



## Telecom Decision CRTC 2007-110

Ottawa, 22 November 2007

### **Mitchell Seaforth Cable T.V. Ltd. – Application to review and vary the determinations in Telecom Decision 2007-50 with respect to the community of Dublin, Ontario**

Reference: 8662-M38-200710659

*In this Decision, the Commission approves an application by Mitchell Seaforth Cable T.V. Ltd. to review and vary its determinations in Telecom Decision 2007-50 with respect to the community of Dublin, Ontario.*

#### **Introduction**

1. Mitchell Seaforth Cable T.V. Ltd. (Mitchell Seaforth) filed an application, dated 17 July 2007, in which it requested that the Commission review and vary its determinations in Telecom Decision 2007-50 with respect to the community of Dublin, Ontario. Mitchell Seaforth submitted that Dublin should not have been included in the list of approved communities as it was already served by an alternative broadband service provider (ABSP).
2. Bell Canada filed comments opposing Mitchell Seaforth's application. The record closed 24 August 2007 with the receipt of Mitchell Seaforth's reply comments.

#### **Background**

3. In Telecom Decision 2006-9, the Commission set out guidelines for the incumbent local exchange carriers (ILECs)<sup>1</sup> concerning the disposition of funds remaining in the deferral accounts.<sup>2</sup> The Commission determined, among other things, that initiatives to expand broadband services to rural and remote communities were an appropriate use of funds in the deferral accounts.<sup>3</sup> Accordingly, the Commission directed each ILEC that wished to pursue

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<sup>1</sup> The incumbent local exchange carriers referred to in Telecom Decision 2006-9 were Aliant Telecom Inc., now part of Bell Aliant Regional Communications, Limited Partnership; Bell Canada; MTS Allstream Inc.; Saskatchewan Telecommunications; TELUS Communications Inc., now TELUS Communications Company (TCC); Société en commandite Télébec, now known as Télébec, Limited Partnership (Télébec); and TELUS Communications (Québec) Inc. (TCQ), now part of TCC.

<sup>2</sup> In Telecom Decision 2002-34, the Commission imposed a pricing constraint equal to inflation less a productivity offset of 3.5 percent on residential local services in non-high-cost serving areas. However, in order to avoid an adverse impact on local competition, the Commission required that all incumbent telephone companies that were subject to the determinations in Telecom Decision 2002-34 create a deferral account where they placed amounts equal to the revenue reductions that would otherwise have resulted from an application of the price cap formula. Deferral accounts were subsequently established for Télébec and TCQ in Telecom Decision 2002-43.

<sup>3</sup> Initiatives to improve access to telecommunications services for persons with disabilities were also determined to be an appropriate use of the funds.

broadband expansion to file, by 30 June 2006,<sup>4</sup> proposals to expand broadband services to the customer premises in communities located primarily in Bands E and F in high-cost serving areas unlikely to receive such services from any other service provider in the near future. They were also to consult with provincial government agencies responsible for broadband initiatives to ensure that the proposals would take into account provincial priorities.

4. In Telecom Public Notice 2006-15, the Commission initiated a proceeding to consider the ILECs' proposals. As part of this process, ABSPs were provided with the opportunity to file submissions with respect to the exclusion of any community identified in the ILECs' proposals, on the basis that it was already served or likely to be served in the near future. ABSPs were directed to file certain information regarding their current and proposed service areas by 19 January 2007. This date was subsequently extended to 19 February 2007. The Commission, the ILECs, and other interested parties were then able to test the information submitted by the ABSPs through the use of interrogatories and requests for further responses to interrogatories.
5. In Telecom Decision 2007-50, the Commission approved the use of deferral account funds by Bell Aliant Regional Communications, Limited Partnership, Bell Canada, MTS Allstream Inc., and TELUS Communications Company to expand broadband services to certain rural and remote communities in Rate Bands E, F, and G in British Columbia, Manitoba, Ontario and Quebec where no ABSP had indicated, on the record of the Telecom Public Notice 2006-15 proceeding, that it currently provided or had firm plans to provide broadband services in the near future ("uncontested communities").

### **Commission's analysis and determinations**

6. In Telecom Public Notice 98-6, the Commission set out the criteria to consider review and vary applications. Specifically, the Commission stated the following:

...applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to: i) an error in law or in fact; ii) a fundamental change in circumstances or facts since the decision; iii) a failure to consider a basic principle which had been raised in the original proceeding; or iv) a new principle which has arisen as a result of the decision.
7. Mitchell Seaforth submitted that, despite an oversight by which it did not provide information on Dublin to the Commission as part of the Telecom Public Notice 2006-15 proceeding, Dublin does not qualify for the use of deferral account funds to provide broadband service since Mitchell Seaforth is currently providing high-speed Internet service to the entire community of Dublin and has been doing so since at least 2001. For this reason, Mitchell Seaforth submitted that there was substantial doubt as to the correctness of the inclusion of Dublin in the list of communities approved in Telecom Decision 2007-50.
8. Bell Canada submitted that the Commission's determinations in Telecom Decision 2007-50 were made in accordance with the guidelines set out in Telecom Decision 2006-9. It also submitted that, in accordance with the Commission's stated criteria in Telecom Decision 2007-50, there was no evidence on the record of the Telecom Public Notice 2006-15 proceeding that broadband services were currently available in the Dublin wire centre identified in Bell Canada's proposal.

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<sup>4</sup> The deadline was later extended to 1 September 2006.

9. The Commission notes that, as part of the Telecom Public Notice 2006-15 proceeding, ABSPs that wished to request the exclusion of any community identified in the ILECs' proposals on the basis that the ABSP was already providing service or had firm plans to provide service to that community in the near future were required to file certain information with the Commission by 19 January 2007. Although this date was later extended to 19 February 2007, Mitchell Seaforth did not file submissions in this respect.
10. The Commission further notes that, for purposes of Telecom Decision 2007-50, based on the Commission's review of the record of the Telecom Public Notice 2006-15 proceeding, Dublin was identified as an uncontested community since no ABSP requested its exclusion.
11. The Commission, therefore, agrees with Bell Canada that the decision with respect to Dublin, Ontario was made in accordance with the guidelines set out in Telecom Decision 2006-9 and that, in accordance with the Commission's stated criteria in Telecom Decision 2007-50, there was no evidence on the record of the Telecom Public Notice 2006-15 proceeding that broadband services were currently available within the Dublin wire centre identified in Bell Canada's proposal. The Commission also notes that Mitchell Seaforth is a member of the Canadian Cable Systems Alliance (CCSA) which filed extensive submissions on behalf of its members. Those submissions clearly reflected the fact that CCSA members had been made aware of and had participated in their preparation. Accordingly, the Commission considers that Mitchell Seaforth was a party to the proceeding leading to Telecom Decision 2007-50.
12. Nevertheless, the Commission also notes that, with respect to broadband initiatives, consistent with Telecom Decision 2006-9, the primary objective of the Telecom Public Notice 2006-15 proceeding is to bring the benefit of broadband services to unserved communities. If the community of Dublin was already being served by an ABSP within the time frames established as part of the Telecom Public Notice 2006-15 proceeding for the identification of such communities, then using funds from the deferral account to expand the services of an ILEC into this community would be contrary to Telecom Decision 2006-9 and the objective of the Telecom Public Notice 2006-15 proceeding.
13. The Commission agrees with Bell Canada that the evidence submitted by Mitchell Seaforth on the record of the Telecom Public Notice 2006-15 proceeding is insufficient to conclude that Mitchell Seaforth provides high-speed Internet service meeting the criteria established in the proceeding in the precise area identified in Bell Canada's proposal. The Commission considers, however, that since there is some evidence that service is available in Dublin from an ABSP and that such service was available within the time frames established as part of the Telecom Public Notice 2006-15 proceeding for the identification of such communities, an opportunity should be afforded for Mitchell Seaforth to provide a full record on the service available in this community and for Bell Canada and other interested parties to comment on those submissions.
14. In light of the above, the Commission concludes that there is substantial doubt as to the correctness of Telecom Decision 2007-50 insofar as it relates to Dublin, Ontario. Accordingly, the Commission **approves** Mitchell Seaforth's application to review and vary Telecom Decision 2007-50 and excludes Dublin, Ontario from the list of uncontested communities in the Attachment to Telecom Decision 2007-50. In the interest of fairness, the Commission intends to consider Dublin, Ontario using the same criteria it will use for other communities in the remainder of the Telecom Public Notice 2006-15 proceeding.

15. In order to have a full record on which to base its final decision regarding Dublin, Mitchell Seaforth is directed to file with the Commission and serve on all parties to the Telecom Public Notice 2006-15 proceeding the information identified in paragraph 9(a) of Telecom Public Notice 2006-15 as well as answers to interrogatories issued concurrent with this Decision by **3 December 2007**.
16. Bell Canada and any other interested party to the Telecom Public Notice 2006-15 proceeding who wishes to comment on the submissions or responses to interrogatories filed by Mitchell Seaforth may file comments with the Commission, serving a copy on all other parties, by **13 December 2007**.
17. Mitchell Seaforth may file reply comments with the Commission, serving a copy on all other parties, by **21 December 2007**.

Secretary General

### **Related documents**

- *Telecom Public Notice CRTC 2006-15 – Use of deferral account funds to expand broadband services to certain rural and remote communities*, Telecom Decision CRTC 2007-50, 6 July 2007, as amended by Telecom Decision CRTC 2007-50-1, 27 July 2007
- *Review of proposals to dispose of the funds accumulated in the deferral accounts*, Telecom Public Notice CRTC 2006-15, 30 November 2006
- *Disposition of funds in the deferral accounts*, Telecom Decision CRTC 2006-9, 16 February 2006
- *Implementation of price regulation for Télébec and TELUS Québec*, Telecom Decision CRTC 2002-43, 31 July 2002
- *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
- *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998

*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>*