single-line inside wire customers could and did carry out inside wiring work themselves, and that the instructions, parts and materials needed to do this were readily and widely available.
12. Aliant Telecom submitted that the vast majority of new homes and single-line businesses were pre-wired by electricians and general contractors. Aliant Telecom clarified in its response to an interrogatory that these electricians and general contractors were not under contract to Aliant Telecom when they wired new homes and single-line businesses, and that they carried on the activity independently of Aliant Telecom. In addition, Aliant Telecom confirmed that the vast majority of new homes and single-line businesses were pre-wired by parties other than Aliant Telecom.
13. Aliant Telecom argued that the market for single-line inside wire demonstrated significant rivalry. The company attached Yellow Pages lists of numerous suppliers of these services in all of the four Atlantic Provinces in which it offered service.
14. Aliant Telecom submitted that there were no significant barriers to customers finding or switching suppliers for the installation, maintenance, and repair of single-line inside wire, since consumers could either do the work themselves or make a phone call to have it done. The company also submitted that there were no regulatory or legislative barriers that would inhibit a supplier's entry into this market, noting that there were many suppliers present in the market. Aliant Telecom stated that it was expected that even greater competition would arise with the expanding Internet industry and with cable companies expanding into the telecommunications business.
15. Aliant Telecom submitted that there were no technical barriers to entry or exit in this market. It also submitted that the required materials and equipment were available from a wide range of retail and wholesale merchants. The company further submitted that infrequent technological changes in the provisioning of single-line inside wire services meant that the materials and equipment had a long service life. Aliant Telecom argued that there were no financial barriers to entry into this market since no major capital investment was required to purchase the necessary materials and equipment.
16. Aliant Telecom argued that without a guaranteed rate of return, it was no longer able to cross-subsidize Competitive segments with revenues from Utility segments and must therefore charge market prices where it faced competition. The company also argued that charging less than market prices without the prospect of offsetting revenue from Utility segment revenues would only lower profits.
17. Aliant Telecom noted that in recent single-line inside wire forbearance rulings, the Commission had stated that customers without a jack-ended demarcation device who experienced a single-line inside wire trouble should not be charged for diagnosis of the problem or for repair of their single-line inside wire. The company submitted that it was inappropriate to mandate

free repair where a demarcation jack was not present. It argued that under this scenario, it would treat two customers with an identical single-line inside wire trouble differently: the customer with a jack-ended demarcation device would be required to pay for repair while the customer without that device would receive repair at no charge. The company submitted that this was unfair.

18. Aliant Telecom also submitted that providing repair services at no charge to certain customers was a disincentive to those customers who would otherwise seek competitive repair alternatives and was therefore contrary to the Commission's goal of promoting competition in the single-line inside wire installation and repair market.
19. Aliant Telecom stated that its policy was that customers without a jack-ended demarcation device would not be charged for travel time and work the company performed to diagnose whether the trouble was on Aliant Telecom's or the customer's side of the demarcation point. The company further stated that if its on-site technician determined that single-line inside wire repair was needed and the customer decided not to use Aliant Telecom for repair, it would either repair one jack or install a jack-ended demarcation device at no charge.
20. Aliant Telecom submitted that, as a result, single-line inside wire customers without a jack-ended demarcation device should continue to receive diagnosis of their problem at no charge but should not be mandated to receive repair at no charge.

Commission's analysis and determination

Application of subsections 34(1), 34(2), and 34(3) of the Act

21. The Commission notes that while subsection 34(1) of the Act provides that the Commission may refrain from regulating a service or class of services when it finds that such forbearance is consistent with the Canadian telecommunications policy objectives set out in the Act, subsection 34(2) of the Act requires the Commission to forbear where it finds that the market for the service in question is, or will be, subject to sufficient competition to protect the interests of users. The Commission also notes, however, that subsection 34(3) of the Act provides that the Commission shall not forbear if it finds that to do so would be likely to impair unduly the establishment or continuance of a competitive market for that service.
22. The Commission notes that in its forbearance application, Aliant Telecom requested forbearance from regulation of all residential and business single-line inside wire services, including installation and repair services, but did not explicitly state that maintenance of single-line inside wire services was included in the forbearance application. The Commission notes, however, that in its forbearance application, Aliant Telecom discussed installation, maintenance, and repair of single-line inside wire. Further, the Commission notes that in all past Commission decisions on forbearance from regulation of single-line inside wire services, maintenance, in addition to installation and repair of single-line inside wire services, was forborne from regulation. The Commission considers that in the context of single-line inside wire services, maintenance and repair are similar services that are performed by inside wiring service providers. As such, the Commission considers that maintenance of single-line inside wire should be included in its deliberation of Aliant Telecom's forbearance application.

23. The Commission also notes that in its application, Aliant Telecom requested forbearance from regulation of existing tariffed single-line inside wire services as well as new applications and similar services that can be characterized as single-line inside wire services. The Commission considers that since there have been infrequent technological changes in the provisioning of inside wiring, new single-line inside wire services on the customer's side of the demarcation point would be expected to perform functions similar to the existing single-line inside wire services. Accordingly, the Commission considers it appropriate for the purpose of this application to define the market for single-line inside wire services to include the installation, maintenance, and repair of all existing and new single-line residential and business inside wire services used for telecommunications purposes that are on the customer's side of the demarcation point.
24. The Commission further considers that the market for single-line inside wire services extends throughout Aliant Telecom's entire service territory since electricians and installers of security systems, in addition to Aliant Telecom, offer such services and the required parts and supplies are available throughout this territory.
25. The Commission finds that, based on the evidence submitted by Aliant Telecom, the market for single-line inside wire services in Aliant Telecom's service territory is competitive, with many existing and potential suppliers and no barriers to entry. The Commission also finds that the potential exists for customers with a jack-ended demarcation device to perform inside wiring work themselves. The Commission considers that these competitive conditions exist throughout Aliant Telecom's territory of New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island. Since the market for single-line inside wire services is competitive, with no barriers to entry, the Commission finds that below-cost pricing of single-line inside wire services by Aliant Telecom for such customers is unlikely. The Commission considers that if it were to refrain from regulating single-line inside wire services, Aliant Telecom could not recoup any loss from below-cost pricing by increasing the prices in the future.
26. The Commission notes, however, that while Aliant Telecom's policy is to install a jack-ended demarcation device at no cost when a customer without such a device reports a transmission problem, the record of this proceeding indicates that Aliant Telecom has not installed a jack-ended demarcation device at all customer premises. The Commission further notes that customers without such a device may be unable to determine whether any transmission problems originate on the inside wiring, for which they would be responsible, or on the company's network, for which they would not be responsible.
27. The Commission considers that a customer without a jack-ended demarcation device will not have the same degree of supply choice as a customer who has a jack-ended demarcation device. Therefore, the Commission considers that the market is not sufficiently competitive to protect the interests of customers who do not have a jack-ended demarcation device in all circumstances.
28. Accordingly, the Commission finds, pursuant to subsection 34(2) of the Act, as a question of fact, that the provision of single-line inside wire services is sufficiently competitive in Aliant Telecom's service territory to protect the interests of users so as to warrant forbearance to the extent set out in this Decision.

29. The Commission finds, pursuant to subsection 34(1) of the Act, as a question of fact, that refraining from the exercise of its powers and the performance of its duties, to the extent set out in this Decision, with respect to single-line inside wire services in Aliant Telecom's service territory, is consistent with the Canadian telecommunications policy objectives.
30. The Commission also finds, pursuant to subsection 34(3) of the Act, as a question of fact, that refraining from regulating single-line inside wire services to the extent set out in this Decision is unlikely to impair unduly the continuance of a competitive market for that class of services.
31. In light of these findings, the Commission must determine the extent to which it is appropriate 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 of the Act.

Section 24

32. Section 24 of the Act provides:

24. The offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission.

33. The Commission considers that it is appropriate to retain its powers pursuant to section 24 of the Act to ensure that the confidentiality of customer information continues to be protected. Because Aliant Telecom's Terms of Service, which ensure the confidentiality of customer information for regulated services, do not apply to forborne services, the Commission directs Aliant Telecom, as a condition of providing single-line inside wire services, to abide by the existing conditions regarding disclosure of confidential customer information to third parties with respect to the services forborne from regulation in this Decision. The Commission also directs Aliant Telecom, on a going-forward basis, as a condition of providing single-line inside wire services, to incorporate, where appropriate, the existing conditions regarding disclosure of confidential customer information to third parties into all contracts and any other arrangements for services forborne from regulation in this Decision.
34. In addition, in light of the conclusions reached in this Decision with respect to customers who do not have a jack-ended demarcation device at the time of reporting transmission problems, the Commission directs Aliant Telecom, as a condition of providing single-line inside wire services, to specify in future editions of the white pages of its telephone directories that diagnosis, maintenance, and repair of single-line inside wiring will be free of charge for all customers without a jack-ended demarcation device at the time of reporting transmission problems.
35. Finally, the Commission considers that it is also appropriate to retain sufficient powers under section 24 of the Act to specify possible future conditions for offering and providing single-line inside wire services. Future conditions could, for example, include the requirement to provide competitors with access to single-line inside wiring.

Section 25

36. Section 25 of the Act provides:

25. (1) No Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission that specifies the rate or the maximum or minimum rate, or both, to be charged for the service.

(2) A joint tariff agreed on by two or more Canadian carriers may be filed by any of the carriers with an attestation of the agreement of the other carriers.

(3) A tariff shall be filed and published or otherwise made available for public inspection by a Canadian carrier in the form and manner specified by the Commission and shall include any information required by the Commission to be included.

(4) Notwithstanding subsection (1), the Commission may ratify the charging of a rate by a Canadian carrier otherwise than in accordance with a tariff approved by the Commission if the Commission is satisfied that the rate

(a) was charged because of an error or other circumstance that warrants the ratification; or

(b) was imposed in conformity with the laws of a province before the operations of the carrier were regulated under any Act of Parliament.

37. Based on the record of this proceeding, the Commission considers it appropriate that Aliant Telecom no longer be required to file and obtain the Commission's approval of tariffs for single-line inside wire services, except for diagnostic, maintenance, and repair services for customers without a jack-ended demarcation device. Accordingly, the Commission will refrain from the exercise of all of its powers and the performance of all of its duties under section 25 of the Act with respect to single-line inside wire services, except for diagnostic, maintenance, and repair services for customers without a jack-ended demarcation device.

Section 27

38. Section 27 of the Act provides:

27. (1) Every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable.

(2) No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

(3) The Commission may determine in any case, as a question of fact, whether a Canadian carrier has complied with section 25, this section or section 29, or with any decision made under section 24, 25, 29, 34 or 40.

(4) The burden of establishing before the Commission that any discrimination is not unjust or that any preference or disadvantage is not undue or unreasonable is on the Canadian carrier that discriminates, gives the preference or subjects the person to the disadvantage.

(5) In determining whether a rate is just and reasonable, the Commission may adopt any method or technique that it considers appropriate, whether based on a carrier's return on its rate base or otherwise.

(6) Notwithstanding subsections (1) and (2), a Canadian carrier may provide telecommunications services at no charge or at a reduced rate

(a) to the carrier's directors, officers, employees or former employees; or

(b) with the approval of the Commission, to any charitable organization or disadvantaged person or other person.

39. The Commission considers that there is no need to apply the regulatory standards for "just and reasonable" rates to rates that are set in a competitive market. Accordingly, and consistent with the Commission's conclusion that the market for single-line inside wire services in Aliant Telecom's service territory is not sufficiently competitive to protect the interests of customers who do not have a jack-ended demarcation device, the Commission will refrain from the exercise of all of its powers and the performance of all of its duties under subsection 27(1) of the Act with respect to single-line inside wire services in Aliant Telecom's service territory, except with respect to the diagnosis, maintenance, and repair of single-line inside wiring of customers without a jack-ended demarcation device.
40. Given that customers without a jack-ended demarcation device may be unable to determine the origin of a transmission problem, the Commission directs Aliant Telecom to issue revised tariff pages specifying that diagnosis, repair, and maintenance of single-line inside wiring will be free of charge to customers without a jack-ended demarcation device when reporting transmission problems.
41. The Commission will refrain from the exercise of all of its powers and the performance of all of its duties under subsection 27(2) of the Act with respect to single-line inside wire services.
42. The Commission considers it necessary to retain its powers under subsection 27(3) of the Act with respect to compliance with powers and duties not forborne from in this Decision.
43. The Commission will refrain from the exercise of its powers under subsection 27(5) of the Act with respect to single-line inside wire services provided to customers with a jack-ended demarcation device as that subsection relates to subsection 27(1) of the Act, with respect to which the Commission is forbearing in this Decision as far as such customers are concerned.

The Commission, however, considers it necessary, with respect to customers without a jack-ended demarcation device, to retain its powers under subsection 27(5) of the Act, since it relates to subsection 27(1) of the Act for which the Commission is retaining its powers insofar as such customers are concerned.

44. The Commission will also forbear from all of its powers under subsections 27(4) and 27(6) of the Act with respect to single-line inside wire services, since subsection 27(4) of the Act relates to subsection 27(2) of the Act with respect to which the Commission is forbearing in this Decision, and since subsection 27(6) of the Act does not relate per se to the charging of rates to customers without a jack-ended demarcation device.

Section 29

45. Section 29 of the Act provides:

29. No Canadian carrier shall, without the prior approval of the Commission, give effect to any agreement or arrangement, whether oral or written, with another telecommunications common carrier respecting

- (a) the interchange of telecommunications by means of their telecommunications facilities;
- (b) the management or operation of either or both of their facilities or any other facilities with which either or both are connected; or
- (c) the apportionment of rates or revenues between the carriers.

46. The Commission considers it appropriate that Aliant Telecom no longer be required to obtain the Commission's approval to enter into agreements with other telecommunications common carriers regarding single-line inside wire services. Accordingly, the Commission will refrain from the exercise of all of its powers and the performance of all of its duties under section 29 of the Act with respect to single-line inside wire services.

Section 31

47. Section 31 of the Act provides:

31. No limitation of a Canadian carrier's liability in respect of a telecommunications service is effective unless it has been authorized or prescribed by the Commission

48. The Commission considers it appropriate that Aliant Telecom be able to limit its liability in respect of single-line inside wire services in the same way as may an unregulated service provider. Accordingly, the Commission will refrain from the exercise of all of its powers and the performance of all of its duties under section 31 of the Act with respect to single-line inside wire services.

Declaration pursuant to subsection 34(4) of the Act

49. In light of the above, the Commission declares, pursuant to subsection 34(4) of the Act, that effective two weeks from the date of this Decision, sections 24, 25, 27, 29, and 31 of the Act do not apply to Aliant Telecom's single-line inside wire services, except with respect to:
- the conditions pursuant to section 24 of the Act set out in this Decision with respect to the confidentiality of customer information;
 - the condition pursuant to section 24 of the Act set out in this Decision with respect to the publication in the white pages of the telephone directories of a statement that diagnosis, maintenance, and repair of single-line inside wire of customers without a jack-ended demarcation device when reporting transmission problems will be free of charge;
 - any future condition that the Commission may impose, pursuant to section 24 of the Act, with respect to single-line inside wire services;
 - the Commission's powers under subsections 25(1), 27(1), and 27(5) of the Act with respect to the filing and approval of tariffs and just and reasonable rates for single-line inside wire services as they relate to customers without a jack-ended demarcation device; and
 - the Commission's powers under subsection 27(3) of the Act with respect to compliance with powers and duties not forborne from in this Decision.

Tariff filings

50. The Commission directs Aliant Telecom to issue revised tariff pages within two weeks of the date of this Decision, deleting the existing tariff provisions relating to residential and business single-line inside wire services and including provisions stating that the company diagnoses, maintains, and repairs, without charge, the single-line inside wiring of customers without a jack-ended demarcation device when customers report transmission problems.

Secretary General

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