



Telecom Decision CRTC 2007-107

Ottawa, 16 November 2007

TBayTel and Shaw Communications Inc. – Implementation of local competition in Thunder Bay

Reference: 8622-S61-200714792

In this Decision, the Commission resolves the issues between TBayTel and Shaw Communications Inc. (Shaw) with respect to a local network interconnection arrangement and orders TBayTel to interconnect its telecommunications facilities to that of Shaw within 15 days of the date of this Decision.

Introduction

1. In November 2006, Shaw Communications Inc. (Shaw) and TBayTel began negotiations for a local network interconnection (LNI) arrangement to implement local competition in the Thunder Bay area. In March 2007, in adherence with Telecom Decision 2006-14, TBayTel applied to the Commission for approval of its plan to allow Shaw to begin local competition in its territory. This plan was approved by the Commission in Telecom Decision 2007-78.
2. In August 2007, Shaw approached the Commission to assist in the LNI negotiations between itself and TBayTel because Shaw was concerned that TBayTel might be unnecessarily delaying the implementation of local competition in its territory.
3. During the course of these LNI negotiations, on 12 October 2007, three days prior to the planned completion date for the installation of the transport facility – an essential step in the interconnection process¹ – the Commission received an email from TBayTel indicating that it would not complete the transport facility installation until what it described as "commercial issues" between the two companies had been resolved.

Process

4. In a letter dated 16 October 2007, the Commission invited submissions from TBayTel and Shaw with respect to the Commission ordering the completion of the installation of the transport facility. TBayTel subsequently completed the installation of the transport facility on 23 October 2007 but submitted that the negotiation and conclusion of certain issues was a necessary condition precedent to the final implementation of local competition.

¹ The planned transport facility completion date was the date that had been negotiated between TBayTel and Shaw for the installation of transport facilities linking the two companies together. The Commission notes that this is one step in the process to complete an LNI arrangement allowing the start of local competition.

5. In a letter dated 25 October 2007, the Commission invited submissions from the parties with respect to the other issues they had raised. The Commission received comments and responses to interrogatories from TBayTel and Shaw. The record closed with reply comments from both parties, dated 30 October 2007. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
6. The Commission will first summarize the positions of the parties regarding their dispute. It will then identify and consider the specific issues which must be addressed regarding the completion of an LNI arrangement between TBayTel and Shaw.

Positions of parties

Issues affecting an LNI arrangement between TBayTel and Shaw

7. TBayTel submitted that while it supported the initiative to implement local competition in its territory, certain commercial issues needed to be resolved by Shaw before local competition should begin. TBayTel identified these issues as follows:
 - a. Negotiation of an effective Partial Systems Agreement (PSA) and Manhole Access Agreement (MHA) to account for, among other things, a rate structure for the use of the coaxial cable for telecom purposes, repair intervals, use of TBayTel's facilities for switched services, and repairs and rental rates, and to establish a clear understanding of the roles and responsibilities of Thunder Bay Hydro and the City of Thunder Bay in relation to the provisions contained in these agreements;
 - b. Network capacity issues which will arise as a result of the implementation of TBayTel's emerging video strategy;
 - c. Delineation of the extent of TBayTel's serving territory to be subject to competition;²
 - d. The legal and practical issues associated with access and changes to the use of existing easements; and
 - e. The issues related to the ownership of inside wiring by TBayTel.
8. TBayTel stated that clause 24 of the November 1984 Memorandum of Agreement between the Corporation of the City of Thunder Bay and MacLean Hunter Cable TV (1984 MOA) prohibited Shaw from providing switched exchange services without the consent of TBayTel. In addition, TBayTel submitted that it would appear unfair for Shaw to compete against TBayTel using the Partial System Offering (PSO) cable that was the subject of that agreement, without proper compensation for the use of that cable. TBayTel also submitted that its emerging video strategy would use the PSO cable and, as owner of the cable, its use should take priority

² The Commission notes that TBayTel later submitted that this issue had no effect on the LNI arrangement in the City of Thunder Bay. Accordingly, the Commission has not addressed this issue.

over Shaw's. In summary, TBayTel submitted that Shaw should not implement local competition without its consent and TBayTel should be able to consider raising the rate it charged for its PSO service because Shaw had added local exchange services to the PSO cable.

9. TBayTel added that a Municipal Access Agreement (MAA) between Shaw and the City of Thunder Bay was a precondition to any LNI arrangement.
10. With respect to the issue of inside wire, TBayTel stated that in Telecom Order 2007-395, the Commission had determined that TBayTel's customers should have a six-month notice period prior to the implementation of the transfer of responsibility and control. TBayTel submitted that Shaw's use of TBayTel's inside wire prior to its transfer was inconsistent with the spirit and intent of Telecom Order 2007-395.
11. Shaw submitted that TBayTel's current Commission-approved PSO tariff did not impose any restriction on Shaw's use of the PSO cable. It added that in approving TBayTel's PSO tariff in Telecom Decision 2002-44, the Commission had noted that the parties were negotiating a PSA modelled on the Bell Canada PSA and that the Commission expected that the resulting PSA, when filed, would be similar to that of Bell Canada. Shaw noted that Bell Canada's PSO tariff contained no restriction on the use of a PSO.
12. Shaw submitted that the 1984 MOA was not the PSA referenced in the PSO tariff. It also submitted that the monthly rate it paid to TBayTel for the PSO service had been set to allow TBayTel to recover its costs in providing that service. Shaw further submitted that its use of the PSO service to provide local exchange service, in addition to cable TV, would not affect TBayTel's costs in providing it. It argued, therefore, that the fact that it would now be using the PSO cable for local exchange service was irrelevant to the monthly rate.
13. Shaw added that TBayTel had had an opportunity, following Shaw's request for local competition and as part of the proceeding that led to Telecom Decision 2007-78, to identify any unique circumstances, such as PSO service, that would have to be resolved prior to the implementation of local interconnection. Shaw noted that TBayTel had not raised any issue related to PSO service in that proceeding and submitted that the reason for this was because PSO service and its rates were not affected in any way by the implementation of local competition.
14. With respect to the network capacity issue raised by TBayTel, Shaw submitted that TBayTel could not use the PSO cable for itself because Shaw was using it under tariff and it would be technically impossible for TBayTel to use it at the same time as Shaw.
15. Shaw further submitted that both an MHA and MAA were irrelevant to the implementation of local competition. Shaw added that if MHAs were required or needed to be modified, then TBayTel could do that through its existing support structure service tariffs. Shaw noted that it was not seeking any new rights to access public places or easements in the City of Thunder Bay and that issues related to MAAs could be dealt with by the City of Thunder Bay and Shaw under sections 43 and 44 of the *Telecommunications Act* (the Act).
16. With respect to the issue of inside wiring, Shaw submitted that the Commission had mandated that customers be permitted to connect the inside wire to the network of any local exchange carrier (LEC) in whose serving area they were situated. Shaw added that the transition period set out in Telecom Order 2007-395 was irrelevant to the implementation of local competition.

Schedule for the implementation of an LNI arrangement

17. TBayTel submitted that it would complete Shaw's LNI implementation requests within 15 days of the resolution of the outstanding commercial issues.
18. Shaw submitted a new schedule for the completion of the LNI arrangements between itself and TBayTel and requested that the Commission order TBayTel meet that new schedule by 19 November 2007.

Commission's analysis and determinations

19. The Commission considers that the following issues must be addressed with respect to the completion of an LNI arrangement between TBayTel and Shaw:

- I Does the PSO tariff or any agreement restrict Shaw from offering switched exchange service? Should the PSO rates be modified? Are there any PSO network capacity issues?

- II Should an MHA be in place between TBayTel and Shaw as a precondition of completing the LNI arrangement between TBayTel and Shaw?

- III Should an MAA be in place between the City of Thunder Bay and Shaw as a precondition of completing the LNI arrangement between TBayTel and Shaw?

- IV Must responsibility and control for inside wire be transferred to the customer before it can be used by Shaw?

- V What should be the timing for implementing the remaining LNI steps?

- VI Application of Policy Direction

- VII Commission Order

I Does the PSO tariff or any agreement restrict Shaw from offering switched exchange service? Should the PSO rates be modified? Are there any PSO network capacity issues?

20. The Commission notes that in Telecom Decision 2006-14, it determined that facilities-based local competition should be implemented in the territories of the small incumbent local exchange carriers (SILECs). The Commission required each SILEC, following a formal signed expression of interest from a LEC or other carrier requesting to use competitor services within a SILEC's territory, to file with the Commission an implementation plan for local competition. The Commission directed that such implementation plans should outline any unique circumstances that would impede the implementation of local competition and how that SILEC proposed to deal with those circumstances.

21. The Commission notes that in the proceeding leading to Telecom Decision 2007-78, TBayTel indicated that it would file any necessary tariff amendments to its existing PSO and support structure service tariff³ once its implementation plan had been approved by the Commission. In Telecom Decision 2007-78, which approved TBayTel's implementation plan, the Commission directed TBayTel to file all required tariffs within 30 days of that Decision. The 30 days provided by the Commission in Telecom Decision 2007-78 for such PSO tariff amendments have passed and no such amendments were received.
22. The Commission notes that while the tariff describes the PSO service as the leasing of "cable television facilities" it does not restrict what those "cable television facilities" can be used for. Therefore, the Commission finds that the current version of the PSO and support structure tariff does not prohibit Shaw's use of the PSO cable for switched exchange service.
23. The Commission notes that TBayTel submitted that clause 24 of the 1984 MOA prohibits Shaw's use of the PSO cable for switched exchange services. The Commission considers that regardless of whether an agreement containing such a prohibition is in effect between TBayTel and Shaw, that prohibition would not apply, because the Commission has created a framework in Telecom Decision 2006-14 for the implementation of local competition, including local switched exchange services.
24. The Commission notes that in Telecom Decision 2002-44, it approved TBayTel's PSO tariff. The Commission also notes that section 2 of the PSO tariff references an agreement between TBayTel and Shaw that would deal with issues not covered in the tariff, such as repair and maintenance of the PSO cable. The Commission notes that in Telecom Decision 2002-44, it approved the PSO tariff in the absence of an agreed PSA, but did so in the expectation that a PSA similar to Bell Canada's would be concluded between TBayTel and Shaw.
25. As a result, the Commission directs TBayTel and Shaw to enter into a PSA similar to that of Bell Canada and to file it with the Commission for approval pursuant to section 29 of the Act within 30 days of the date of this Decision. The Commission determines that entering into and filing this agreement is not a precondition to the completion of the LNI arrangements and the implementation of local competition between TBayTel and Shaw.
26. The Commission notes that TBayTel submitted that the monthly rate charged by it to Shaw for using the PSO service should be modified to reflect that Shaw is offering local services over the PSO cable. The Commission also notes that TBayTel has not applied to amend the tariff relating to the PSO cable. The Commission considers that any amendment of the PSO tariff is not a precondition to the completion of the LNI arrangements and the implementation of local competition between TBayTel and Shaw. Furthermore, while TBayTel may apply to amend the tariff, the Commission notes that in previously approving PSO tariffs, the Commission based its determinations on costs causal to the carrier in placing the PSO cable.
27. With respect to TBayTel's submission that it may seek to use the PSO cable itself for its "emerging video strategy," the Commission notes that Shaw is the current user of that cable through a Commission-approved tariff. The Commission considers that if TBayTel wishes

³ The Commission notes that TBayTel offers PSO service and support structure service in one tariff under the heading "Arrangements for Cable-television undertakings and telecommunications carriers" (GT TB1200).

to use that same PSO cable for its own services then it would need to file an application with the Commission to amend or withdraw the PSO tariff. The Commission notes that the filing and disposition of any such application is not a precondition for the completion of the LNI arrangements and the implementation of local competition between TBayTel and Shaw.

II Should an MHA be in place between TBayTel and Shaw as a precondition of completing the LNI arrangement between TBayTel and Shaw?

28. The Commission notes that TBayTel submitted that Shaw must enter into an MHA in order to mitigate any liabilities related to safety and technical requirements of access to manholes, before LNI arrangements can be completed. The Commission considers that TBayTel, as owner of the support structure, is responsible for setting and enforcing reasonable construction standards in its operation of its support structure service. Further, the Commission considers that it is reasonable operating practice to document these standards in an MHA, if they are not already contained in a support structure license agreement.
29. The Commission notes that, to date, Shaw has operated in TBayTel's manholes without an agreement on reasonable safety and technical standards required for access to those manholes. In light of this, the Commission determines that Shaw's compliance with those standards is not a precondition to the completion of the LNI arrangements and the implementation of local competition between TBayTel and Shaw.

III Should an MAA be in place between the City of Thunder Bay and Shaw as a precondition of completing the LNI arrangement between TBayTel and Shaw?

30. The Commission notes TBayTel's submission that a signed MAA between Shaw and the City of Thunder Bay was a precondition for LNI because Shaw's use of the PSO did not need an MAA, while Shaw's placement of its own facilities did. The Commission also notes that Shaw is already located in the streets and easements of the City of Thunder Bay without a signed MAA and that Shaw has submitted a draft MAA to the City of Thunder Bay for its consideration.
31. The Commission considers that the issue of whether an MAA is required is a matter between Shaw and the City of Thunder Bay, and does not involve TBayTel. Accordingly, the Commission determines that an MAA between Shaw and the City of Thunder Bay is not a precondition of the completion of the LNI arrangements and the implementation of local competition between TBayTel and Shaw.

IV Must responsibility and control for inside wire be transferred to the customer before it can be used by Shaw?

32. The Commission notes that it approved the transfer of responsibility and control of TBayTel's inside wire to its single-line residential customers in Telecom Order 2007-395, effective 30 April 2008. The Commission also notes that that Order covered the installation, addition, moves, and rearrangements of inside wire, and maintenance and repair of existing inside wire.

The Commission further notes that in Telecom Decision 97-8, it determined that customers would be permitted to connect the inside wire to the network of any LEC in whose serving area they were situated. Finally, the Commission notes that in Telecom Decision 2006-14, it determined that the interconnection framework that applied in the incumbent local exchange carrier territories should also apply in the SILEC territories.

33. The Commission considers that the transition period for the transfer and control of inside wire from TBayTel to its customers does not preclude, in the meantime, customers of TBayTel from connecting the inside wire to the network of another LEC. Given this, the Commission determines that the completion of the transfer of responsibility and control of inside wire from TBayTel to customers is not a precondition of the completion of the LNI arrangements and the implementation of local competition between TBayTel and Shaw.

V What should be the timing for implementing the remaining LNI steps?

34. The Commission notes that with the issuance of this Decision, there are no outstanding issues that need to be resolved by the Commission prior to the completion of an LNI arrangement and the implementation of local competition between TBayTel and Shaw. The Commission considers that the remaining LNI steps can be completed within 15 days.

VI Application of Policy Direction

35. The Commission notes that it has the power under section 40 of the Act to order a Canadian carrier to connect its telecommunications facilities to any other telecommunications facilities. The Commission notes that its powers under section 40 of the Act are subject to the Governor in Council's *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the Policy Direction). The Commission considers that the determinations in this Decision comply with the Policy Direction.
36. For example, paragraph 1(a) of the Policy Direction provides that the Commission should rely on market forces to the maximum extent feasible as a means of achieving the telecommunications policy objectives. The Commission notes that the LNI negotiations between TBayTel and Shaw have been underway for almost a year. Further, considering the length of time that the two parties have been negotiating, without success, the Commission considers that market forces alone will not achieve timely interconnection and that without intervention by the Commission, the implementation of local competition in the territory of TBayTel would unnecessarily be delayed. Such a delay would be contrary to the policy objectives set out in section 7 of the Act.

VII Commission Order

37. Given the above, the Commission, pursuant to its powers set out in section 40 of the Act, orders TBayTel to connect its telecommunications facilities to those of Shaw within 15 days of the date of this Decision, and orders TBayTel and Shaw to complete all the remaining LNI arrangements as set out below.

38. The following LNI arrangements must be completed within 15 days of the date of this Decision, except where other timeframes are specified:
- Transport in service (including OTDR);
 - Local trunk group turn-up (Bill and keep, 9-1-1, EAS, Toll transit);
 - LNI testing (including exchange of LNI test plans);
 - LNP testing (including test numbers);
 - Business process testing (including exchange of electronic files – LSR/LSC, E9-1-1, BLIF via AS2 protocol);
 - MALI agreement⁴ – Shaw is to file this agreement, for Commission approval, within five days of the date of this Decision;
 - 9-1-1 agreement⁵ – Shaw is to file this agreement, for Commission approval, within five days of the date of this Decision;
 - BLIF agreement⁶ – TBayTel is to file an unexecuted version of this agreement, for Commission approval, within five days of the date of this Decision;
 - Shaw is to file amendments to its CLEC model tariff to reflect that it is operating in TBayTel's territory within five days of the date of this Decision; and
 - Any other LNI arrangements that may arise between now and when LNI takes place that are necessary for Shaw to offer competitive local exchange service in TBayTel's Thunder Bay local exchange.
39. The Commission notes that it has also directed the parties to enter into and file, for Commission approval, a PSA within 30 days of the date of this Decision.
40. The Commission is registering this Decision with the Federal Court pursuant to subsection 63(1) of the *Telecommunications Act*. The Commission's Decision will then become an order of the Federal Court and will be enforceable in the same manner as orders of the Court. According to the Federal Court Rules, anyone who disobeys an order of the Court may be found guilty of contempt of court.

Secretary General

⁴ TBayTel stated that this agreement was sent to Shaw on 24 September 2007 to finalize.

⁵ TBayTel stated that this agreement had been signed by both parties and was ready for filing.

⁶ TBayTel stated that this agreement was sent to Shaw on 4 October 2007 to finalize.

Related documents

- *TBayTel – Transfer of inside wire*, Telecom Order CRTC 2007-395, 26 October 2007
- *Implementation of local competition in TBayTel's serving territory – ExaTEL Inc. and Shaw communications Inc.*, Telecom Decision CRTC 2007-78, 31 August 2007
- *Revised regulatory framework for the small incumbent local exchange carriers*, Telecom Decision CRTC 2006-14, 29 March 2006
- *Thunder Bay Telephone – Tariffs for partial cable-distribution system and support structure service*, Telecom Decision CRTC 2002-44, 2 August 2002
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997

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>