



Telecom Decision CRTC 2014-213

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Ottawa, 2 May 2014

Forbearance with respect to retail directory assistance services provided by the small incumbent local exchange carriers

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The Commission forbears conditionally, to the extent set out in this decision, from regulating the retail directory assistance (DA) services provided by Amtelecom Limited Partnership and People's Tel Limited Partnership, both operating as Eastlink; DMTS; KMTS; NorthernTel, Limited Partnership; TBayTel; as well as the companies represented by both l'Association des companies de Téléphone du Québec and the Independent Telecommunications Providers Association. Forbearance with respect to each company's retail DA service is conditional on the company maintaining the current exemptions regarding its DA service charges and providing an optional DA blocking service to its customers at no charge if the company chooses to implement an access fee for retail DA.

Introduction

1. The Commission received an application, dated 5 July 2013, from DMTS; KMTS; Northern Tel, Limited Partnership; the companies represented by l'Association des companies de Téléphone du Québec; and the companies represented by the Independent Telecommunications Providers Association requesting that it refrain from exercising its powers and performing its duties under sections 25, 27, 29, and 31 of the *Telecommunications Act* (the Act) in relation to retail directory assistance (DA) services and new or future applications and similar services characterized as DA services. Retail DA service provides, upon a customer's request, a local, domestic, or international telephone number.
2. Amtelecom Limited Partnership and People's Tel Limited Partnership, both operating as Eastlink, and TBayTel filed applications for forbearance from the regulation of their retail DA services on 8 November 2013.
3. The above-noted applications were considered in one proceeding. This decision refers to the applicants collectively as the small incumbent local exchange carriers (ILECs). See Appendix A for the list of small ILECs to which the present decision applies.
4. More specifically, the small ILECs sought forbearance from the regulation of the following retail DA services:

- local DA service,
 - long distance DA service,
 - automatic DA call completion (ADACC) service, and
 - services of the same class that the small ILECs may offer in the future.
5. For all of these services, the related per-usage charges are typically billed to the account associated with the telephone number from which the DA service call is made. However, Alternate Billed DA allows such charges to instead be billed to a calling card, a third-party telephone number, or a credit card. The small ILECs requested that Alternate Billed DA be part of the present forbearance applications.
 6. The small ILECs submitted that forbearance should be granted under the same conditions as the forbearance granted to the large ILECs in Telecom Regulatory Policy 2009-243,¹ as varied by Telecom Regulatory Policy 2009-717, including the requirements to (i) retain the exemptions from retail DA charges,² and (ii) offer a free DA blocking service should they choose to implement an access charge for retail DA.
 7. The small ILECs also submitted that their applications should be evaluated under the forbearance framework set out in Telecom Decision 94-19, consistent with the approach taken by the Commission in Telecom Regulatory Policy 2009-243 for the large ILECs.³
 8. No interventions were received with respect to these applications. The public record of this proceeding, which closed on 13 December 2013, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

¹ In Telecom Regulatory Policy 2009-243, the Commission forbore conditionally from the exercise of its powers and the performance of its duties under sections 25, 29, and 31 and subsections 27(1), (5), and (6) of the Act in regard to the retail DA services provided by Bell Aliant Regional Communications, Limited Partnership (Bell Aliant); Bell Canada; MTS Allstream Inc. (MTS Allstream), Saskatchewan Telecommunications (SaskTel); Télébec, Limited Partnership (Télébec); and TELUS Communications Company (TCC).

² The small ILECs provide domestic DA services at no charge, pursuant to their retail DA tariffs, for certain DA requests. The tariffs include exemptions for calls requesting toll-free service numbers, from payphones for local numbers, from persons unable to use the printed directory and certified as such, from persons 65 years and older, certified as such and registered with the carrier, from persons identifying that an emergency exists, from a hospital, or from Mobile Telephone, Ship and Aircraft, Relay, and Teleforum services.

³ The small ILECs referenced the application filed by Bell Canada, on behalf of itself, Bell Aliant, and Télébec (collectively, Bell Canada et al.) in the proceeding that led to Telecom Regulatory Policy 2009-243. They adopted the material in Bell Canada et al.'s application related to the relevant product markets, relevant geographic markets, market power, numerous alternatives, and barriers to entry as evidence for their applications.

Issues

9. Telecom Decision 94-19 sets out the Commission's framework for assessing forbearance applications. In assessing the applications, the Commission has identified the following issues to be addressed in this decision:

- I. How are DA services defined?
- II. What are the relevant product and geographic markets?
- III. Do the small ILECs have market power with respect to retail DA services?
- IV. Should the Commission forbear from regulation of the small ILECs' retail DA services?

I. How are DA services defined?

10. The small ILECs submitted that retail DA service assists subscribers by providing telephone number information upon request. Typically, that entails providing listed local, provincial, national, North American, or international telephone numbers.

11. They further submitted that DA service permits customers to do the following:

- dial 4-1-1 to obtain local or long distance telephone listing information;
- dial 1, plus a valid North American area code plus 555-1212, to obtain North American telephone listing information for the territory covered by the area code (commonly known as long distance DA); and
- dial 0 to obtain overseas directory assistance.

12. The Commission notes that, in Telecom Regulatory Policy 2009-243, it determined that retail DA services consist of local DA service, long distance DA service for which forbearance had not already been granted,⁴ ADACC service, and future enhanced DA services.

13. The Commission considers that the definition of retail DA services established in Telecom Regulatory Policy 2009-243 for the large ILECs is also appropriate for each small ILEC market. Accordingly, for the purpose of this decision, retail DA services are defined as local DA service, long distance DA service, ADACC service, future enhanced DA services and any similar services that the small ILECs may offer in the future.

⁴ The Commission forbore from regulation of DA services for listed telephone numbers outside Canada and the United States in Telecom Decision 97-19 for large ILECs other than SaskTel, and in Decision 2000-150 for SaskTel.

II. What are the relevant product and geographic markets?

14. As set out in Telecom Decision 94-19, the relevant market is defined as the smallest group of products and geographic area in which a provider with market power can profitably impose a sustainable price increase.

Relevant product market

15. In Telecom Regulatory Policy 2009-243, the Commission determined that the relevant product market involves an assessment of the group of products that consumers would consider to be substitutes for the incumbents' retail DA services. It considered that such substitutes are characterized by their ability to provide current listed telephone information, their accessibility to the incumbents' customers, their ease of use, and their prices, which should be comparable to the incumbents' retail DA service rates.
16. The small ILECs submitted that the relevant product market includes all current and future services, from any provider, that provide listed telephone information to a requesting party for local and long distance numbers in Canada and the United States, which includes printed telephone directories, Internet telephone listings search engines (using both cell phone handsets and personal computers), various toll-free telephone directory assistance options, text message DA, cellular telephones to call a wireless service provider's DA, and DA services from competitive local exchange carriers (CLECs).
17. The Commission notes that, in Telecom Regulatory Policy 2009-243, it concluded that online DA services, wireless service providers' DA services, dial-around service, and enhanced DA services were substitutes for the large ILECs' retail DA services.
18. However, the Commission found in that same decision that CLEC DA services, mobile text message DA services, toll-free DA services, and printed telephone directories are not substitutes for the ILECs' retail DA services. The Commission concluded that it was unlikely that a significant increase in the ILECs' retail DA service rates would cause their customers to use those services as substitutes for the following reasons:
- Customers cannot access CLEC DA services if they do not subscribe to that CLEC's local service;
 - Mobile text message DA services require the user to submit accurately typed name and address information in order to retrieve correct listed telephone information, meaning an incorrect listing would likely be returned if the user were to seek telephone listing information for a customer with the same name as other customers or if any portion of the subscriber name or address submitted for query were incorrect or missing;
 - Toll-free accessible DA services generally provide only business listings and may not provide local and long distance numbers in both Canada and the United States; and

- Printed directories generally do not contain current listing information, are limited to a given geographic area, and do not provide complete long distance listing information.

19. The Commission finds that there is no evidence on the record of this proceeding indicating that the definition of relevant market established in Telecom Regulatory Policy 2009-243 for the large ILECs should not apply to the small ILECs.
20. In light of the above, the Commission finds that, for the purpose of this decision, the relevant product market should be limited to online DA services, wireless service providers' DA services, dial-around service, and enhanced DA services.

Relevant geographic market

21. In Telecom Regulatory Policy 2009-243, the Commission indicated that in order to define a relevant geographic market, one must assess whether a customer would be willing to switch from a supplier in one area to a supplier in another area. Further, the relevant geographic market should contain an aggregation of customers to whom the same substitutes are available. For the large ILECs, the relevant geographic market for DA services is each ILEC's operating territory.
22. The small ILECs submitted that the relevant geographic market was each company's operating territory since most, if not all, of the products in the relevant product market are available throughout the companies' operating territories.
23. The Commission finds that there is no evidence on the record of this proceeding indicating that the definition of relevant geographic market established in Telecom Regulatory Policy 2009-243 for the large ILECs should not apply to the small ILECs.
24. In light of the above, the Commission finds that the relevant geographic market for the purpose of this decision is the respective operating territory of each small ILEC.

III. Do the small ILECs have market power with respect to retail DA services?

25. In Telecom Decision 94-19, the Commission adopted the concept of market power to assess whether a market is, or is likely to become, sufficiently competitive to protect the interests of users, therefore allowing the Commission to forbear from regulating a specific service. Market power is demonstrated by the ability of a provider to raise or maintain prices above those that would prevail in a competitive market.
26. In assessing whether the large ILECs possessed market power in the provision of DA services, the Commission considered, in Telecom Regulatory Policy 2009-243, the following factors:
 1. Market shares of the dominant and competing firms;
 2. Demand conditions affecting customer response to a change in the price of the product, including customers' ability to switch to another supplier or to reduce consumption (e.g. availability of practical substitutes, switching costs, importance of the product to the customer); and

3. Supply conditions affecting the ability of other firms in the market to respond to a change in the price of the product, including the likelihood of entry into the market, barriers to entry, and evidence of rivalrous behaviour.

Market shares of the dominant and competing firms

27. The small ILECs submitted that determining exact market shares is very difficult without knowing the usage of all of the alternative services available. The small ILECs further submitted, however, that the trend away from their traditional DA services and towards alternative DA services, including online DA services, has continued with the aggressive penetration of Internet, wireless, and voice over Internet Protocol services in their operating territories. In this regard, it was noted that there has been a constant and continued drop in the number of distinct DA calls to the small ILECs since 2009.
28. The Commission notes that while the small ILECs did not provide evidence of their respective market shares, there is a trend away from traditional DA services, as evidenced by the drop in the number of DA calls to the small ILECs. Further, the small ILECs provided evidence that there are a number of unregulated alternative services in the relevant markets.

Demand conditions

29. The small ILECs submitted that, with the availability of alternative DA services through the Internet, the vast majority of their customers have access to a substitute for retail DA service.
30. The small ILECs also submitted that 33 of the 34 distinct websites that provided free DA services at the time of the forbearance application submitted by Bell Canada, on behalf of itself, Bell Aliant Regional Communications, Limited Partnership, and Télébec, Limited Partnership (collectively, Bell Canada et al.) in March 2008⁵ are still offering free DA services to members of the public today. Those services are available to anyone who has access to the Internet, either through a computer/tablet or a smart phone. The small ILECs further noted that free Internet access is usually available at city halls, public libraries, and community centres.
31. With respect to smart phones, the small ILECs submitted that smart phone users not only have access to mobile retail DA services from their service provider from wherever cellular coverage is available, but they can also use the web browser on their phones to access the free DA services available to all Internet users. The small ILECs further argued that with the growth in the number of public-accessible Wi-Fi Hot Spots, free Internet access through smart phones is increasing.

⁵ On 28 March 2008, Bell Canada et al. filed an application requesting forbearance with respect to the regulation of their retail DA services (the application was amended on 28 May 2008). TCC had filed a similar application on 29 February 2008, and MTS Allstream and SaskTel subsequently filed similar applications on 18 July 2008. The Commission's determinations with respect to these applications were set out in Telecom Regulatory Policy 2009-243.

32. The Commission notes that with the increasing use of Internet and smart phones, more and more people have access to online DA services as a substitute for DA services. Furthermore, the availability of alternative DA services, such as wireless service providers' DA services and dial-around service, further demonstrates the availability of substitutes to retail DA services. As such, it is likely that a significant increase in the incumbents' retail DA service rates would cause their customers to use one or more of these services as substitutes.
33. In light of the above, the Commission concludes that in response to an increase in the small ILECs' retail DA service rates, the small ILECs' customers would have access to substitutes to DA services.

Supply conditions

34. The small ILECs submitted that there are no barriers to entry in the provision of DA services in their operating territories as all small ILECs' operating territories are open to local competition. CLECs are therefore free to enter these markets and offer DA services as part of their service offerings. Also, competitive wireless services are available across all small ILEC operating territories, allowing wireless users to either access their service provider's mobile DA services or, for those using a smart phone, to access the free online DA services.
35. With regard to evidence of rivalrous behaviour, it was noted earlier in this decision that there are currently a number of substitutes for the small ILECs' retail DA services. Further, the Commission determined in Telecom Decision 2008-17 that the availability of basic listing interchange file service⁶ and directory file service⁷ (essential services with mandated rates) removes a barrier to the entry of alternative DA service providers. The Commission therefore considers that there are no barriers to entry to the provision of DA services in the small ILECs' operating territories.
36. In view of the above, the Commission concludes that supply conditions for local and long distance retail DA services are such that alternative service providers may readily enter the market in response to an increase in the price of the small ILECs' retail DA services.

Conclusions

37. In light of the above, the Commission concludes that the small ILECs do not possess market power for local and long distance retail DA services in their respective markets.

⁶ Basic listing interchange file service (or BLIF service) provides a complete set of non-confidential basic subscriber listing information for a given local exchange carrier to other such carriers, Independent Telephone Directory Publishers, and alternative service providers (e.g. canada411.ca).

⁷ Directory file service provides the same information as basic listing interchange file service, plus information regarding complex listings, such as business sub-listing information or additional listing information for a residential main line.

38. The Commission notes that, in Telecom Regulatory Policy 2009-243, it concluded that the large ILECs would not possess market power with regard to enhanced DA services they may provide in the future since online DA services already offer enhanced DA services, which provide additional services such as maps or directions. The Commission finds that the same conclusion applies for enhanced DA services that the small ILECs may offer in the future.
39. With respect to ADACC services, the Commission noted in Telecom Regulatory Policy 2009-243, that customers, after obtaining a number through the large ILECs' retail DA services, have the option of placing the call by dialing the telephone number themselves. Accordingly, the Commission concluded that the large ILECs did not possess market power with regard to their ADACC services. The Commission finds that the same conclusion applies to ADACC services offered by the small ILECs.

IV. Should the Commission forbear from regulation of the small ILECs' retail DA services?

Determinations with regard to subsections 34(1), (2), and (3) of the Act

40. With regard to subsection 34(1) of the Act, the Commission finds, as a question of fact, that forbearing from the regulation of the retail DA services of each of the small ILECs, to the extent provided for and subject to the conditions set out in this decision, is consistent with the policy objectives set out in section 7 of the Act, specifically those in paragraphs 7(b), (c), (f), and (h) of the Act.⁸
41. The Commission further finds, pursuant to subsection 34(2) of the Act and as a question of fact, that the retail services of each of the small ILECs are subject to competition sufficient to protect the interests of users and that it is therefore appropriate to refrain, to the extent set out below, from the regulation of each of the small ILECs' retail DA services.
42. Pursuant to subsection 34(3) of the Act, the Commission finds as a question of fact that forbearance with respect to the retail DA services of each of the small ILECs, to the extent provided for and subject to the conditions set out in this decision, would not likely impair unduly the continuance of a competitive market for retail DA services.
43. The Commission notes that the small ILECs' existing per-usage charge exemptions from retail DA service charges include those applied to domestic DA calls that are for toll-free service numbers, from payphones for local numbers, from persons unable to

⁸ The cited policy objectives of the Act are:

7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;

7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and

7(h) to respond to the economic and social requirements of users of telecommunications services.

use the printed directory and certified as such, from persons 65 years and older, certified as such and registered with the carrier, from persons identifying that an emergency exists, from a hospital, or from Mobile Telephone, Ship and Aircraft, Relay, and Teleforum services. Having regard to the policy objective set out in paragraph 7(h) of the Act in particular, the Commission requires that each small ILEC maintain all existing exemptions from retail DA service charges as a condition of forbearance with respect to its DA services under subsections 34(1) and (2) of the Act.

44. Consistent with the requirements imposed on the large ILECs with respect to DA call blocking service, the Commission considers that, in a forbore environment, the option of DA call blocking should be available to the customers of any small ILEC that introduces an access fee related to its retail DA services. Accordingly, having regard to the policy objective set out in paragraph 7(h) of the Act in particular, the Commission requires that each small ILEC that chooses to implement an access fee related to its retail DA services provide DA blocking service at no charge upon customer request, as a condition of forbearance with respect to its retail DA services under subsections 34(1) and (2) of the Act.

Extent of forbearance

45. In light of the above findings, the Commission must determine the extent to which it is appropriate to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29, and 31 of the Act.

Section 24

46. The Commission finds it appropriate to retain sufficient powers under section 24 of the Act in order to maintain its ability to impose future conditions as warranted.

Section 25

47. In light of its finding that the small ILECs do not have market power concerning retail DA services in their respective operating territory, the Commission concludes that it would be appropriate to forbear from the exercise of all its powers and the performance of all its duties under section 25 of the Act.

Section 27

48. The Commission considers that there is no need to apply the regulatory standards for just and reasonable rates, as provided for in section 27 of the Act, to rates that are set in a competitive market. Accordingly, the Commission will refrain from exercising any power or performing any duty under subsection 27(1) of the Act in relation to the small ILECs' existing DA services and any similar services that they may offer in the future.

49. The Commission considers, however, that it would be appropriate to retain its powers and duties under subsection 27(2) of the Act to ensure that the small ILECs do not unjustly discriminate or give an undue or unreasonable preference toward any person in relation to the provision of retail DA services. As a necessary consequence of the retention of its powers and duties under subsection 27(2) of the Act, the Commission considers that it should also retain its powers and duties under subsection 27(4) of the Act. Finally, the Commission considers it necessary to retain its powers under subsection 27(3) of the Act in order to ensure compliance with the powers and duties from which it is not forbearing.
50. Accordingly, the Commission retains its powers under subsections 27(2), (3), and (4) of the Act.

Sections 29 and 31

51. The Commission considers that section 29 of the Act addresses matters that are not relevant to the retail DA market and concludes that it would be appropriate to forbear with respect to its powers and duties under section 29 of the Act.
52. The Commission considers that, in a competitive market for retail DA services, carriers should be able to establish, through negotiations with their customers, the extent and scope of any limitations on their liability. Accordingly, the Commission concludes that it would be appropriate to forbear from the exercise of its powers and the performance of its duties under section 31 of the Act. The Commission notes, however, that any provision limiting liability in any existing contracts or arrangements, as of the date of this decision, will remain in force until its expiry.

Policy Direction

53. The Policy Direction⁹ states that the Commission, in exercising its powers and performing its duties under the Act, shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(a), (b), and (c) of the Policy Direction.
54. The Commission considers that its determinations in this decision will advance the policy objectives set out in paragraphs 7(b), (c), (f), and (h) of the Act. The Commission also considers that its determinations are consistent with the Policy Direction requirements that (i) the measures in question are efficient and proportionate to their purpose and interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives, and (ii) the measures neither deter economically efficient competitive entry into the retail DA services market nor promote economically inefficient entry.

⁹ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

Secretary General

Related documents

- *Bell Aliant Regional Communications, Limited Partnership; Bell Canada; and Télébec, Limited Partnership – Application to review and vary part of Telecom Regulatory Policy 2009-243 regarding directory assistance blocking service, Telecom Regulatory Policy CRTC 2009-717, 23 November 2009*
- *Forbearance with respect to retail directory assistance services provided by the large incumbent local exchange carriers, Telecom Regulatory Policy CRTC 2009-243, 1 May 2009*
- *Revised regulatory framework for wholesale services and definition of essential service, Telecom Decision CRTC 2008-17, 3 March 2008*
- *SaskTel – Transition to federal regulation, Decision CRTC 2000-150, 9 May 2000*
- *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*
- *Review of regulatory framework, Telecom Decision CRTC 94-19, 16 September 1994*

Small ILECs

Association des companies de téléphone du Québec

- CoopTel
- Groupe Maskatel LP (formerly Téléphone Guèvremont inc.)
- La Cie de Téléphone de Courcelles inc.
- La Compagnie de Téléphone de Lambton inc.
- La Compagnie de Téléphone de St-Victor
- La Compagnie de Téléphone Upton inc.
- Le Téléphone de St-Éphrem inc.
- Sogetel inc.
- Téléphone Milot inc.

Independent Telecommunications Providers Association

- Brooke Telecom Co-operative Limited
- Bruce Telecom
- CityWest Telephone Corporation
- Cochrane Telecom Services
- Execulink Telecom Inc.
- Gosfield North Communications Co-operative Limited
- Hay Communications Co-operative Limited
- Huron Telecommunications Co-operative Limited
- Lansdowne Rural Telephone Co. Ltd.
- Mornington Communications Co-operative Limited
- Nexicom Telecommunications Inc.
- Nexicom Telephones Inc.
- North Frontenac Telephone Corporation Ltd.
- NRTC Communications
- Ontera
- Quadro Communications Co-operative Inc.
- Roxborough Telephone Company Limited
- Tuckersmith Communications Co-operative Limited

- WTC Communications
- Wightman Telecom Ltd.

Other small ILECs

- Bragg Communications Inc. (Amtelecom Limited Partnership and People's Tel Limited Partnership)
- DMTS
- KMTS
- NorthernTel, Limited Partnership
- TBayTel