



Telecom Public Notice CRTC 2006-14

Ottawa, 9 November 2006

Review of regulatory framework for wholesale services and definition of essential service

Reference: 8663-C12-200614439

In this Public Notice, the Commission initiates a proceeding to consider a revised definition of essential service, and the classifications and pricing principles for essential and non-essential services made available by incumbent telephone companies, cable carriers and competitive local exchange carriers to other competitors at regulated rates (wholesale services). The proceeding will include an oral hearing to be held in Gatineau, Quebec starting in October 2007.

Introduction

1. The Commission's regulatory framework in relation to the provision of essential facilities, functions and services (essential services) and in relation to the provision of other services made available by incumbent local exchange carriers (ILECs), cable carriers and competitive local exchange carriers (CLECs) to other competitors at regulated rates (in this Public Notice, essential and such other services are hereafter referred to as wholesale services) has been implemented on an incremental basis and has evolved over time.
2. When the Commission provided for the facilities-based competitive provision of public long distance voice telephone services in *Competition in the provision of public long distance voice telephone services and related resale and sharing issues*, Telecom Decision CRTC 92-12, 12 June 1992, as amended by Erratum 92-12-1, 28 August 1992, the Commission found that regulatory safeguards were needed with respect to, among other things, access by interexchange carriers (IXCs) to the bottleneck facilities of the ILECs subject to that Decision. The Commission also considered that safeguards should focus on equivalent access to the type of services and facilities that the ILECs required in order to provide their own long distance services. The Commission mandated the ILECs to make available to IXCs access to various network interconnection arrangements and ancillary functionalities or services such as billing and collection services, billed number screening database access, etc.
3. In *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994, the Commission concluded that bottleneck services and services subject to dominant supply should be unbundled to the greatest extent practicable to stimulate competition. The Commission directed the ILECs subject to that Decision to file proposed co-location tariffs, with such tariffs being based on the principle that ILECs should provide competitors with access to local switches that was comparable, in terms of price and quality, to the access provided to their own long distance operations. The Commission also directed the ILECs to file proposed tariffs for unbundled service components.

4. In establishing a regulatory framework for the competitive provision of local exchange services, in *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997 (Decision 97-8), the Commission required ILECs to make available on an unbundled basis, at mandated rates, essential services as defined in that Decision. The Commission concluded that to be essential, a facility, function, or service must meet the following three criteria: (1) it is monopoly controlled; (2) a CLEC requires it as an input to provide services; and (3) a CLEC cannot duplicate it economically or technically. The Commission determined that the following met the definition of an essential service:
 - central office codes (NXXs);
 - subscriber listings; and
 - local loops in certain bands.¹
5. The Commission also considered in Decision 97-8, that certain facilities and functions that did not meet the criteria set out in the Commission's definition of an essential service should nevertheless, for a period of five years, be unbundled and priced based on the rating principles for essential services. These facilities and functions were:
 - local loops situated in large urban areas;
 - CLEC-to-CLEC, CLEC-to-wireless service provider (WSP) and CLEC-to-IXC transiting;
 - CLEC-to-CLEC, CLEC-to-WSP and CLEC-to-IXC CCS7² transiting; and
 - extended area service delivery of CLEC-originated switched local traffic.
6. With respect to local loops, for example, the Commission noted that, in the bands in question, there was competitive supply but it was limited. The Commission therefore concluded that CLECs must have access to ILEC loops in these bands if they were to compete effectively in the short term.
7. In *Price cap regulation and related issues*, Telecom Decision CRTC 97-9, 1 May 1997, the Commission described certain services of the ILECs subject to that Decision as Competitor Services. The Commission stated that Competitor Services included services utilized by local and toll competitors, as well as interconnection services required by wireless carriers. The Commission further stated that Competitor Services included, for example, all services for which rates were approved in *Unbundled rates to provide equal Access*, Telecom Decision CRTC 97-6, 10 April 1997, as amended by Telecom Decision CRTC 97-6-1, 24 April 1997, and rates for directory file service.

¹ In *Implementation of price cap regulation and related issues*, Telecom Decision CRTC 98-2, 5 March 1998, as amended by Telecom Decision CRTC 98-2-1, 20 March 1998, the Commission finalized rate band classifications and determined that loops in the bands identified in that Decision would be treated as essential facilities for purposes of the imputation test, which is a pricing floor safeguard. These loops are typically located in non-metropolitan areas.

² Common Channel Signalling Number 7.

8. In *Local competition: Sunset clause for near-essential facilities*, Order CRTC 2001-184, 1 March 2001, the Commission extended the sunset period that it had established in Decision 97-8 with respect to near-essential services, without specifying a termination date, until such time as the market for such services was sufficiently competitive.
9. In *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002, as amended by Telecom Decision CRTC 2002-34-1, 15 July 2002, the Commission established two categories of Competitor Services in order to clarify the pricing treatment of these services.
10. The Commission determined that Competitor Services in the nature of an essential service would be known as Category I competitor services. Category I competitor services include essential services, near-essential, and interconnection and ancillary services. The Commission indicated that near-essential services are critical inputs required by competitors in light of the very limited competitive supply for these services. The Commission determined that Category I competitor services would be priced on the basis of Phase II costs plus a mandated mark-up of 15 percent, with certain exceptions.
11. The Commission determined that the second group of Competitor Services would be those services developed for use by telecommunications service providers - other than services in the nature of an essential service - and would be known as Category II competitor services. The pricing of Category II competitor services would be determined on a case-by-case basis.
12. In *Follow-up to Regulatory framework for second price cap period, Telecom Decision CRTC 2002-34 – Service basket assignment*, Telecom Decision CRTC 2003-11, 18 March 2003, as amended by Telecom Decision CRTC 2003-11-1, 23 May 2003, the Commission identified, on a final basis, various ILEC services as Category I and Category II competitor services.
13. The Competitor Services framework described above applies to Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, MTS Allstream Inc. (MTS Allstream), Saskatchewan Telecommunications (SaskTel) and TELUS Communications Company (TCC) (the major ILECs).
14. The Commission has also approved, in several determinations, the rates and terms on which CLECs make certain services, typically interconnection and ancillary services, available to competitors. In *Terms and rates approved for large cable carriers' higher speed access service*, Order CRTC 2000-789, 21 August 2000, as amended by Order CRTC 2000-789-1, 31 January 2001, and subsequent decisions, the Commission has also approved the rates and terms on which Cogeco Cable Inc. (Cogeco), Rogers Communications Inc. (RCI), Shaw Cablesystems G. P. (Shaw) and Videotron Ltd. (Videotron) (the cable carriers) provide an Internet access service to competitors.
15. The Commission notes that to date it has not conducted a comprehensive framework proceeding with respect to wholesale services and that, as noted above, its current regulatory regime for wholesale services evolved on an incremental basis. The Commission also notes that the nature and scope of competition in telecommunications markets that fall within its jurisdiction under the *Telecommunications Act* (the *Act*) have also increased considerably

during this time. The Commission, therefore, considers there is a need to conduct a comprehensive proceeding to review the regulatory framework for wholesale services, including, in particular, a review of the definition of essential service and the associated pricing principles.

16. The Commission notes that, in a competitive telecommunications market, interconnection between networks is necessary in order that customers of different service providers can communicate with each other. In the Commission's experience, regulatory oversight of interconnection has been required to ensure efficient interconnection. Accordingly, the Commission is of the preliminary view that interconnection services offered by local exchange carriers (LECs) required to permit the interchange of traffic with public switched telephone network (PSTN) customers would fall within any revised definition of essential service.
17. Finally, the Commission notes that on 26 September 2006, the Bureau of Competition Policy (Competition Bureau) issued for comment a draft Information Bulletin on the Abuse of Dominance Provisions as Applied to the Telecommunications Industry (September Draft Bulletin). In its September Draft Bulletin, the Competition Bureau described its proposed approach under the abuse of dominance provisions in the *Competition Act* with respect to conduct in the telecommunications industry to the extent that the Commission has made a determination to refrain from regulating such conduct. For the purposes of section 79 of the *Competition Act*, an essential facility was defined as an input that provides the firm controlling it with the power to lessen or prevent competition in a relevant downstream market.
18. The Commission appreciates the magnitude of the challenge, for both it and the industry, that will accompany a comprehensive proceeding to review the regulatory framework for wholesale services provided by the ILECs, cable carriers and CLECs, including a review of the definition of essential service, the classification of wholesale services, and the determination of appropriate pricing principles, with the magnitude being directly related to the volume of services, complexity of issues, and the varying and conflicting positions of parties. The Commission also realizes that conducting a comprehensive review will result in an issue of time to decision.
19. In formulating the scope of this proceeding, the Commission considered a number of possible options in the interests of advancing the date of decision, including:
 - circumscribing the scope by limiting the services considered; and
 - circumscribing the scope by only addressing definitional issues in an initial proceeding.
20. The Commission notes, however, that the complexity of the interrelationships between several of the wholesale services means that to deal with them in isolation could create unforeseen problems.

21. The Commission's conclusion, moreover, is that any limitation of scope in the interests of time would ultimately create a longer overall timeline as it would be necessary to conduct several significant lengthy related proceedings in sequence. This would result in delaying certainty for all concerned.
22. In light of the nature and complexity of the issues, the Commission is providing for the filing of supplementary material and a second round of interrogatories in order to obtain a sufficient record.
23. In light of the unique nature of this proceeding and its potential impact on the telecommunications industry and the Canadian public, parties filing information in this proceeding should be particularly diligent in filing as much information as possible on the public record.
24. Any party that considers it necessary to assert a confidentiality claim with respect to any such material, must file the material in question in confidence with the Commission. At the same time, such party must file detailed and specific reasons, on the public record, to support such a claim. Any party claiming confidentiality must file and serve an abridged version of the information, redacted as little as possible, to be placed on the public record or detailed and specific reasons for objecting to the filing of an abridged version.
25. Parties must also address, in a detailed and specific manner the terms and conditions under which it might be appropriate to provide such material, on a confidential basis, to the Competition Bureau, and to legal or other representatives for other parties that request access to such information.

Issues to be addressed in this proceeding

26. The Commission invites comments, including supporting rationale, on the following:
 - (a) Should the Commission adopt the definition of essential facility proposed in the Competition Bureau's September Draft Bulletin as the definition of essential service to be used by the Commission for the purposes of the Act, including the achievement of the telecommunications policy objectives of the Act? If not, what definition of essential service would be appropriate and contribute best to the achievement of those policy objectives? How should any new definition of essential service be applied? For example, what specific criteria, if any, should be used to apply any new definition of essential service?
 - (b) Based on the definition proposed by a party in response to (a), which specific facilities, functions and services currently provided by the major ILECs, Société en commandite Télébec (Télébec), the cable carriers and CLECs would fall within the definition of essential service? Include comments on the Commission's preliminary view that interconnection services offered by LECs required to permit the interchange of traffic with PSTN customers would fall within any revised definition of essential service.

- (c) What pricing principles should apply to essential services? To the extent that any such proposed principles differ from the mandatory pricing that now applies to Category I competitor services, is there a need for a transition period, and what should be the scope and duration of any such transition period?³
 - (d) When should future reviews of the assignment of essential services be conducted (e.g., on a regular basis, on the basis of applications, etc.)?
 - (e) What regulatory regime, including pricing principles, should apply to wholesale services not included within any new definition of essential service? Is there a need for a transition period with respect to any new regulatory regime for non-essential wholesale services, and what should be the scope and duration of any such transition period?
27. The Commission notes that it intends to apply its determinations in this proceeding to wholesale services provided by CLECs as well as to wholesale services provided by the major ILECs, Télébec, and the cable carriers.

Procedure

28. Bell Aliant, Bell Canada, Cogeco, MTS Allstream, RCI, SaskTel, Shaw, TCC, Télébec, and Videotron are made parties to this proceeding.
29. Other persons interested in participating in this proceeding (including receiving copies of all submissions) must notify the Commission of their intention to do so by filling out the on-line form, or by writing to the Secretary General, CRTC, Ottawa, Ontario, K1A 0N2, or by faxing at: 819-994-0218 by **2 January 2007** (the registration date). Parties are to provide their e-mail address, where available. If 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.
30. The Commission will issue on its web site, as soon as possible after the registration date, a complete list of interested parties and their mailing addresses (including their e-mail addresses, if available), identifying those parties who wish to receive disk versions.
31. Any person who wishes merely to file written comments in this proceeding, without receiving copies of the evidence filed or appearing at the hearing may do so by writing to the Commission, at the address or fax number noted in paragraph 29, or by filling out the on-line form, by **14 December 2007**.
32. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding.

³ The pricing principles under consideration in this proceeding do not include the applicability of price cap constraints.

33. Each ILEC and cable carrier made party to this proceeding is to provide to the Commission, and serve on all parties, by **5 February 2007**, (a) a list that identifies, separately by sub-category, the interconnection and ancillary services it provides that in its view are either (i) interconnection services required to permit the interchange of traffic with the PSTN, (ii) other interconnection services, or (iii) services ancillary to interconnection services, and (b) a list of all other wholesale services it provides. Each list is to include for each service identified: a service description, tariff reference as appropriate, and current Competitor Service classification and category, as appropriate.
34. Each major ILEC, Télébec and each cable carrier made party to this proceeding is to file, and other parties may file, evidence on matters within the scope of this proceeding. Each party's evidence must include an executive summary no longer than 10 pages in length. Parties filing evidence are to do so with the Commission, serving a copy on all parties, by **5 February 2007**.
35. Parties may address interrogatories to any party who files evidence pursuant to paragraph 34. Any such interrogatories must be filed with the Commission and served on the relevant party or parties by **7 March 2007**.
36. Responses to interrogatories addressed pursuant to paragraph 35 are to be filed with the Commission and served on all parties by **5 April 2007**.
37. 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 **12 April 2007**.
38. 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 **19 April 2007**.
39. A determination will be issued with respect to requests for further information and public disclosure as soon as possible. Any information to be provided pursuant to that determination will be filed with the Commission and served on all interested parties by **22 May 2007**.
40. Parties who filed evidence pursuant to paragraph 34 may file supplementary material in response to other parties' evidence, responses to interrogatories and the other information filed pursuant to paragraphs 35, 36 and 39. Each party's supplementary material must include an executive summary no longer than 10 pages in length. Parties filing supplementary material are to do so with the Commission, serving a copy on all parties, by **21 June 2007**.
41. Parties may address additional interrogatories to any party who filed evidence pursuant to paragraph 34. Any such interrogatories must be filed with the Commission and served on the relevant party or parties by **23 July 2007**.
42. Responses to interrogatories addressed pursuant to paragraph 41 are to be filed with the Commission and served on all parties by **22 August 2007**.

43. 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 **29 August 2007**.
44. 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 **5 September 2007**.
45. A determination will be issued with respect to requests for further information and public disclosure as soon as possible. Any information to be provided pursuant to that determination will be filed with the Commission and served on all interested parties by **1 October 2007**.
46. An oral hearing, allowing for cross-examination by parties, will take place in Gatineau, Quebec commencing on **29 October 2007** at the Conference Centre, Phase IV, Outaouais Room, 140 Promenade du Portage, Gatineau, Quebec and is expected to last approximately two weeks.
47. Interested parties wishing to appear at the oral hearing shall file notice of their intention to participate no later than **31 August 2007**. An organization and conduct letter, providing directions on procedure with respect to the oral hearing, including the scope of the issues to be examined during the oral hearing, will be issued prior to the commencement of the oral hearing.
48. Persons requiring communications support such as assistive listening devices and sign language interpretation are requested to inform the Commission at least 20 days before the commencement of the oral hearing so that necessary arrangements can be made.
49. All parties may file argument with the Commission on any matter within the scope of this proceeding, limited to 40 pages with an executive summary no longer than 10 pages in length, serving a copy on all other parties, by **14 December 2007**.
50. All parties may file reply argument with the Commission, limited to 25 pages with an executive summary no longer than seven pages in length, serving a copy on all other parties, by **11 January 2008**.
51. The Commission expects to issue a decision on the issues raised in this Public Notice within 180 days after the record closes.
52. 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.
53. Parties may file their submissions electronically or on paper. Submissions longer than five pages should include a summary.
54. Electronic submissions should be in HTML format. As an alternative, those making submissions may use "Microsoft Word" for text and "Microsoft Excel" for spreadsheets.

55. Each paragraph of all submissions should be numbered. In addition, the line ***End of document*** should be entered following the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
56. The Commission also encourages parties to monitor the record of this proceeding (and/or the Commission's web site) for additional information that they may find useful when preparing their submissions.

Important notice

57. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or through the Commission's web site at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's web site. This information includes your personal information, such as your full name, e-mail address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.
58. Documents received electronically or otherwise will be posted on the Commission's web site in their entirety exactly as you send them, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
59. The personal information you provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.

Location of CRTC offices

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

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

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Secretary General

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