



Telecom Decision CRTC 2009-514

Ottawa, 21 August 2009

MTS Allstream Inc. – Application concerning provisioning of competitor digital network services in accordance with competitor quality of service standards

File number: 8660-M59-200816994

In this decision, the Commission clarifies the conditions under which an incumbent local exchange carrier (ILEC) may claim that no facilities are available to provision competitor digital network DS-1 services.

The Commission directs the ILECs to immediately apply the “no facilities available” (NFA) definition in accordance with the Commission's determinations in this decision. The Commission also directs those ILECs that have filed forbearance applications with the Commission that include competitor quality of service indicator 1.19 performance results to file revised results that reflect the determinations regarding the NFA definition set out in this decision or explain why they do not need to file revised results. Finally, the Commission directs the ILECs to identify the nature of the facility shortage to the competitor when claiming that circumstances justify an NFA claim.

Introduction

1. The Commission received an application by MTS Allstream Inc. (MTS Allstream), dated 18 December 2008, in which the company alleged that other incumbent local exchange carriers (ILECs)¹ were incorrectly classifying many orders for competitor digital network (CDN) services as “no facilities available” (NFA), in contravention of rules established by the Commission in *Follow-up to Finalization of quality of service rate rebate plan for competitors, Telecom Decision CRTC 2005-20 – Service intervals for provisioning CDN services and Type C loops*, Telecom Decision CRTC 2006-34, 26 May 2006 (Telecom Decision 2006-34).
2. MTS Allstream requested that the Commission direct the ILECs to
 - a) adhere to approved service interval standards for competitor quality of service (Q of S) indicator 1.19 where facility availability is readily within their control,
 - b) immediately stop classifying certain orders for CDN DS-1 access as NFA, and
 - c) identify the specific nature of the facility shortage whenever an NFA situation is claimed.

¹ In this decision, the term “ILECs” applies to Bell Aliant Regional Communications, Limited Partnership, Bell Canada, MTS Allstream, Saskatchewan Telecommunications, and TELUS Communications Company.

3. The Commission received comments from Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (collectively, the Bell companies), Saskatchewan Telecommunications (SaskTel), and TELUS Communications Company (TCC). The public record of this proceeding, which closed on 27 May 2009, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.
4. In this proceeding, the Bell companies proposed amendments to the standard service intervals for provisioning CDN DS-1 service. The Commission considers that changes to the standard service intervals are not within the scope of this proceeding.

Are the ILECs incorrectly applying the definition of NFA as alleged by MTS Allstream?

5. In Telecom Decision 2006-34, the Commission set out the definition of conditions that justify an NFA claim by an ILEC. The Commission noted that

where facilities required for CDN service or Type C loops are not available, ILECs need to conduct economic studies before deciding to invest in a network extension. They also need to design work plans, secure rights of way and permits, and order equipment before building, testing, and putting the new network into service. The Commission notes that many of these steps are not completely within the ILECs' control. The Commission considers that this supports the need for the ILECs and their customers to negotiate the in-service date. [the NFA definition]

6. MTS Allstream argued that ILECs are taking an unjustifiably broad view of the NFA definition. The company identified four provisioning situations that, in its view, do not meet the NFA definition. MTS Allstream submitted that those four provisioning situations require (a) line transfers in the outside plant, (b) loop conditioning that does not involve underground plant, (c) line cards in the serving central office (CO), and (d) additional common equipment in growth COs.

a) Line transfers in the outside plant

7. MTS Allstream submitted that the line transfers required to obtain facilities require simple routine work that the ILECs should perform in a timely manner.
8. SaskTel submitted that the line transfer process may involve a variety of facility types that frequently have customer notification requirements. SaskTel also submitted that these requirements extend the time necessary to provision the service beyond the standard service interval. TCC submitted that in some circumstances where line transfers are required, the line transfer process could involve the facilities of existing customers. TCC also submitted that in some cases a new cable might be required.

Commission's analysis and determinations

9. The Commission considers that while some minimal customer notification coordination may be required during the line transfer process to secure facilities to provide service at an end-user location, an ILEC could lessen any notification requirements by choosing single residential lines instead of more complex business lines, which have more specific constraints.
10. The Commission notes that the NFA definition only applies in the case of a network extension where certain conditions outside of the ILEC's control apply, including the need to conduct economic studies, secure rights of way and permits, and design work plans. The Commission considers that a line transfer alone does not meet any of these circumstances.
11. The Commission therefore determines that a line transfer alone does not justify an NFA claim.
12. The Commission considers that line transfers do not generally require the installation of a new cable. However, it considers that the need to install a new cable would justify an NFA claim, because the ILEC would generally need to undertake an activity contemplated in the NFA definition.

b) Loop conditioning that does not involve underground plant

13. MTS Allstream submitted that loop conditioning that does not involve underground plant is completely within the control of the ILEC and includes the installation of repeaters, and/or the removal of a bridge or end tap, capacitors, or loading coils.
14. TCC submitted that inclement weather conditions resulting in complex coordination of scarce technician resources may cause delays in loop conditioning. SaskTel submitted that because of potential inclement weather and the requirement to notify landowners, only the installation of repeaters could not reasonably be expected to be completed within the standard service interval.
15. The Bell companies submitted that standard service intervals are often not met for loop conditioning situations that involve the installation of repeaters, due to the need to dispatch a technician who often requires access to manholes.

Commission's analysis and determinations

16. The Commission notes that MTS Allstream limited its application to loop conditioning scenarios that do not involve underground plant – that is, those scenarios that involve aerial facilities.
17. The Commission notes that an ILEC can file an exclusion application to have performance results adjusted if they experience delays in providing or maintaining service in situations such as adverse weather conditions.

18. The Commission considers that the ILECs' concerns about meeting the standard service intervals in provisioning situations that require repeater installation apply to underground or buried facilities, but not to aerial facilities. The Commission does not consider that the circumstances set out in the NFA definition, such as the need to conduct economic studies, design work plans, or secure rights of way and permits, apply to loop conditioning of aerial facilities.
19. The Commission therefore determines that loop conditioning scenarios involving only aerial facilities do not justify an NFA claim.

c) Line cards in the serving CO

20. MTS Allstream submitted that provisioning the line cards that are required in the serving CO does not meet the NFA definition since line card stocking is a routine matter. SaskTel submitted that the installation of a line card is not subject to significant business case review and does not justify an NFA claim.
21. The Bell companies and TCC submitted that standard service intervals may not be met in situations that involve the installation of line cards in the serving CO or in outside plant. Bell Canada submitted that this was due to the need to dispatch a technician to install and test the equipment.

Commission's analysis and determinations

22. The Commission considers that dispatching a technician to install a line card is a routine activity. The Commission further considers that line cards are items that ILECs forecast and stock on a continuous basis to complete repair work or provide services. Installation of line cards does not require that an ILEC perform any of the activities contemplated in the NFA definition.
23. The Commission therefore determines that the installation of line cards, whether in the serving CO, remote terminal, or at end-customer premises, does not justify an NFA claim.

d) Additional common equipment in growth COs

24. MTS Allstream submitted that the need for additional common equipment in a growth CO does not meet the NFA definition because standard industry practice includes proactively provisioning CO equipment.

25. TCC submitted that capacity constraints are not always apparent until orders are received. SaskTel submitted that the installation of shelf equipment would exceed the standard service interval and therefore justifies an NFA claim.

Commission's analysis and determinations

26. The Commission considers that while ILECs are expected to follow standard industry practice, which includes proactively provisioning common CO equipment, an ILEC may have some COs that have reached full capacity and in which investment is no longer being made. The Commission considers that in this situation, a request for CDN DS-1 service may require the ILEC to increase capacity at the CO by extending its network.
27. As noted above, the Commission clearly contemplated in Telecom Decision 2006-34 that an NFA claim is limited to circumstances where a network extension is required. These network extensions involve, among other things, the need to conduct economic studies, secure rights of way and permits, and design work plans. The Commission considers that additional common equipment required in a CO does not meet any of these circumstances, except in the case of a CO that has reached capacity and in which investments are no longer being made.
28. The Commission therefore determines that the installation of additional common equipment required in a CO does not justify an NFA claim, except in the case of a CO that has reached full capacity and in which investment is no longer being made.

Conclusion

29. In light of the above, the Commission determines that the NFA definition is being applied incorrectly in certain circumstances.
30. The Commission directs the ILECs to immediately apply the NFA definition in accordance with the Commission's determinations set out above. Where the NFA definition does not apply, ILECs are to continue to provision the requested CDN services in accordance with the relevant competitor Q of S standard.
31. The Commission notes that certain ILECs have filed forbearance applications with the Commission that include competitor Q of S indicator 1.19 performance results. Given the significant differences in the interpretation of the NFA definition among the parties, the Commission directs those ILECs to file revised results for this indicator that reflect the determinations regarding the NFA definition set out in this decision. The Commission will take no further action to dispose of a pending forbearance application until the ILEC in question has submitted revised results or an explanation to the satisfaction of the Commission as to why revised results are not required.

32. Finally, the Commission considers that identifying the reason why a competitor's provisioning request has been classified as meeting the NFA definition would help competitors understand the ILEC's CDN DS-1 provisioning issues. The Commission therefore directs the ILECs to identify the nature of the facility shortage to the competitor when claiming that circumstances justify an NFA claim. In cases where an ILEC claims NFA because a CO has reached full capacity and investments are no longer being made, the ILEC is to identify the CO in question to the competitor.

Secretary General

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