



## Telecom Decision CRTC 2012-424

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Ottawa, 6 August 2012

### **GATPE Services, operating as Miniphone.ca – Application requesting that certain telecommunications service providers cease offering free local VoIP telephone services in Montréal**

File number: 8622-G49-201202316

*In this decision, the Commission determines that Fongo, Dell Voice, and Fibernetics are not in violation of the Telecommunications Act when they provide free local voice over Internet Protocol telephone services, and therefore denies Miniphone's application to direct these companies to cease offering such services free of charge in Montréal.*

#### **Introduction**

1. The Commission received an application by GATPE Services, operating as Miniphone.ca (Miniphone), dated 3 March 2012, in which the company requested that the Commission direct Fongo Inc. (Fongo), Dell Voice, and Fibernetics Corporation (Fibernetics) to cease offering local voice over Internet Protocol (VoIP) telephone services (local VoIP services) free of charge in Montréal. Miniphone argued that offering such services for free was predatory and anti-competitive, and violated the *Telecommunications Act* (the Act).
2. The Commission received comments from Fibernetics and TELUS Communications Company (TCC). The public record of this proceeding, which closed on 11 April 2012, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings" or by using the file number provided above.

#### **Background**

3. In Telecom Decision 97-8, the Commission established a regulatory framework setting out the rights and obligations that applied to incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs) in the provision of local exchange services.
4. The Commission also exercised its powers to forbear, to the extent set out in that decision, from the regulation of retail telecommunications services provided by CLECs to end-users and resellers. The Commission stated that it would refrain from exercising its powers and performing its duties pursuant to sections 25 and 31 and subsections 27(1), (5), and (6) of the Act in relation to retail telecommunications services provided by CLECs to end-users, including resellers.

5. In Telecom Decision 2005-28, the Commission established a regulatory regime applicable to the provision of VoIP services. The Commission determined, among other things, that local VoIP services should be regulated as local exchange services, and that the regulatory framework governing local competition, set out in Telecom Decision 97-8, and subsequent determinations, applied to local VoIP service providers except as otherwise provided in Telecom Decision 2005-28.
6. In Telecom Decision 2007-65, the Commission approved Bell Canada's request for forbearance from the regulation of residential local exchange services in 191 exchanges, including 36 exchanges in the Montréal census metropolitan area. Accordingly, telecommunications service providers in these exchanges are not subject to rate regulation for residential local exchange services.

**Are resellers and CLECs that provide local VoIP services free of charge in violation of subsections 27(1) and (6) of the Act?<sup>1</sup>**

7. Miniphone submitted that the local VoIP services offered free of charge by Fongo, Dell Voice, and Fibernetics were adversely impacting its business, causing irreparable harm and threatening its survival.
8. Miniphone submitted that the Commission regulates local VoIP services. It submitted, in that regard, that any telecommunications service provider that offers local VoIP services free of charge is contravening subsections 27(1) and (6) of the Act, and that the Commission should therefore direct any such companies to cease offering those services for free.
9. The Commission notes that subsections 27(1) and (6) of the Act only apply to Canadian carriers.<sup>2</sup> Because neither Fongo nor Dell Voice is a Canadian carrier, these subsections do not apply to them.
10. The Commission notes that Fibernetics is a Canadian carrier and is therefore subject to subsections 27(1) and (6) of the Act. However, in Telecom Decision 97-8, the Commission forbore from exercising its powers under subsections 27(1) and (6) of the Act with regard to retail telecommunications services provided by CLECs to end-users. Because Fibernetics is a CLEC, these subsections do not apply to its retail telecommunications services, including local VoIP services, in both competitive and non-competitive markets.

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<sup>1</sup> 27. (1) Every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable.

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27. (6) Notwithstanding subsections (1) and (2), a Canadian carrier may provide telecommunications services at no charge or at a reduced rate

- (a) to the carrier's directors, officers, employees or former employees; or
- (b) with the approval of the Commission, to any charitable organization or disadvantaged person or other person.

<sup>2</sup> A Canadian carrier is defined as, among other things, a carrier that owns or operates a transmission facility.

11. The Commission notes that it forbore from regulating the rates for retail telecommunications services provided by CLECs because it found that those services are subject to competition sufficient to protect the interests of users. The Commission also notes that this is consistent with the Policy Direction,<sup>3</sup> which directed the Commission to rely on market forces to the maximum extent feasible.
12. In light of the above, the Commission determines that Fongo, Dell Voice, and Fibernetics are not in violation of subsections 27(1) or (6) of the Act when they provide local VoIP services free of charge. Accordingly, the Commission **denies** Miniphone's application.

Secretary General

### **Related documents**

- *Bell Canada – Applications for forbearance from the regulation of residential local exchange services*, Telecom Decision CRTC 2007-65, 3 August 2007
- *Regulatory framework for voice communication services using Internet Protocol*, Telecom Decision CRTC 2005-28, 12 May 2005, as amended by Telecom Decision CRTC 2005-28-1, 30 June 2005
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997

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<sup>3</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006