



Telecom Decision CRTC 2014-321

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TBayTel – Application for the transfer of responsibility for single-line inside wire to business customers and for forbearance from the regulation of single-line inside wire services

*The Commission **approves** the transfer of responsibility for single-line inside wire to business customers. The Commission also forbears, conditionally and to the extent set out in this decision, from regulating TBayTel's single-line inside wire services provided to residential and business customers on the customer's side of the demarcation point. Customers in premises without a jack-ended demarcation device will not be required to pay for the diagnosis of inside wire when reporting transmission problems.*

Introduction

1. The Commission received an application from TBayTel, dated 15 January 2014, requesting approval to transfer responsibility for all installations, additions, moves, and rearrangements of inside wire, as well as maintenance and repair of existing single-line inside wire, to its business customers.
2. TBayTel also requested that the Commission forbear from the regulation of all TBayTel's residential and business single-line inside wire services on the customer's side of the demarcation device,¹ including any new applications of these services, any insurance plans related to the services, and any similar services that it may offer in the future that can be characterized as single-line inside wire services.
3. The Commission received no interventions regarding this application. The public record of this proceeding, which closed on 18 February 2014, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Issues

4. The Commission has identified the following issues to be addressed in this decision:

¹ "Demarcation device" refers to the equipment that connects the inside wire of the customer's premises to the incumbent local exchange carrier's (ILEC) network. Demarcation devices that are jack-ended include a test jack or demarcation jack that allows customers to verify whether a transmission problem is on the inside wire or on the telephone network.

- I. Should the Commission approve the transfer of responsibility for single-line inside wire to TBayTel's business customers?
- II. Should the Commission forbear from regulating TBayTel's single-line inside wire services provided to residential and business customers and, if so, to what extent?

I. Should the Commission approve the transfer of responsibility for single-line inside wire to TBayTel's business customers?

5. TBayTel noted that in Telecom Order 2007-395, the Commission approved the transfer of responsibility for all installations, additions, moves, and rearrangements of inside wire, as well as maintenance and repair of existing inside wire, to the company's single-line inside wire residential customers.² TBayTel requested that the terms and conditions of Telecom Order 2007-395 be extended to include its single-line inside wire business customers.
6. TBayTel stated that the single-line inside wire services market in its operating territory is currently disjointed, as it is limited to residential single-line inside wire on the customer's side of the demarcation point, with the exception of customers in premises that still have hard-wired single-line connections until such time as jacks are installed. Further, the company stated that it is still required to provide and maintain single-line inside wire services for business customers.
7. TBayTel submitted that Commission approval of its request would extend the market to include single-line inside wire business customers, thereby creating a common marketplace for single-line inside wire, consistent with other parts of Canada.
8. TBayTel stated that it will review its existing Wire Care Plan,³ and update it where necessary, to ensure that all aspects of inside wire are covered.

Commission's analysis and determinations

9. Based on the record of this proceeding, the Commission considers TBayTel's proposals to be appropriate. The transfer of responsibility for single-line inside wire to TBayTel's business customers would permit competitive entry into markets for inside wire installation and for maintenance/repair services in TBayTel's operating territory.
10. The Commission considers, however, that single-line inside wire business customers should be informed of the transfer of responsibility, consistent with Telecom Order

² Interim approval was granted in Telecom Order 2007-395, and final approval in Telecom Order 2007-412.

³ TBayTel's Wire Care Plan, which exists only for its residential customers, is a maintenance plan, with certain terms and conditions, that covers the costs to repair residential customers' inside wire and jacks.

2007-395. In this regard, several other telephone companies' applications requesting the transfer of responsibility for inside wire to their customers have been approved in instances where

- customers are given notice of the proposal to transfer responsibility; and
 - if customers are to take responsibility for the installation and maintenance of inside wire, the telephone company makes available to its customers a wiring guide setting out the specifications and other information, including any references to relevant building codes or industry standards, in sufficiently descriptive detail to permit the safe installation of typical inside wire.
11. The Commission **approves** TBayTel's application to transfer responsibility for single-line inside wire to business customers, effective six months from the date of customer notification of the transfer of responsibility (e.g. via a billing insert or a letter).
12. The Commission **directs** TBayTel, within **60 days** of the date of this decision, to
- notify its single-line inside wire business customers (e.g. via a billing insert or a letter) of the transfer of responsibility for inside wire; and
 - make available a wiring guide providing customers with specifications for the installation of inside wire from the demarcation point up to and including telephone jacks, including any references to relevant building codes or industry standards. The guide is to provide sufficiently descriptive detail to enable the customer to safely install typical inside wire.
13. The Commission further **directs** TBayTel to submit for the Commission's review, within **10 days** of the date of this decision, the content of the notice to be sent to its single-line inside wire business customers. The notice is to state clearly that
- as of the date of the notice, the company will make the wiring guide available upon request;
 - the company will install, extend, move, or repair inside wire at the tariffed rates in effect as of the date of this decision for all single-line inside wire business customers' requests made up to the effective date of the decision, even if the work is not completed until a later date;
 - effective six months from the date of the notice, business customers will be responsible for and have authority over inside wire, whether installed by TBayTel, another supplier, a landlord, or the customer, and may perform any work related to installation, maintenance, repair, additions, moves, and rearrangements themselves, or have this work performed by TBayTel or a third-party contractor; and

- single-line inside wire for business customers in premises that have hard-wired single-line connections will continue to be treated under the existing tariff.
14. The Commission also **directs** TBayTel to issue revised tariff pages,⁴ pursuant to the determinations in this decision regarding the transfer of responsibility for inside wire, by **14 July 2014**. These tariff pages are to be effective six months from the date of the notice to customers. Any inside wire ordered before the effective date of the revised tariff pages is to be subject to currently approved rates and must be treated as pre-existing inside wire.

II. Should the Commission forbear from regulating TBayTel's single-line inside wire services provided to residential and business customers and, if so, to what extent?

15. TBayTel requested that, pursuant to section 34 of the *Telecommunications Act* (the Act), the Commission refrain wholly and unconditionally from exercising any power or performing any duty under sections 24 (in part), 25, 29, and 31, and subsections 27(1), 27(2), 27(3) (in part), 27(4), 27(5), and 27(6), of the Act in relation to single-line inside wire services, for residential and business customers, presently offered by the company and any single-line inside wire services the company may offer in the future.
16. TBayTel submitted that there is no regulatory, technical, or financial barrier for entry into the market for single-line inside wire services. It also submitted that there are sufficient competitive safeguards to protect customers, as there are already many suppliers and potential suppliers in this market and, as such, predatory pricing would not be a workable strategy for the company.
17. TBayTel stated that it will follow the directives set out in paragraph 14 of Telecom Regulatory Policy 2012-563 regarding the provision of free diagnostic services to single-line inside wire customers in premises without a jack-ended demarcation device and the options involved.⁵
18. Finally, TBayTel submitted that forbearance from the regulation of single-line inside wire services would be consistent with the Policy Direction.⁶

⁴ The revised tariff pages can be submitted to the Commission without a description page or an approval request; a tariff application is not required.

⁵ Under this decision, all ILECs that have transferred responsibility for single-line inside wire to their customers are to provide free diagnostic services to customers whose premises do not have a jack-ended demarcation device at the time of reporting a transmission problem. Following the provision of free diagnostic services, ILECs have the option to

- a) not install a jack-ended demarcation device, and provide repair services for inside wire free of charge; or
- b) install a jack-ended demarcation device, at which time the ILEC may charge for the repair of inside wire during the same visit.

⁶ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

Commission's analysis and determinations

19. Subsection 34(1) of the Act provides that the Commission may refrain from regulating a service or class of services where it finds that such forbearance is consistent with the telecommunications policy objectives set out in section 7 of the Act. Subsection 34(2) of the Act requires the Commission to forbear where it finds that the market for the service or class of services in question is, or will be, subject to sufficient competition to protect the interests of users. Subsection 34(3) of the Act provides that the Commission shall not forbear if it finds that to do so would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.
20. The Commission considers it appropriate, for the purpose of this application, to define the market for single-line inside wire services to include the maintenance and repair of all existing single-line inside wire; new installations, additions, moves, and rearrangements of single-line inside wire; and similar new single-line inside wire services that are used for telecommunications purposes and that are on the customer's side of the demarcation point. Further, the market for such services extends throughout TBayTel's entire operating territory because electricians and installers of security systems, in addition to TBayTel, offer such services, and the required parts and supplies are available throughout this territory.
21. In addition, the Commission notes that (i) the responsibility for single-line inside wire has been transferred to residential customers and will be transferred to business customers, and (ii) residential customers have been informed of this responsibility, and business customers will be informed of it via a notice from TBayTel.
22. Based on the evidence submitted by TBayTel, the market for single-line inside wire services in TBayTel's operating territory is competitive, with many existing and potential suppliers and no barriers to entry. Further, the potential exists for customers in premises with a jack-ended demarcation device to perform inside wiring work themselves.
23. The Commission considers that since the market for single-line inside wire services is competitive, TBayTel could not recoup any loss from below-cost pricing by increasing its prices in the future.
24. However, the record of this proceeding indicates that there are premises in TBayTel's operating territory that do not have a jack-ended demarcation device. Customers in premises without such a device would typically be unable to determine whether any transmission problems originate on the inside wire, for which they would be responsible, or on the company's network, for which they would not be responsible.
25. However, TBayTel has proposed to follow the directive in paragraph 14 of Telecom Regulatory Policy 2012-563 regarding the provision of free diagnostic services to

single-line inside wire customers in premises without a jack-ended demarcation device and the options involved (see footnote 5 of this decision for details).

26. Accordingly, pursuant to subsection 34(1) of the Act, the Commission finds, as a question of fact, that refraining from exercising its powers and performing its duties, to the extent set out in this decision, in TBayTel's operating territory is consistent with the Canadian telecommunications policy objectives, specifically those in paragraphs 7(a), (b), (f) and (h) of the Act.⁷
27. In addition, pursuant to subsection 34(2) of the Act, the Commission finds, as a question of fact, that the provision of single-line inside wire services in TBayTel's operating territory is sufficiently competitive to protect the interests of users so as to warrant forbearance to the extent set out in this decision.
28. Pursuant to subsection 34(3) of the Act, the Commission finds, as a question of fact, that refraining from regulating single-line inside wire services in TBayTel's operating territory, to the extent set out in this decision, is unlikely to unduly impair the continuance of a competitive market for these services.

Extent of forbearance

29. 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

30. The Commission considers that it is appropriate to retain its powers to impose conditions, pursuant to section 24 of the Act, so as to ensure that the confidentiality of customer information continues to be protected. TBayTel's Terms of Service, which ensure the confidentiality of customer information associated with regulated services, do not apply to forborne services. This being the case, the Commission **directs** TBayTel, as a condition of providing single-line inside wire services, to abide by the existing conditions regarding disclosure of confidential customer information to third parties with respect to these services.
31. The Commission also **directs** TBayTel, on a going-forward basis and as a condition of providing single-line inside wire services, to incorporate, where appropriate, the

⁷ The cited policy objectives are

7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;

(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;

(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

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

existing conditions regarding disclosure of confidential customer information to third parties into all contracts and any other arrangements for these services.

32. As an incumbent local exchange carrier that has transferred responsibility for single-line inside wire to its residential customers and that will be transferring this responsibility to its business customers, TBayTel should continue to abide by the regulatory measures set out in Telecom Regulatory Policy 2012-563 with respect to single-line inside wire services for its residential and business customers with no jack-ended demarcation device. Consequently, the Commission **directs** TBayTel, as a condition of providing these services, to abide by the regulatory measures set out in Telecom Regulatory Policy 2012-563.
33. The Commission further considers that it is appropriate to retain sufficient powers under section 24 of the Act to specify possible future conditions with respect to all TBayTel's single-line inside wire services, should it prove appropriate to do so.

Section 25

34. In light of its finding that TBayTel does not have market power with respect to single-line inside wire services, the Commission considers that requiring TBayTel to obtain prior Commission approval for rates, terms, and conditions for these services would not represent efficient and effective regulation. Accordingly, it would be appropriate for the Commission to refrain from the exercise of all its powers and the performance of all its duties under section 25 of the Act with respect to these services.

Section 27

35. Subsections 27(2) and (4) of the Act relate to unjust discrimination and undue or unreasonable preference or disadvantage. The Commission considers that it would be inappropriate to refrain from exercising its powers or performing its duties under these provisions in respect of TBayTel's single-line inside wire services, in order to allow the Commission to address any potential complaints that may arise regarding these services.
36. The Commission also considers it necessary to retain its powers under subsection 27(3) of the Act with respect to compliance with the powers and duties from which it has not forborne in this decision.
37. Accordingly, the Commission considers it necessary to retain its powers and to perform its duties under subsections 27(2), (3), and (4) of the Act with respect to TBayTel's single-line inside wire services. The Commission will, however, refrain from the exercise of all its powers and the performance of all its duties under subsections 27(1), (5), and (6) of the Act as they relate to the determination of just and reasonable rates with respect to these services.

Sections 29 and 31

38. The Commission considers it appropriate that TBayTel no longer be required to obtain prior Commission approval to enter into agreements or arrangements with other telecommunications common carriers regarding all single-line inside wire services. Accordingly, the Commission will refrain from the exercise of all its powers and the performance of all its duties under section 29 of the Act with respect to these services.
39. The Commission also considers it appropriate that TBayTel be able to limit its liability regarding all single-line inside wire services in the same way as an unregulated service provider. Accordingly, the Commission will refrain from the exercise of all its powers and the performance of all its duties under section 31 of the Act with respect to these services.

Declaration of forbearance

40. In light of all the above, the Commission declares, pursuant to subsection 34(4) of the Act, that sections 24, 25, 27, 29, and 31 of the Act do not apply to all TBayTel's single-line inside wire services, except with respect to
- the conditions set out in this decision pursuant to section 24 of the Act, including the regulatory measures set out in Telecom Regulatory Policy 2012-563;
 - any future condition that the Commission may impose, pursuant to section 24 of the Act;
 - the Commission's powers under subsections 27(2) and (4) of the Act with respect to single-line inside wire services to guard against possible unjust discrimination, undue or unreasonable preference, or undue or unreasonable disadvantage; and
 - the Commission's powers under subsection 27(3) of the Act with respect to powers and duties not forborne.
41. The Commission **directs** TBayTel to provide notification to its single-line inside wire customers regarding the provisions of Telecom Regulatory Policy 2012-563 via the information in the next edition of its white pages directories, its website, its customers' bills, and its customer service representatives at the time of a service call.
42. The Commission **directs** TBayTel to issue revised tariff pages⁸ that reflect the determinations in this decision regarding forbearance by **14 July 2014**.
43. Forbearance takes effect on the effective date that responsibility for single-line inside wire is transferred to business customers.

⁸ See footnote 4.

Policy Direction

44. The Commission considers that the determinations made in this decision are consistent with the Policy Direction for the reasons set out below.
45. The Policy Direction requires, among other things, that the Commission rely on market forces to the maximum extent feasible as the means of achieving the Canadian telecommunications policy objectives. The Commission considers that forbearance from the regulation of all TBayTel's single-line inside wire services, as set out in this decision, would be consistent with subparagraphs 1(a)(i) and (ii), and 1(b)(i) and (ii) of the Policy Direction.⁹
46. Consistent with subparagraph 1(a)(i) of the Policy Direction, where the Commission has maintained regulation of TBayTel's single-line inside wire services in this decision, it has done so because market forces alone cannot be relied upon to achieve the telecommunications policy objectives set out in section 7 of the Act.
47. Consistent with subparagraph 1(a)(ii) of the Policy Direction, the Commission considers that the regulatory measures approved in this decision are efficient and proportionate to their purpose, and interfere minimally with market forces.
48. Consistent with subparagraph 1(b)(i) of the Policy Direction, the Commission considers that its determinations to maintain regulatory measures in this decision advance the telecommunications policy objectives set out in paragraphs 7(a), (b), (f), and (h) of the Act.
49. Consistent with subparagraph 1(b)(ii) of the Policy Direction, the Commission considers that its determinations in this decision neither deter economically efficient competitive entry into the above-noted markets nor promote economically inefficient entry.

Secretary General

⁹ These subparagraphs state the following:

1(a) the Commission should

(i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and

(ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives;

(b) the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that

(i) specify the telecommunications policy objective that is advanced by those measures and demonstrate their compliance with [the Policy Direction], and

(ii) if these are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry.

Related documents

- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application to review and vary Telecom Regulatory Policy 2012-83 regarding the regulatory measure associated with single-line inside wire services, Telecom Regulatory Policy CRTC 2012-563, 15 October 2012*
- *Telecom Order CRTC 2007-412, 7 November 2007*
- *TBayTel – Transfer of inside wire, Telecom Order CRTC 2007-395, 26 October 2007*