



Telecom Decision CRTC 2011-757

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Télébec, Limited Partnership – Application for forbearance from the regulation of business local exchange services

File number: 8640-T78-201111007

In this decision, the Commission approves Télébec's request for forbearance from the regulation of business local exchange services in the exchange of Norbertville, Quebec.

Introduction

1. The Commission received an application by Télébec, Limited Partnership (Télébec), dated 15 July 2011, in which the company requested forbearance from the regulation of business local exchange services¹ in the exchanges of Norbertville and St-Ours, Quebec. The Commission approved Télébec's application concerning the exchange of St-Ours in Telecom Decision 2011-629.
2. The Commission received submissions and/or data regarding Télébec's application from Quebecor Media Inc., on behalf of its affiliate Videotron Ltd. (Videotron). The public record of this proceeding, which closed on 25 August 2011, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Commission's analysis and determinations

3. In its forbearance application, Télébec requested that the Commission apply the structured rule of reason, as defined in Telecom Decision 2006-15, rather than the usual competitor presence test. Consequently, the Commission has examined the four criteria set out below.

a) Product market

4. The Commission received no comments with respect to Télébec's proposed list of business local exchange services.
5. The Commission notes that Télébec is seeking forbearance from the regulation of 30 tariffed business local exchange services. The Commission also notes that in Telecom Decision 2010-68, it found all of these services to be eligible for forbearance. A list of the 30 approved services is set out in the Appendix to this decision.

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

b) Market power

6. In Telecom Decision 2006-15, the Commission concluded that it would forbear from regulating the local exchange services of an incumbent local exchange carrier (ILEC) if the ILEC does not possess market power. For this application, the Commission has assessed the market power criterion using the conditions of the structured rule of reason, as defined in paragraph 213 of Telecom Decision 2006-15. These conditions are set out below:
 - i) at least two independent, facilities-based service providers, the ILEC and a facilities-based entrant, must exist and be capable of offering local service that has been determined to fall within the relevant product market for ILEC local service;
 - ii) the entrant was able to obtain and retain a customer base;
 - iii) the entrant's variable costs of providing local service are similar to or lower than the ILEC's variable costs of providing local service;
 - iv) neither the ILEC nor the entrant is capacity-constrained;
 - v) there is evidence of vigorous rivalry between the ILEC and the entrant in the provision of local service; and
 - vi) industry characteristics are such that the ILECs are unlikely to engage in anti-competitive behaviour.

i) Condition concerning the number of providers

7. The Commission notes that Videotron, an independent, facilities-based service provider, is present in the exchange of Norbertville and provides local exchange services in the same market as Télébec.
8. Consequently, the Commission finds that condition i) is met in this exchange.

ii) Condition concerning obtaining and retaining a customer base

9. Based on the information submitted on the record of this proceeding, the Commission notes that over the past four years, Télébec's market share has been in continuous decline, to the benefit of Videotron, and that this trend seems stable.
10. The Commission also notes that Videotron has been very successful in the exchanges in which it offers services and that it has a large market share in those exchanges.
11. Consequently, the Commission finds that condition ii) is met in the exchange of Norbertville.

iii) Condition concerning variable costs

12. Télébec submitted that the very nature of variable costs, the competitive nature of the elements of these costs, and the fact that Videotron operates in the same market as Télébec suggest that Videotron's variable costs are at least comparable to those incurred by Télébec, if not lower. Télébec also submitted that Videotron's monthly rate for business basic local service is considerably lower than Télébec's rate. Télébec stated that Videotron's variable cost structure is therefore likely comparable to, or even lower than, Télébec's structure.
13. The Commission notes that Videotron did not contest that its variable costs are lower than those of Télébec.
14. Consequently, the Commission finds that condition iii) is met in the exchange of Norbertville.

iv) Condition concerning capacity

15. The Commission notes Télébec's submission that neither it nor its competitors have any constraints preventing them from expanding their networks. The Commission considers that Videotron has not demonstrated that it is capacity-constrained in this exchange, regarding both its financial and network capacities.
16. The Commission considers that Videotron is able to expand its network if it decides to do so. The Commission notes that, based on the market share that Videotron has acquired, the company is able to compete with Télébec, and that Videotron's success in the exchange of Norbertville will likely motivate it to expand its network.
17. Consequently, the Commission finds that condition iv) is met in the exchange of Norbertville.

v) Condition concerning rivalry

18. The Commission notes that Videotron has conducted a marketing campaign and that it offers competitive rates everywhere it offers services, including in the exchange of Norbertville. The Commission therefore considers that Videotron has the capacity to sustain a long-term rivalry with Télébec.
19. Consequently, the Commission finds that condition v) is met in the exchange of Norbertville.

vi) Condition concerning the possibility of the ILECs engaging in anti-competitive behaviour

20. The Commission notes Télébec's submission that since local competition regulations are currently in effect, the telecommunications market is open. According to Télébec, it is therefore unlikely that a company would adopt anti-competitive

behaviours that might threaten competition simply because the Commission has granted forbearance from the regulation of local exchange services.

21. The Commission also notes that Videotron is one of the largest cable telephony providers in Quebec. Consequently, the Commission notes that Videotron may react immediately and vigorously if Télébec engages in anti-competitive behaviour. The Commission also notes that it has not received any complaints from competitors regarding other exchanges in which Télébec has been granted forbearance from regulation.
22. The Commission therefore finds that it is unlikely that Télébec would engage in anti-competitive behaviour if its request is approved. Consequently, the Commission finds that condition vi) is met in the exchange of Norbertville.

Conclusion concerning market power

23. In light of the above, the Commission finds that the exchange of Norbertville meets the market power criterion.

c) Competitor quality of service (Q of S) results

24. The Commission notes that Télébec submitted competitor Q of S results for January to April, as well as June and July 2011. The Commission has reviewed these results and finds that Télébec has demonstrated that during this six-month period it
 - i) met, on average, the Q of S standards for each indicator set out in Appendix B of 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.
25. Accordingly, the Commission determines that Télébec meets the competitor Q of S criterion for this period.

d) Communications plan

26. The Commission has reviewed Télébec's proposed communications plan and finds that it meets the information requirements set out in Telecom Decision 2006-15. The Commission **approves** the proposed communications plan and directs Télébec to provide the resulting communications materials to its customers, in both official languages where appropriate.

Conclusion

27. The Commission determines that Télébec's application regarding the exchange of Norbertville, Quebec, meets all the local forbearance criteria set out in Telecom Decision 2006-15.
28. Pursuant to subsection 34(1) of the *Telecommunications Act* (the Act), the Commission finds as a question of fact that to refrain from exercising its powers and performing its duties, to the extent specified in Telecom Decision 2006-15, in relation to the provision by Télébec of the business local exchange services listed in the Appendix and future services that fall within the definition of local exchange services set out in Telecom Public Notice 2005-2 as they pertain to business customers only, in this exchange, would be consistent with the Canadian telecommunications policy objectives set out in section 7 of the Act.
29. Pursuant to subsection 34(2) of the Act, the Commission finds as a question of fact that these business local exchange services are subject to a level of competition in this exchange sufficient to protect the interests of users of these services.
30. Pursuant to subsection 34(3) of the Act, the Commission finds as a question of fact that to refrain from exercising its powers and performing its duties, to the extent specified in Telecom Decision 2006-15, in relation to the provision by Télébec of these business local exchange services in this exchange would be unlikely to impair unduly the continuance of a competitive market for these services.
31. In light of the above, the Commission **approves** Télébec's application for forbearance from the regulation of the local exchange services listed in the Appendix and future services that fall within the definition of local exchange services set out in Telecom Public Notice 2005-2, as they pertain to business customers only, in the exchange of Norbertville, Quebec, subject to the powers and duties that the Commission has retained as set out in Telecom Decision 2006-15. This determination takes effect as of the date of this decision. The Commission directs Télébec to file revised tariff pages with the Commission within 30 days of the date of this decision.

Secretary General

Related documents

- *Télébec, Limited Partnership – Application for forbearance from the regulation of business local exchange services*, Telecom Decision CRTC 2011-629, 28 September 2011
- *Télébec, Limited Partnership – Application for forbearance from the regulation of business local exchange services*, Telecom Decision CRTC 2010-68, 10 February 2010

- *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006, as amended by Order in Council P.C. 2007-532, 4 April 2007
- *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

***Local exchange services eligible for forbearance from regulation in this decision
(for business customers only)***

Tariff	Item	List of services
25140	1.4	RAFA Plan – Expanded Local Calling Area for the “Lac-à-Foin” Region
25140	1.7	Telephone Set Loss Charge
25140	2.1.7.1	Basic Service and Regional Service
25140	2.1.7.4	Rate Adjustment for Access Line Customers
25140	2.1.7.5	Specialized Business Service – Key Systems Access Line
25140	2.1.7.5	Specialized Business Service – PBX Access Line
25140	2.1.7.5	Specialized Business Service – Touch-Tone Dialing
25140	2.1.7.6	Télébec’s Centrex Access Lines
25140	2.1.8	Basic Services Provided Outside the Company’s Serving Area
25140	2.1.11	Telephone Service for Senior Citizens’ Club
25140	2.5	Telephones Available Only for Two-Party Line or Multi-Party Access Service
25140	2.6	Direct Inward Dialling
25140	2.8	Télébec Centrex Service
25140	2.10	Temporary Business Service
25140	2.15	Service to Immobilized Ships, Trailers and Trains
25140	2.23.2	Telephone Number Reservation
25140	2.27.6	Extra Listings
25140	2.27.7	Omission of Directory Listings (Business)
25140	3.1	Intra-Exchange Distance Charges
25140	3.3.17	Toll Restriction Service
25140	3.3.18	Call Management Services
25140	3.3.19	Call Display Blocking – Per Call
25140	3.3.20	Integrated Vocal Messaging Service
25140	5.2.6.5	Call Blocking Service – 900 Service
25140	8.4	Internet Call Display
25140	8.7.3	Integrated Services Digital Network (ISDN) 2B+D Télébec
25140	8.8	Integrated Services Digital Network (ISDN) 23B+D Télébec – Basic Option
25140	8.9	Integrated Services Digital Network (ISDN) 23B+D Télébec – Premium Option
25140	8.11	Boreal Service
25140	8.13	Digital Exchange Service