



Telecom Decision CRTC 2007-20

Ottawa, 30 March 2007

Access to certain telecommunications services by persons who are blind

Reference: 8662-S49-01/01

In this Decision, the Commission denies the request made by Mrs. Marie Laporte-Stark and Mr. Chris Stark that it should re-regulate terminal equipment. Further, the Commission encourages all telecommunications service providers to provide information on terminal equipment with accessibility features for persons who are blind on their websites. Finally, the Commission notes that it intends to initiate a proceeding to address unresolved accessibility issues for persons with disabilities.

1. The Commission received an application from Mrs. Marie Laporte-Stark and Mr. Chris Stark (collectively, the Starks), dated 18 November 2001, filed pursuant to section 62 of the *Telecommunications Act* (the Act), to review and vary a portion of *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994 (Decision 94-19). Specifically, the Starks requested that the Commission re-regulate terminal equipment to ensure that persons who are blind had access to the full range of telecommunications services offered to sighted persons. The Starks argued that circumstances with respect to the terminal equipment market had changed since the issuance of Decision 94-19 such that competition was not then, nor was it likely to be, sufficient to protect the interests of persons who are blind.
2. The Commission received submissions, reply comments and/or responses to interrogatories from Bell Canada, on behalf of itself, Bell Aliant Regional Communications, Limited Partnership (Bell Aliant),¹ and MTS Allstream Inc. (MTS Allstream) [collectively, Bell Canada et al.]; Saskatchewan Telecommunications (SaskTel);² and TELUS Communications Company (TCC).³ Throughout this Decision, these five incumbent local exchange carriers (ILECs) are collectively referred to as "the Companies."

¹ On 7 July 2006, Bell Canada's regional wireline telecommunications operations in Ontario and Quebec were combined with, among other things, the wireline telecommunications operations of Aliant Telecom Inc., Société en commandite Télébec, and NorthernTel, Limited Partnership to form Bell Aliant Regional Communications, Limited Partnership.

² SaskTel was brought under the Commission's jurisdiction effective 30 June 2000, pursuant to *SaskTel – Transition to federal regulation*, Decision CRTC 2000-150, 9 May 2000. In paragraph 69 of that Decision, the Commission considered the sale, lease, and maintenance of single-line and multi-line terminal equipment in Saskatchewan to be sufficiently competitive to warrant forbearance pursuant to subsection 34(2) of the Act, and considered, among other things, that it was appropriate to forbear from exercising its powers under sections 24 (in part), 25, 27, 29 and 31 of the Act.

³ Effective 1 March 2006, TELUS Communications Inc. assigned and transferred all of its network assets and substantially all of its other assets and liabilities, including substantially all of its service contracts, to TELUS Communications Company.

3. Submissions, reply comments and/or responses to interrogatories were also received from ARCH Disability Law Centre (ARCH),⁴ the Canadian National Institute for the Blind (CNIB), the Canadian Wireless Telecommunications Association, Fido Solutions Inc.,⁵ and the Alliance for Equality of Blind Canadians (AEBC).⁶ A number of these parties were of the view that the Starks' application had not met the criteria for a review and vary application, as set out in *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998 (Public Notice 98-6).⁷ The Commission notes that the Starks did not object to the application being dealt with as a new application.
4. During the proceeding, the Commission commissioned a report from Acuity Research Group Inc. on the accessibility of terminal equipment to persons who are blind. The report, which was made part of the record on 26 July 2005, was entitled *Telephone terminals and accessibility with special reference to visual disabilities*.
5. On 2 September 2005, at the request of the Starks, the Commission suspended consideration of the application while the Starks and Bell Canada attempted to resolve their dispute with the assistance of Commission staff. By letter dated 26 July 2006, Commission staff advised parties to the proceeding that the Starks and Bell Canada had been unable to resolve their disagreements. The Starks and the Companies filed letters in early November 2006 by which they agreed to close the record without making any further submissions, and the record was closed on 9 November 2006.
6. While the positions of parties have necessarily been summarized in this Decision, the Commission has carefully reviewed and considered the submissions of all parties.

Positions of parties

7. The Starks submitted that they should have access to the same telecommunications services and terminal equipment features as persons who are sighted, noting that, as technologies converge, accessibility for persons who are blind should be included for all new telecommunications services.
8. The Starks alleged that, by not regulating terminal equipment, the Commission had allowed telephone companies to confer on sighted customers an undue preference in the provision of telecommunications services. The Starks further alleged that failure to ensure accessibility for persons who are blind to the entire range of new services and equipment developed and introduced in the last ten years constituted discrimination.

⁴ Formerly known as ARCH: A Legal Resource for Persons with Disabilities.

⁵ Fido Solutions Inc. withdrew from the proceeding following the announcement that the scope of the proceeding would be restricted to the wireline terminal market, as per Commission letter dated 15 July 2005.

⁶ Formerly known as the National Federation of the Blind: Advocates for Equality.

⁷ As set out in paragraph 11 of Public Notice 98-6, the Commission noted that in order for it to exercise its discretion pursuant to section 62 of the Act, an applicant must show that there was substantial doubt as to the correctness of the original decision, for example due to (a) an error in fact or law, (b) a fundamental change in circumstances or facts since the decision, (c) a failure to consider a basic principle which had been raised in the original proceeding, and (d) a new principle that had arisen as a result of the decision.

9. The Starks indicated that they sought access to the independent and unassisted use of all features of modern terminals, including access to all the functionalities and information to which sighted persons had access; this included the ability to program and reprogram their own equipment when they wanted. The Starks argued that they needed the same level of independence, choice, and quality of life as afforded to customers who are sighted by the Canadian telecommunications network. The Starks contended that they had no option except to purchase partially usable equipment, or to rely on adaptive technology at additional cost, but that this technology was not effective or ergonomically functional.
10. The Starks submitted that persons who are blind wanted to be able to learn about the features of their equipment independently, and accessible information was crucial in this respect. They submitted that operating manuals, specifications, and feature sheets accompanying terminal equipment needed to be in accessible formats. The Starks argued that, although the Commission had already suggested that this information should be readily available, it was their repeated experience that it was not possible to obtain this information.
11. The Starks argued that the existence of visual screen-based services, print key labels, and print operating instructions conferred benefits to some customers denied to others because of their disability. The Starks listed the following features which they considered necessary for a terminal to be usable by persons who are blind:
 - consistent tactile orientation/telephone keypad layouts;
 - any aspect of the terminal equipment that relied on visual cues, such as print labels and screen display, should be available through non-visual cues as well (e.g. tactile markings and audio output of screen information); and
 - audio feedback to inform persons who are blind of which numbers they had pressed, in order to correct dialing errors.
12. The Starks also indicated that they needed access to information about accessibility features of terminal equipment and the choices of accessible equipment available to them. They argued that the telephone companies should be providing information about equipment that was usable by persons who are blind, noting that they were unable to locate the accessible equipment identified as being on the market by the telephone companies.
13. Bell Canada et al. were of the view that terminal equipment requirements in the United States drove supply in Canada, and submitted that they had not engaged in the development and manufacturing of terminal equipment for many decades.
14. Bell Canada et al. submitted that each of their services which involved a residential individual-line service customer using terminal equipment to interact with the network could be used by persons who are blind to the same extent as they could be used by persons who did not have such a disability, sometimes with the use of a telephone adjunct, with some limited exceptions.
15. Bell Canada et al. did recognize that the following residential wireline services might not be accessible to persons who are blind:

- a) some of the i-Select Services, i.e., screen-displayed text information. Bell Canada et al. indicated that the terminal equipment necessary to make i-Select Services accessible to persons who are blind did not exist.
 - b) visual call waiting - the service would not be usable by persons unable to see a message waiting light. Bell Canada et al. indicated, however, that persons who are blind could determine that a message was waiting by lifting the telephone receiver and listening for an audible stutter, indicating that a message was waiting.
16. Bell Canada et al. submitted that a substantial and growing proportion of customers visited their websites and the websites of their competitors for product and service information, and that they had devoted considerable efforts to producing highly functional websites which provided detailed information concerning their services. Bell Canada et al. indicated that information posted on these websites may be accessible by persons who are blind through the use of technical aids.
17. Bell Canada et al. and TCC noted that the exercise of regulatory authority by the Commission over the sale of terminal equipment was, even prior to Decision 94-19, limited to the establishment of filing requirements for floor prices, and not the technical aspects of terminal equipment sold to their customers.
18. The Companies submitted that they had limited influence on the manufacturers of telephone sets, which were often foreign companies and/or with whom they were not affiliated. The Companies further submitted that issues pertaining to standards for terminal equipment should be addressed by the Canadian Standards Association (CSA) and Industry Canada.
19. The Companies submitted that there was no demonstrated need for the Commission, or for them at the Commission's direction, to substitute themselves for the marketplace to meet the needs of users who are blind.
20. In response to Commission interrogatories, the Companies all filed lists of (a) terminal equipment with accessibility features for persons who are blind, and (b) retailers of such equipment.
21. SaskTel submitted that it made available terminal equipment that could meet certain needs of persons who are visually impaired or blind and customers with other physical limitations. In the case of persons with special needs, SaskTel indicated that it might, upon request, recommend alternative sources of supply or refer people to support groups.
22. SaskTel submitted that the great majority of its services requiring the end-user's direct action, such as the use of terminal equipment to interact with network-based features or functions that involved customer interaction with the network, were accessible to customers who are blind using a basic telephone set. Further, SaskTel indicated that most of the information and services provided via a screenphone could be obtained through alternative sources, in many cases using nothing more than a wireline telephone.

23. SaskTel argued that the responsibility for the provision of operating manuals, technical specifications, and fact sheets in alternative formats to accommodate the requirements of persons who are visually impaired or blind rested with the terminal manufacturer or distributor.
24. TCC submitted that equipment that provided the audio and visual functionality referred to by the Starks was already available. Further, TCC was of the view that Braille telephones offered the most comprehensive number of tactile keys, and that telephones without tactile capability may be converted by the user using a Braille labeller.
25. TCC submitted that each of its tariffed residential wireline services that involved customer interaction with the network was accessible to customers who are blind, at the same price as for other customers, using a basic telephone set. Certain services, such as Call Display and Internet Call Director, also required the use of an adjunct to enable the vocal announcement of the caller identification. TCC indicated that, for those services that were not accessible, either it offered an audible alternative or equipment was readily available on the market.
26. ARCH conducted a preliminary search of terminal equipment with accessibility features for persons who are blind, mostly of Internet sources. The search found that
 - a large market existed for telephone products which accommodated persons with disabilities, as evidenced by the production of an extensive variety of telephones;
 - the vast majority of these telephone products were made in the United States; and
 - most American vendors advertised that they would sell to Canada.
27. ARCH indicated that it undertook a limited consultation⁸ with persons with a range of disabilities regarding telecommunications services and equipment, consisting of twenty interviews with seventeen Ontario-based disability organizations. ARCH noted that the questionnaire was based on the interrogatories addressed by the Commission. ARCH submitted that its research demonstrated that terminal equipment using screens was inaccessible to persons who are blind or with other visual disabilities. ARCH argued that the failure of the telephone companies to ensure that persons with disabilities, including persons who are blind, could use telecommunications services at no additional cost amounted to unjust discrimination within the meaning of the *Canadian Charter of Rights and Freedoms* and human rights jurisprudence.
28. The CNIB submitted that it would be appropriate for the Commission to take the leadership in addressing the issue of terminal equipment accessibility for persons who are blind.
29. The AEBC requested that the Commission initiate a process for regulating the development and deployment of residential, office, and mobile terminal equipment into the Canadian marketplace so that it would be fully accessible to, and usable by, all Canadians, including those who are blind or partially sighted.

⁸ ARCH noted that it consulted on a cross-disability basis and responded to interrogatories from a cross-disability perspective. ARCH further noted that it was mindful that the consultation did not reflect a representative sample.

Commission's analysis and determinations

30. The Commission considers that the application does not raise substantial doubt as to the correctness of Decision 94-19, within the meaning of Public Notice 98-6, and therefore is dealing with it as a new application.
31. The Commission considers that the Starks' application raises two issues:
 - whether it should regulate terminal equipment with respect to its accessibility to persons who are blind; and
 - whether local residential wireline services are accessible to persons who are blind.
32. The Commission's analysis and determinations related to these two issues are provided below.

Regulation of terminal equipment

33. The Commission notes that, in Decision 94-19, it found, among other things, that the market for terminal equipment was sufficiently competitive to protect the interests of all users. Accordingly, the Commission forbore, pursuant to subsections 34(1) and (2) of the Act, from the regulation of the sale, lease, and maintenance of competitive terminal equipment by AGT Limited and BC TEL (both now part of TCC); Bell Canada; and The Island Telephone Company Limited, Maritime Tel & Tel Limited, The New Brunswick Telephone Company, Limited, and Newfoundland Telephone Company Limited (collectively Aliant Telecom Inc., and now part of Bell Aliant).
34. Prior to Decision 94-19, the exercise of regulatory authority by the Commission over the sale of terminal equipment was limited to the filing requirements for floor prices. Since the early 1980s, the Commission has not actively regulated the technical aspects of terminal equipment sold to the telephone companies' customers.
35. The Commission notes that the Act confers powers on the Commission to determine standards in respect of the technical aspects of telecommunications applicable to telecommunications facilities operated by or connected to those of a Canadian carrier. However, the Commission notes that its jurisdiction under the Act does not extend to non-carrier manufacturers of terminal equipment. It also notes that the certification of terminal equipment is the responsibility of Industry Canada. Accordingly, the Commission considers that standards would be more comprehensively determined by entities such as the CSA and/or Industry Canada.
36. The Commission notes that there is a range of terminal equipment that offers audio output of screen information such as the information provided through Call Display service, including different models of telephones and telephone set adjuncts. There are also various models of terminal equipment that offer tactile markings, Braille add-ons, and different sizes and designs of keypads to increase accessibility for persons who are blind.

37. The Commission finds that a market for terminal equipment with accessibility features for persons who are blind has developed, and that there is a range of features and prices from which to choose. The Commission notes that much of this equipment has been manufactured in other countries, and that equipment available to the American market is generally available in Canada as well.
38. The Commission considers that many models of terminal equipment with accessibility features for persons who are blind were manufactured subsequent to the Commission forbearing from the sale, lease, and maintenance of terminal equipment in Decision 94-19, and that there is no evidence to suggest that the market for equipment with accessibility features for persons who are blind will not continue to develop in the future.
39. The Commission also considers that the information accompanying individual terminals is the responsibility of the manufacturers of those terminals, and is beyond the control of the Canadian carriers.
40. For these reasons, the Commission considers that its intervention is not warranted with respect to the regulation of terminal equipment as it relates to persons who are blind. The Starks' request in this regard is therefore **denied**.

Accessibility to local residential wireline services by persons who are blind

41. The Commission considers that, as a general principle, all local residential wireline services should be accessible to all persons in Canada, including to persons who are blind. Further, the Commission considers that persons who are blind are discriminated against within the meaning of subsection 27(2) of the Act where it is demonstrated that a local residential wireline service offered by a Canadian carrier is not accessible by persons who are blind as a result of their disability.
42. The Commission considers that a local residential wireline service is not accessible to persons who are blind if the service contains a visual component for which there is no non-visual alternative. Further, the Commission finds that the lack of availability in Canada of the appropriate terminal equipment offering such non-visual alternatives for persons who are blind would amount to the absence of a non-visual alternative. However, such discrimination would not be unjust within the meaning of subsection 27(2) of the Act where accessibility by persons who are blind requires the use of terminal equipment that does not exist.
43. The Commission also notes that, in certain circumstances, access to a service may not be provided on an equivalent basis. For example, accommodation via a third person, which could raise privacy issues, might not constitute an equivalent alternative. On the other hand, the use of an additional piece of terminal equipment such as a telephone set adjunct may be a reasonable accommodation that provides suitable equivalency in certain circumstances. The Commission considers that the Starks have not introduced any specific evidence on what constitutes a reasonable equivalent service, and as such the record in this proceeding is insufficient to render determinations on this issue.

44. The Commission notes that, in the proceeding initiated by *Review of proposals to dispose of the funds in the deferral accounts*, Telecom Public Notice CRTC 2006-15, 30 November 2006 (Public Notice 2006-15), it invited comments on proposals filed by the ILECs to improve accessibility to telecommunications services for persons with disabilities within their respective territories. It is the Commission's intention, subsequent to the issuance of a decision related to the Public Notice 2006-15 proceeding, to initiate a proceeding to address unresolved accessibility issues for persons with disabilities. The Commission considers that the issue of what constitutes a reasonable equivalent service should be considered in the context of that planned proceeding.
45. As a measure to address the lack of accessibility to local residential wireline services by persons who are blind, the Commission would consider imposing a section 24 condition on any service that is not accessible, by requiring the Canadian carrier offering such a service to ensure that appropriate terminals (i.e. those offering a non-visual alternative to access a service) are available, where necessary to allow accessibility, provided they exist.⁹ Available in this context would mean
- the terminals are available in Canada through retailers, whether affiliated with the Canadian carriers or not;
 - the terminals can be obtained either through special order or directly off the shelf; and
 - information on where to obtain the terminals is provided by the Canadian carriers.
46. The record of this proceeding shows that the only local residential wireline services that proved to be inaccessible to persons who are blind are some of Bell Canada's i-Select Services. The Commission notes that some of the i-Select Services can be accessed by persons who are blind in an alternative manner, for example through Directory Assistance service. However, some of the other services would require specialised terminal equipment to translate what appears on the screen into a non-visual format.
47. The Commission notes that the information on the record of this proceeding concerning the state of technological development in relation to Bell Canada's i-Select Services dates back to 2003, and it would be inappropriate to make a finding relating to accessibility based on the state of terminal equipment that might have evolved to provide access to i-Select Services for persons who are blind. Therefore, the Commission directs Bell Canada to file with the Commission, within 30 days of the date of this Decision, updated information as follows:
- a list and brief description of each i-Select Service;
 - the number of subscribers to i-Select Services;

⁹ The Commission notes that in certain circumstances, it may be a network modification that is required to make a local residential wireline service accessible to persons who are blind. The evidence on the record of this proceeding does not show any situations requiring such a modification.

- the extent to which each service listed could be used by persons who are blind; and
 - a description of how each service listed is made accessible to persons who are blind, with a description of the terminal equipment or network modification required to enable persons who are blind to use the service to the same extent as it is used by persons who are sighted. If appropriate terminal equipment exists, but that equipment is not available, the reasons why it is not available are to be provided.
48. The Commission notes that, in relation to information about the various options for terminal equipment with accessibility features for persons who are blind, the Acuity Research Group Inc. report examined the websites of Bell Aliant, Bell Canada, MTS Allstream, SaskTel, and TCC. In the report, it was concluded that information provision was not identical across these telephone companies, and even those that provided some information (i.e. SaskTel and MTS Allstream) did not have information on the terminals with the most accessibility features for persons who are blind.
49. The Commission considers that information on appropriate terminal equipment for persons who are blind might be difficult to obtain. The Commission considers that the telephone companies' websites, as well as the websites of all telecommunications service providers (TSPs), can be a valuable source of information for consumers. The Commission is of the view that it would be beneficial to consumers who are blind if information on accessible terminal equipment were included on these websites, including where such equipment can be purchased, to the extent that the TSPs provide information on terminal equipment. The Commission therefore encourages the TSPs to provide information on accessible terminal equipment on their websites.

Secretary General

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