



Telecom Decision CRTC 2006-30

Ottawa, 18 May 2006

TELUS Communications Company's application for forbearance from section 29 of the *Telecommunications Act* with respect to forborne interexchange private line and domestic long distance services within its incumbent serving territory in Quebec

Reference: 8640-T66-200514754

*In this Decision, the Commission **approves** TELUS Communications Company's (TCC's) application for forbearance from section 29 of the Telecommunications Act (the Act) with respect to agreements or arrangements that TCC might enter into with any other telecommunications common carrier in relation to forborne interexchange private line (IXPL) and domestic long distance services within its incumbent serving territory in Quebec. The Commission also determines that section 29 of the Act does not apply with respect to forborne domestic long distance and IXPL services provided by TCC in its incumbent serving territory in Quebec.*

Background

1. In *TELUS' application for forbearance from section 29 of the Telecommunications Act with respect to forborne interexchange private line and long distance services*, Telecom Decision CRTC 2003-77, 19 November 2003 (Decision 2003-77), the Commission forbore from the exercise of its powers and duties under section 29 of the *Telecommunications Act* (the Act) in respect of agreements or arrangements that TELUS Communications Company (TCC)¹ might enter into regarding forborne domestic long distance and interexchange private line (IXPL) services.
2. In *Aliant Telecom, Bell Canada, MTS Allstream and SaskTel – Forbearance from section 29 of the Act for agreements related to forborne domestic toll services and forborne interexchange private line services*, Telecom Decision CRTC 2004-80, 9 December 2004 (Decision 2004-80), the Commission forbore from the exercise of its powers and duties under section 29 of the Act in respect of agreements or arrangements that Aliant Telecom Inc. (Aliant Telecom), Bell Canada, MTS Allstream Inc. (MTS Allstream) and Saskatchewan Telecommunications (SaskTel) might enter into with other telecommunications carriers relating to forborne domestic toll and IXPL services.

The application

3. Pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure* and pursuant to section 34 of the Act, TCC filed an application, dated 2 December 2005, requesting that the Commission refrain completely and unconditionally from exercising its powers and duties

¹ On 1 July 2004, TELUS Communications (Québec) Inc. (TCQ) transferred all its assets and business to TCC, and TCQ's telecommunications services in Quebec have been provided by TCC since that date.

under section 29 of the Act in respect of agreements or arrangements relating to forborne domestic long distance and IXPL services that TCC might enter into with other telecommunications common carriers, within its incumbent serving territory in Quebec.

4. According to TCC, its application is consistent with prior decisions granting section 29 forbearance to other incumbent local exchange carriers (ILECs) for the same services. TCC also pointed out that the Commission had previously granted section 29 forbearance for the same services to Aliant Telecom, Bell Canada, MTS Allstream and SaskTel in their incumbent serving areas (Decision 2004-80) and to TCC in Alberta and in British Columbia (Decision 2003-77). According to TCC, if the application is approved, it will put TCC on an equal footing with other ILECs, specifically Bell Canada, and competitors.
5. TCC further mentioned that approving its application would not negatively affect current or future competitiveness in the domestic long distance and IXPL service markets in TCC's serving territory because each of them would continue to be subject to a sufficient level of competition to protect the interests of the users of these services.
6. The Commission did not receive any comments concerning the application.

Regulatory framework

7. 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.

8. The Canadian telecommunications policy objectives referred to in subsection 34(1) are set out in section 7 of the Act and 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;

...

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

9. Section 29 of the Act stipulates the following:

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.

10. The Commission forbore in large part from the regulation of domestic toll and toll-free services in *Forbearance – Regulation of toll services provided by incumbent telephone companies*, Telecom Decision CRTC 97-19, 18 December 1997 (Decision 97-19) and from the regulation of IXPL services in *Stentor Resource Centre Inc. – Forbearance from regulation of interexchange private line services*, Telecom Decision CRTC 97-20, 18 December 1997 (Decision 97-20).
11. The Commission notes that in Decisions 2003-77 and 2004-80, as a question of fact, in accordance with subsection 34(1) of the Act, it found that refraining from the exercise of its powers and the performance of its duties under section 29 of the Act with respect to forbore domestic long distance and IXPL services provided by TCC and by Aliant Telecom, Bell Canada, MTS Allstream and SaskTel was consistent with the Canadian telecommunications policy objectives.

12. The Commission also notes that in Decisions 2003-77 and 2004-80, as a question of fact, in accordance with subsection 34(2) of the Act, it found that the market for forborne domestic long distance and IXPL services was sufficiently competitive to protect the interests of users, such that forbearance from section 29 of the Act was warranted.
13. The Commission further notes that in Decisions 2003-77 and 2004-80, it also found, pursuant to subsection 34(3) of the Act, that refraining from the exercise of its powers and the performance of its duties under section 29 of the Act with respect to forborne domestic long distance and IXPL services would not impair the continuance of a competitive market for these services.

Commission's analysis and determination

14. As noted above, the Commission forbore in large part from the regulation of domestic toll and toll-free services, and certain IXPL services, in Decisions 97-19 and 97-20, respectively. The Commission notes that TCC is requesting forbearance from the requirements of section 29 of the Act for agreements regarding forborne domestic long distance and IXPL services.
15. The Commission has established the terms and conditions under which competitors obtain access to the ILECs' networks. Pursuant to *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997 (Decision 97-8), the ILECs provide competitors with access to their networks according to the rates, terms and conditions of their tariffs, and competitors are able to obtain essential or near-essential facilities on an unbundled basis. In Decisions 97-8 and 97-19, the Commission retained its powers and duties under subsection 27(2) of the Act to ensure that competitors obtain non-discriminatory access to the ILECs' networks.
16. The Commission therefore notes that if it were to forbear from regulating under section 29 of the Act, competitors would continue to have access to TCC's network according to the company's tariffed rates, terms and conditions. Further, TCC would still be required to comply with subsection 27(2) of the Act and provide competitors with access to its network. In addition, TCC would continue to be required to enter into agreements with competitive local exchange carriers, other ILECs or interexchange carriers that conform to Master Interconnection Agreements approved by the Commission.
17. The Commission considers that approval of the TCC application would be consistent with Decisions 2003-77 and 2004-80, and would remove the existing competitive imbalance between TCC and the other ILECs with respect to the requirements of section 29 of the Act.
18. The Commission notes that with approval of TCC's application, all agreements that include forborne domestic long distance or IXPL services, together with tariffed services, would still have to be filed with the Commission and would be subject to Commission approval.

19. Finally, the Commission finds, pursuant to subsections 34(1), 34(2) and 34(3) of the Act, that:
- a) refraining from the exercise of its powers and the performance of its duties under section 29 of the Act with respect to forborne domestic long distance and IXPL services provided by TCC in its incumbent serving territory in Quebec is consistent with the Canadian telecommunications policy objectives;
 - b) the market for forborne domestic long distance and IXPL services is sufficiently competitive to protect the interests of users, such that forbearance from section 29 of the Act is warranted;
 - c) forbearance from the exercise of its powers and the performance of its duties under section 29 of the Act with respect to forborne domestic long distance and IXPL services would not impair the continuance of a competitive market for these services.
20. Accordingly, the Commission **approves** TCC's application for forbearance and determines, pursuant to subsection 34(4) of the Act, that section 29 of the Act does not apply to forborne domestic long distance and IXPL services provided by TCC in its incumbent serving territory in Quebec.

Secretary General

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