



Telecom Decision CRTC 2007-108

Ottawa, 20 November 2007

TELUS Communications Company - Application for forbearance from the regulation of high-speed intra-exchange digital network access services

Reference: 8640-T66-200612714

In this Decision, the Commission approves TELUS Communications Company's (TCC) request for forbearance from the regulation of high-speed intra-exchange digital network access services in 38 wire centres in Alberta and British Columbia. The Commission denies TCC's request for forbearance in 52 wire centres in Alberta, British Columbia, and Quebec.

Introduction

1. On 10 October 2006, TELUS Communications Company (TCC) filed an application 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, 25, 27, 29, and 31 of the Act with respect to high-speed intra-exchange digital network access (high-speed DNA) services.
2. In a letter dated 26 October 2006, the Commission suspended TCC's application pending the release of the decision associated with the proceeding initiated by Telecom Public Notice 2005-8.
3. On 25 May 2007, the Commission issued Telecom Decision 2007-35. In that Decision, the Commission set out, among other things, the criteria that it would use in determining whether it was appropriate to forbear from regulating high-speed DNA services and what the scope of such forbearance would be. On that same date, the Commission issued a letter
 - re-opening TCC's application, and
 - requesting that TCC and the competitors file certain additional information.¹

¹ Pursuant to paragraphs 151 and 152 of Telecom Decision 2007-35, applicant incumbent local exchange carriers and competitors must provide specific information for each wire centre for which an application for forbearance is filed, as per the format set out in the Appendix of Telecom Decision 2007-35.

4. In Telecom Decision 2007-35, the Commission also considered that there was merit in advising incumbent local exchange carriers (ILECs) of the percentage of competitor network presence² in wire centres with buildings connected to an ILEC's and/or competitor's high-speed DNA-capable network. The Commission indicated at that time that it would be setting out a process³ shortly to determine whether it was appropriate to disclose publicly the percentage of competitor network presence and, if so, what level of information should be disclosed.
5. On 14 June 2007, TCC filed a revised application pursuant to the instructions set out in Telecom Decision 2007-35. In this revised application, TCC identified 90 wire centres as being eligible for forbearance: 35 wire centres in Alberta, 42 wire centres in British Columbia, and 13 wire centres in Quebec.
6. The Commission received submissions and/or data regarding TCC's revised application from Bell Canada; ENMAX Envision Inc.; MTS Allstream Inc.; Quebecor Media Inc., on behalf of its affiliate Videotron Ltd.; Rogers Communications Inc.; and Shaw Communications Inc. The record of this proceeding closed on 10 October 2007 with the filing of TCC's response to a Commission interrogatory. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

TCC's forbearance requests

7. In Telecom Decision 2007-35, the Commission considered that forbearance from the regulation of high-speed DNA services was warranted in the following circumstances:
 - a) there were 25 or more buildings connected to an ILEC's and/or competitors' high-speed DNA-capable networks within the wire centre and a competitor network presence of 30 percent or more;
 - b) there were 25 or more buildings connected to an ILEC's and/or competitors' high-speed DNA-capable networks within the wire centre and, although competitor network presence was below 30 percent, the presence of other factors demonstrated that the wire centre was sufficiently competitive to warrant forbearance; and
 - c) there were fewer than 25 buildings connected to an ILEC's and/or competitors' high-speed DNA-capable networks within the wire centre, and competitor network presence, complemented with evidence of rivalrous behaviour, demonstrated that the wire centre was sufficiently competitive to warrant forbearance.

² In this context, competitor network presence is the ratio of buildings connected to the competitors' high-speed DNA-capable networks, divided by the total number of buildings connected to all service providers' high-speed DNA-capable networks. Multiple competitor connections to a building are counted as one connection, while ILEC and competitor connections to a building are counted as two connections.

³ This process was initiated by a Commission letter dated 4 June 2007. The record of that process closed with the filing of reply comments by several parties on 10 July 2007.

8. As noted above, TCC sought forbearance in a total of 90 wire centres within the provinces of Alberta, British Columbia, and Quebec. Based on its analysis of the data submitted by all parties to this proceeding, the Commission finds that, in the case of 16 of these wire centres, competitors did not report any buildings connected to their high-speed DNA-capable network. Consistent with Telecom Decision 2007-35,⁴ the Commission is of the view that it would be inappropriate to grant forbearance in these markets.
9. Of the remaining 74 wire centres, the Commission notes that 25 wire centres reported less than 25 buildings connected to TCC's and/or competitors' high-speed DNA-capable networks within the wire centre (small markets). The Commission notes that TCC identified the known facilities-based competitors in its operating territories of Alberta, British Columbia, and Quebec, but failed to provide sufficient evidence to demonstrate the existence of rivalrous behaviour at the wire centre as required by Telecom Decision 2007-35.⁵ Without this requisite information, the Commission is unable to assess at this time the competitive market conditions in the 25 small market wire centres identified in Appendix 1 of this Decision.
10. The Commission notes that TCC indicated that the remaining 49 wire centres reported 25 or more buildings connected to TCC's and/or competitors' high-speed DNA-capable networks within the wire centre (large markets). Based on its review of the evidence presented by the parties to this proceeding, the Commission finds that competitor network presence is less than 30 percent in 11 of these large markets. Further, the Commission notes that in 3 of these 11 markets, competitor network presence is greater than 20 percent. As noted above, forbearance is warranted in such circumstances only where a combination of other factors exist.⁶ On the basis of the record of this proceeding, the Commission, at present, is unable to conclude that these 11 markets are sufficiently competitive to warrant forbearance.
11. With respect to the remaining 38 of these large markets, the Commission finds that the competitor network presence is 30 percent or more.
12. Pursuant to subsection 34(1) of the Act, the Commission finds as a question of fact that a determination to forbear, to the extent specified in Telecom Decision 2007-35 from the regulation of high-speed DNA services and future services that fall within the definition of high-speed DNA services, in the 38 wire centres listed in Appendix 2, would be consistent with the Canadian telecommunications policy objectives set out in section 7 of the Act.
13. Pursuant to subsection 34(2) of the Act, the Commission finds as a question of fact that these high-speed DNA services are subject to a level of competition in these 38 wire centres sufficient to protect the interests of users of these services.
14. Pursuant to subsection 34(3) of the Act, the Commission finds as a question of fact that to forbear, to the extent specified in Telecom Decision 2007-35, from regulating these high-speed DNA services in these 38 wire centres would be unlikely to impair unduly the continuance of a competitive market for these services.

⁴ Paragraph 173 of Telecom Decision 2007-35.

⁵ Paragraph 109 of Telecom Decision 2007-35.

⁶ Paragraph 108 of Telecom Decision 2007-35.

15. In light of the above, the Commission **approves** TCC's revised application for forbearance from the regulation of high-speed DNA services and future services that fall within the definition of high-speed DNA services set out in Telecom Decision 2007-35, subject to the powers and duties retained in that Decision, in the 38 wire centres listed in Appendix 2.
16. The Commission determines that TCC's revised application regarding the remaining 52 wire centres does not meet the forbearance criteria set out in Telecom Decision 2007-35. Accordingly, the Commission **denies** TCC's revised application for forbearance from the regulation of high-speed DNA services in these 52 wire centres.

Disclosure of competitor network presence information

17. Consistent with the determination set out in its letter dated 13 November 2007, titled *Disclosure of information filed in confidence with the Commission pursuant to Telecom Decision 2007-35*, the Commission is releasing the following information related to TCC's revised application:
 - for three of the large market wire centres in British Columbia, namely Cypress, Lake City, and Hemlock, the competitor network presence is between 20 and 30 percent; and
 - for 25 small market wire centres, listed in Appendix 1, competitors reported at least one connected building.

Secretary General

Related Documents

- *Framework for forbearance from regulation of high-speed intra-exchange digital network access services*, Telecom Decision CRTC 2007-35, 25 May 2007
- *Framework for forbearance from regulation of high-speed intra-exchange digital services*, Telecom Public Notice CRTC 2005-8, 30 June 2005, as amended by Telecom Public Notice CRTC 2005-8-1, 22 July 2005, and Telecom Public Notice CRTC 2005-8-2, 28 October 2005

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>

Small markets where competitors reported at least one connected building

Province	Exchange	Wire Centre
Alberta	Calgary Calgary	Country Hills McKenzie
British Columbia	Abbotsford Chilliwack Kelowna Prince George Prince George Saanich Saanich Vancouver Vancouver Vancouver Vancouver Victoria Victoria Victoria	Abbotsford Chilliwack Rutland Hartway Pineview Keating Sidney Alpine Amherst Castle Fairfax Albion Cordova Bay Oak Bay
Quebec	Baie-Comeau Bonaventure Donnacona Gaspé Matane Montmagny Saint-Augustin-de-Demaures Sainte-Marie-de-Beauce Saint-Henri-de-Lévis	Baie-Comeau Bonaventure Donnacona Gaspé Matane Montmagny Saint-Augustin-de-Demaures Sainte-Marie-de-Beauce Saint-Henri-de-Lévis

Large markets where competitor network presence is 30 percent or more

Province	Exchange	Wire Centre
Alberta	Calgary	Airdrie
	Calgary	Airways
	Calgary	Bonavista
	Calgary	Bowness
	Calgary	Capitol Hill
	Calgary	Crescent Heights
	Calgary	Crowchild
	Calgary	Elbow Park
	Calgary	Forest Lawn
	Calgary	Hillhurst
	Calgary	Huntington Hills
	Calgary	Killarney
	Calgary	Kingsland
	Calgary	Main Calgary
	Calgary	Mount Royal
	Calgary	Oakridge
	Calgary	Ogden
	Calgary	Shawnessy
	Calgary	Temple
	Edmonton	Bonnie Doon
	Edmonton	Jasper Place
	Edmonton	Lendrum
	Edmonton	Londonderry
	Edmonton	Main Edmonton
	Edmonton	Norwood
	Edmonton	Westmount
	Fort McMurray	Fort McMurray
	Grande Prairie	Grande Prairie
	Lethbridge	Lethbridge
	Medicine Hat	Medicine Hat
Red Deer	Red Deer	
British Columbia	Nanaimo	Nanaimo
	Penticton	Penticton
	Vancouver	Mutual
	Vancouver	Regent
	Vancouver	Trinity
	Victoria	Belmont
Victoria	Colquitz	