



Telecom Decision CRTC 2007-59

Ottawa, 25 July 2007

Bell Aliant – Applications for forbearance from the regulation of residential local exchange services

Reference: 8640-B54-200706096, 8640-B54-200706111, 8640-B54-200706129,
8640-B54-200706153, 8640-B54-200706632 (New Brunswick);

8640-B54-200705551, 8640-B54-200705809, 8640-B54-200705824,
8640-B54-200705874, 8640-B54-200705890, 8640-B54-200705957,
8640-B54-200705981, 8640-B54-200705999, 8640-B54-200706020,
8640-B54-200706038, 8640-B54-200706731 (Nova Scotia);

8640-B54-200706046, 8640-B54-200706054, 8640-B54-200706062,
8640-B54-200706070, 8640-B54-200706723 (Prince Edward Island); and

8640-C12-200706351 (general)

In this Decision, the Commission approves Bell Aliant Regional Communications, Limited Partnership's (Bell Aliant) request for forbearance from the regulation of residential local exchange services in 72 exchanges in New Brunswick, Nova Scotia, and Prince Edward Island. The Commission denies Bell Aliant's request for forbearance in 8 exchanges.

Introduction

1. The Commission received applications by Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), dated between 11 and 30 April 2007, in which the company requested forbearance from the regulation of residential local exchange services¹ in 80 exchanges in New Brunswick, Nova Scotia – including exchanges in the priority census metropolitan area (CMA) of Halifax² – and Prince Edward Island.
2. In a letter dated 7 May 2007, the Commission directed incumbent local exchange carriers (ILECs), competitive local exchange carriers, and wireless service providers to provide additional information regarding current local forbearance applications.
3. The Commission received submissions and/or data regarding Bell Aliant's applications and/or local forbearance applications in general from Access Communications Co-operative Limited; Amtelecom Cable Limited Partnership; Bell Canada, Bell Mobility Inc.; Bragg Communications Inc., carrying on business as EastLink (EastLink); Bruce Telecom; Canadian Cable Systems

¹ In this Decision, "residential local exchange services" refers to local exchange services used by residential customers to access the public switched telephone network, and any associated service charges, features and ancillary services.

² Paragraph 522 of Telecom Decision 2006-15, as amended by the Governor in Council's *Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007-532, 4 April 2007 (modified Telecom Decision 2006-15) states that applications for local forbearance related to local exchanges located wholly or partially within the CMAs of Calgary, Edmonton, Halifax, Hamilton, London, Montréal, Ottawa-Gatineau, Québec, Toronto, Vancouver, or Winnipeg will be given priority by the Commission.

Alliance Inc.; Cogeco Cable Inc.; Execulink Telecom Inc. (Execulink Telecom); Globility Communications Corporation; Maskatel inc.; Mountain Cablevision Ltd; MTS Allstream Inc. (MTS Allstream); Primus Telecommunications Canada Inc.; the Public Interest Advocacy Centre on behalf of the Consumers' Association of Canada and the National Anti-Poverty Organization (the Consumer Groups); Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Inc.; Saskatchewan Telecommunications; Shaw Communications Inc.; 9164-3122 Québec inc., doing business as Sogetel Numérique; Téléphone Drummond inc.; TELUS Communications Company; Wightman Telecom Ltd. (Wightman); and WTC Communications.

4. The record of this proceeding closed with Bell Aliant's reply comments, dated 11 June 2007.
5. The Commission has assessed Bell Aliant's applications based on the local forbearance test set out in Telecom Decision 2006-15, as amended by the Governor in Council's *Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007-532, 4 April 2007 (modified Telecom Decision 2006-15), by examining the following:
 - a) Product market
 - b) Competitor presence test
 - c) Competitor quality of service (Q of S) results
 - d) Communications plan
6. The Commission will consider an additional issue – limitation of liability provisions – raised by Bell Aliant under the heading "Other issues."

Commission's analysis and determinations

a) Product market

7. The Commission received no comments with respect to Bell Aliant's proposed list of residential local exchange services.

Nova Scotia and Prince Edward Island exchanges

8. The Commission notes that Bell Aliant is seeking forbearance for 12 tariffed residential local exchange services offered in each of Nova Scotia and Prince Edward Island. The Commission also notes that all of these services were included in the list of services set out in Telecom Decision 2005-35.
9. Accordingly, the Commission considers the lists of services proposed by Bell Aliant for forbearance in Nova Scotia and Prince Edward Island to be appropriate. The lists are set out in Appendix 1 to this Decision.

New Brunswick exchanges

10. The Commission notes that Bell Aliant is seeking forbearance for 13 tariffed residential local exchange services offered in New Brunswick. The Commission also notes that all but 2 of

these 13 services were included in the list of services set out in Decision 2005-35.

11. The Commission notes that the additional services – Automatic Dialing Service, and Jack and Plug Equipment – are local services that were not included in Decision 2005-35. However, the Commission considers that these two services fall within the definition of local exchange services set out in Telecom Public Notice 2005-2.
12. Accordingly, the Commission considers the list of services proposed by Bell Aliant for forbearance in New Brunswick to be appropriate. The list is set out in Appendix 1.

b) Competitor presence test

13. The Commission notes that Bell Aliant requested forbearance for 14 exchanges in New Brunswick, 54 exchanges in Nova Scotia, and 12 exchanges in Prince Edward Island.
14. The Commission also notes that information provided by parties indicates that there is no facilities-based fixed-line telecommunications service provider offering residential services in the exchanges of Barrington, Bridgetown, Digby, Musquodoboit Harbour, and Shelburne in Nova Scotia, and Alberton, Georgetown, and O'Leary in Prince Edward Island. Accordingly, the Commission determines that these 8 exchanges do not meet the competitor presence test.
15. The Commission notes that for the remaining 49 exchanges in Nova Scotia and 9 exchanges in Prince Edward Island, as well as all 14 exchanges in New Brunswick, information provided by parties confirms that there are, in addition to Bell Aliant, at least two independent facilities-based telecommunications service providers, including providers of mobile wireless services. Each of these service providers offers local exchange services in the market and is capable of serving at least 75 percent of the number of residential local exchange service lines that Bell Aliant is capable of serving, and at least one, in addition to Bell Aliant, is a facilities-based, fixed-line telecommunications service provider.
16. Accordingly, the Commission determines that the 14 exchanges in New Brunswick, 49 exchanges in Nova Scotia, and 9 exchanges in Prince Edward Island listed in Appendix 2 meet the competitor presence test.

c) Competitor Q of S results

17. The Commission notes that Bell Aliant submitted competitor Q of S results for the period of August 2006 to January 2007. Specifically, for the period from August 2006 to December 2006, Bell Aliant proposed to use competitor Q of S results for the Atlantic provinces portion of its serving territory; for January 2007, the company proposed to use consolidated results for its entire serving territory.³ Bell Aliant also proposed to use these competitor Q of S results in all its forbearance applications, whether for exchanges located in the Atlantic provinces or in the Ontario and Quebec portions of its operating territory.

³ 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.

18. MTS Allstream submitted that Bell Aliant should be required to restate its competitor Q of S results for 2006 to include results for those areas of Ontario and Quebec that now formed part of its operating territory.
19. In reply, Bell Aliant submitted that prior to January 2007, the competitor Q of S results for its Ontario and Quebec territory had been consolidated with Bell Canada's results and were reported as they had been for the rate rebate plan for competitors. Bell Aliant submitted that it was reasonable, for the purpose of the local forbearance competitor Q of S criterion, that Bell Aliant only be measured on a company-wide basis from the time its consolidated competitor Q of S results became available in January 2007.
20. The Commission considers it reasonable to expect that it would have taken Bell Aliant some time to develop a process for incorporating the competitor Q of S results from the acquired exchanges in Ontario and Quebec into its competitor Q of S results following a consolidation of operations. Accordingly, the Commission considers that it is appropriate to use Bell Aliant's consolidated results from January 2007.
21. The Commission is concerned, however, with Bell Aliant's proposed methodology for the months of August to December 2006, in that the Q of S forbearance criterion is clear that these Q of S results are to be assessed with respect to the services provided to competitors in the territory containing the exchanges for which forbearance is being sought. In the Commission's view, using the August to December 2006 Q of S results – which reflect services provided to competitors only in the Atlantic provinces – when assessing forbearance for exchanges located in Ontario and Quebec would be contrary to the intent of the Q of S forbearance criterion.
22. Consequently, the Commission considers that for the months of August to December 2006, Bell Aliant's compliance with the Q of S forbearance criterion should be assessed based on the competitor Q of S results from the ILEC that reported results that included the particular exchange for which forbearance is requested – that is, exchanges in the Atlantic provinces would be assessed based on Bell Aliant Q of S results as reported in this application, and exchanges in Ontario and Quebec would be assessed based on Bell Canada Q of S results for August to December 2006 plus Bell Aliant's consolidated Q of S results for January 2007. Accordingly, the Commission considers that Bell Aliant's competitor Q of S results as submitted are appropriate for assessing the local forbearance criteria in exchanges in the Atlantic provinces.
23. Execulink Telecom submitted that the approach Bell Aliant had used to calculate its competitor Q of S results was not appropriate. Execulink Telecom claimed that modified Telecom Decision 2006-15 was very clear that the Q of S results for each exchange should be the average results for the competitors in the exchange, and not across the ILEC's territory.
24. The Commission notes that modified Telecom Decision 2006-15 indicates that, for local forbearance purposes, the ILECs' competitor Q of S results are to be calculated on a territory-wide basis.

25. Wightman submitted that it did not agree with the competitor Q of S results reported by Bell Aliant for Wightman for January 2007. In reply, Bell Aliant stated that its competitor Q of S results had been audited on two occasions, once by internal sources and once by external sources.
26. The Commission has examined Bell Aliant's competitor Q of S results using both the data submitted by Bell Aliant and the data submitted by Wightman. The Commission considers that Bell Aliant would meet, on average, the Q of S standard for each applicable indicator in each case.
27. EastLink submitted that Bell Aliant had consistently provided it with services that were below the competitor Q of S standards and that, accordingly, Bell Aliant had failed to satisfy part of the competitor Q of S criterion.
28. The Commission has reviewed Bell Aliant's competitor Q of S results associated with EastLink and notes that Bell Aliant met the Q of S standard for over 85 percent of the individually reported numbers, where each reported number is one indicator's result for one month. Accordingly, the Commission considers that these results do not support EastLink's claim that Bell Aliant had consistently provided EastLink with below-standard competitor services.
29. The Commission has reviewed Bell Aliant's competitor Q of S results and finds that the company has demonstrated that during this six-month period it
 - i) met, on average, the Q of S standard for each indicator set out in Appendix B of modified Telecom Decision 2006-15, as defined in Telecom Decision 2005-20, with respect to the services provided to competitors in its territory, and
 - ii) did not consistently provide any of those competitors with services that were below those Q of S standards.
30. Accordingly, the Commission determines that Bell Aliant's competitor Q of S results meet the local forbearance criteria.

d) Communications plan

31. The Consumer Groups submitted that Bell Aliant's communications plan was inadequate and proposed specific and detailed elements to be addressed by the company in its plan. In reply, Bell Aliant submitted that the Consumer Groups' request would be more appropriately addressed through an application to review and vary modified Telecom Decision 2006-15.
32. The Commission notes that modified Telecom Decision 2006-15 states that the communications plan should describe how the ILEC intends to explain local forbearance to customers in the relevant market, provide information concerning the ongoing availability of stand-alone primary exchange service in the market, and provide contact information for customers who have questions or concerns.

33. The Commission has reviewed Bell Aliant's draft communications plan and is satisfied that it generally meets the information requirements set out in modified Telecom Decision 2006-15. However, the Commission considers that the company should make the following changes to the plan (*italics* represent revisions to be made):

i) Revise the first paragraph of the section entitled "Changes to the regulation of your local phone service" as follows:

... advise customers in (list exchange) that *as of (date), the price and most terms for local telephone services in your area are no longer regulated by the CRTC*. This means Bell Aliant is no longer required to obtain prior CRTC approval through tariff filings for the provision of *many* local services and the associated rates ...

ii) Revise the first sentence of the second paragraph of the section entitled "Changes to the regulation of your local phone service" as follows:

The CRTC has directed Bell Aliant to maintain certain requirements, such as continuing to provide local telephone access services on a stand-alone basis in forborne areas at no more than the most recently CRTC-approved rates.

iii) Provide mailing addresses for each organization listed in the communications plan.

iv) Add the following information to the contact list, after Bell Aliant's contact information and before the Commission's contact information:

Commissioner for Complaints for Telecommunications Services (CCTS)

Website

www.ccts-cprst.ca

Email

General inquiries: info@ccts-cprst.ca

Complaints: complaints@ccts-cprst.ca

Telephone

Toll-free: 1-888-221-1687

Ottawa area: 613-244-9585

Toll-free fax: 1-877-782-2924

Postal address

P.O. Box 81088, Ottawa, ON K1P 1B1

v) Add the following information to the contact list, after the Commission's contact information:

Canadian Consumer Information Gateway – Office of Consumer Affairs
Industry Canada
235 Queen Street
6th Floor West
Ottawa, ON
K1A 0H5
Tel: 613-946-2576
Email: consumer.information@ic.gc.ca

and

Office of the Privacy Commissioner of Canada
112 Kent Street
Place de Ville
Tower B, 3rd Floor
Ottawa, Ontario
K1A 1H3
Toll-free: 1-800-282-1376
Tel: 613-995-8210
Fax: 613-947-6850
TTY: 613-992-9190

34. The Commission **approves** the proposed communications plan with the revisions outlined above. The Commission directs Bell Aliant to provide the resulting communications materials to its customers in both official languages, where appropriate.

Other issues

Limitation of liability

35. Bell Aliant noted that previous forbearance orders, for example, Telecom Decision 97-19, had included a "limitation of liability" provision to address the transitional period from full regulation to regulatory forbearance. Bell Aliant requested that the Commission include a limitation of liability clause in its decision and, as an example, proposed the following words:

Any provision limiting liability in existing contracts or other arrangements with customers will continue to remain in force for the greater of (i) 90 days after the effective date of this Forbearance Order, and (ii) until the end of the term of such contracts or other arrangements, in accordance with the terms of such contracts or other arrangements.

36. The Commission notes that this issue was expressly dealt with in modified Telecom Decision 2006-15, where the Commission stated the following:

... The Commission notes that any provision limiting liability in any existing contracts or arrangements, as of the date of the Commission decision granting forbearance in a relevant market, will remain in force until its expiry. Such existing contracts or arrangements will be deemed to terminate on the date or in the manner provided therein, notwithstanding any contractual provisions governing extensions.

37. The Commission considers that Bell Aliant's concerns have been addressed by this statement and that no further ruling regarding limitation of liability provisions is required in this Decision.

Conclusion

38. The Commission determines that Bell Aliant's applications regarding the 72 exchanges listed in Appendix 2 meet all the local forbearance criteria set out in modified Telecom Decision 2006-15.
39. Pursuant to subsection 34(1) of the *Telecommunications Act* (the Act), the Commission finds as a question of fact that a determination to forbear, to the extent specified in modified Telecom Decision 2006-15, from the regulation of residential local exchange services listed in Appendix 1 in the 72 exchanges listed in Appendix 2 would be consistent with the Canadian telecommunications policy objectives set out in section 7 of the Act.
40. Pursuant to subsection 34(2) of the Act, the Commission finds as a question of fact that these residential local exchange services are subject to a level of competition in these exchanges sufficient to protect the interests of users of these services.
41. Pursuant to subsection 34(3) the Act, the Commission finds as a question of fact that to forbear, to the extent specified in modified Telecom Decision 2006-15, from regulating these residential local exchange services in these exchanges would be unlikely to impair unduly the continuance of a competitive market for these services.
42. In light of the above, the Commission **approves** Bell Aliant's applications for forbearance from the regulation of the local exchange services listed in Appendix 1, as they pertain to residential customers only, in the 72 exchanges listed in Appendix 2, subject to the powers and duties that the Commission has retained as set out in modified Telecom Decision 2006-15. This determination takes effect as of the date of this Decision.
43. However, the Commission **denies** Bell Aliant's applications for forbearance in the exchanges of Barrington, Bridgetown, Digby, Musquodoboit Harbour, and Shelburne in Nova Scotia, and Alberton, Georgetown, and O'Leary in Prince Edward Island since these exchanges do not meet the competitor presence test.

Related documents

- *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006, as amended by the Governor in Council's *Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007-532, 4 April 2007
- *List of services within the scope of the proceeding on forbearance from the regulation of local exchange services*, Telecom Decision CRTC 2005-35, 15 June 2005, as amended by Telecom Decision CRTC 2005-35-1, 14 July 2005
- *Forbearance from regulation of local exchange services*, Telecom Public Notice CRTC 2005-2, 28 April 2005
- *Finalization of quality of service rate rebate plan for competitors*, Telecom Decision CRTC 2005-20, 31 March 2005
- *Forbearance – Regulation of toll services provided by incumbent telephone companies*, Telecom Decision CRTC 97-19, 18 December 1997, as amended by Telecom Decision CRTC 97-19-1, 9 March 1998

Secretary General

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>

**Local exchange services eligible for forbearance from regulation in this Decision
(for residential customers only)**

New Brunswick

Tariff	Item	List of services
21491	125.3	Extra Listings
21491	125.4	Non-Listed, Non-Published Service
21491	125.5	Contract Period for Chargeable Extra Listings
21491	125.6	Directories and Listings – Rates and Charges
21491	205.1	Residence Single Line Access Service
21491	205.3	Residence Multi-Line Access Service
21491	304	Enhanced Local Calling (Calling Features)
21491	308	Internet Call Manager
21491	310.1	Voice Messaging Service
21491	312	900 Call Denial/Blocking Service
21491	332	Jack and Plug Equipment
21491	348	Hospital Patient Telephone Service
12001	190	Automatic Dialing Service

Nova Scotia

Tariff	Item	List of services
21491	125.3	Directories and Listings – Extra Listings
21491	125.4	Directories and Listings – Non-Listed, Non-Published Service
21491	125.5	Directories and Listings – Contract Period for Chargeable Extra Listings
21491	125.6	Directories and Listings – Rates and Charges
21491	205.1	Residence Single Line Access Service
21491	205.3	Residence Multi-Line Access Service
21491	304	Enhanced Local Calling (Calling Features)
21491	308	Internet Call Manager
21491	310.1	Voice Messaging Service
21491	312	900 Call Denial/Blocking Service
21491	348	Hospital Patient Telephone Service
10001	2100	Conference Service – Local

Prince Edward Island

Tariff	Item	List of services
21491	125.3	Extra Listings
21491	125.4	Non-Listed, Non-Published Service
21491	125.5	Contract Period for Chargeable Extra Listings
21491	125.6	Directories and Listings – Rates and Charges
21491	205.1	Residence Single Line Access Service
21491	205.3	Residence Multi-Line Access Service
21491	304	Enhanced Local Calling (Calling Features)
21491	308	Internet Call Manager
21491	310.1	Voice Messaging Service
21491	312	900 Call Denial/Blocking Service
21491	348	Hospital Patient Telephone Service
11001	910-915	Local Conference Service

List of exchanges

New Brunswick

Dorchester
Fredericton
Grand Bay – Westfield
Hampton
Hillsborough
Keswick
Moncton
Oromocto
Port Elgin
Rothesay
Sackville
Saint John
Salisbury
Sussex

Nova Scotia

Amherst
Antigonish
Aylesford
Berwick
Boularderie
Bridgewater
Brookfield
Brooklyn
Chester
Collingwood
Debert
East Bay
French Village
Halifax
Hantsport
Heatherton
Hopewell
Hubbards
Kentville
Ketch Harbour
Kingston
Lahave
Liverpool
Lunenburg
Mahone Bay
Middleton

List of exchanges

Nova Scotia (cont'd)

Mill Village
Mount Uniacke
New Glasgow
North Sydney
Oxford
Parrsboro
Pictou
Port Mouton
Prospect Road
River Hebert
Riverport
Sackville
Saltsprings
Springhill
St. Margarets
Sydney
Thorburn
Truro
Waverly
Wedgeport
Windsor
Wolfville
Yarmouth

Prince Edward Island

Charlottetown
Crapaud
Hunter River
Montague
Morell-St. Peters
Mount Stewart
Murray River
Souris
Summerside