



## Telecom Decision CRTC 2015-228

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### **TELUS Communications Company (TCC) – Application to review and vary Telecom Decision 2014-487 regarding the provision and billing of competitor digital network services by TBayTel to TCC**

*The Commission **denies** a request from TCC to review and vary Telecom Decision 2014-487. In that decision, the Commission denied TCC’s application that the phase-out requirements of Telecom Decision 2008-17 apply to TBayTel.*

#### **Introduction**

1. In Telecom Decision 2008-17, the Commission set out a framework for wholesale services, which included forbearing from the regulation of wholesale services with respect to which the Commission determined that their mandatory provisioning would be phased out. Forbearance from the regulation of these services was to take effect on expiry of the relevant phase-out period. These services were also subject to additional requirements, namely compliance with the “end of transition” direction that all incumbent local exchange carriers (ILECs) subject to that decision<sup>1</sup> are required to follow when services approach the end of their specified phase-out periods.
2. In Telecom Decision 2010-897, the Commission, in disposing of an application from TBayTel to withdraw its wholesale competitor digital network (CDN) service tariff, directed the company to continue to provide wholesale CDN services only to MTS Allstream Inc. (MTS Allstream)<sup>2</sup> and TELUS Communications Company (TCC) for existing circuits at existing wholesale CDN rates, subject to the phase-out periods set out in the Appendix to that decision. Any new circuits ordered by new or existing customers were to be provided at digital network access (retail DNA)<sup>3</sup> rates.

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<sup>1</sup> Bell Aliant Regional Communications, Limited Partnership (Bell Aliant); Bell Canada; MTS Inc. (see footnote 2); Saskatchewan Telecommunications; and TELUS Communications Company (TCC)

<sup>2</sup> MTS Allstream Inc. was the entity that participated in the proceeding that led to Telecom Decision 2010-897. However, as of early January 2012, MTS Allstream Inc. became known as two separate entities, namely, MTS Inc. and Allstream Inc.

<sup>3</sup> DNA is a retail service provided by an ILEC that provides for the digital transmission of information from a customer’s premise to another premise within an exchange, or from a customer’s premise to the Rate Centre to connect with other network services. CDN, on the other hand, is a wholesale service priced for competitors to provide similar services.

3. In January 2014, TBayTel notified TCC that it would begin applying its tariffed DNA rates to those digital network services it had been providing to TCC at wholesale CDN rates pursuant to Telecom Decision 2010-897. Further, TBayTel stated that it would calculate the impact of the rate adjustment from its wholesale CDN rates to its retail DNA rates for the period covering 3 March 2013 (end of the phase-out period) to the beginning of the January 2014 billing cycle.
4. On 11 April 2014, TCC filed an application with the Commission, in which TCC submitted that TBayTel had failed to comply with the phase-out requirements outlined in Telecom Decision 2008-17 and as specified in Telecom Decision 2010-897, including the requirement to provide six-months' written prospective notice to both the Commission and affected carriers specifying the tariff pages that are being withdrawn.
5. In Telecom Decision 2014-487, the Commission denied TCC's application that the phase-out requirements of Telecom Decision 2008-17 apply to TBayTel. The Commission determined that TBayTel's wholesale CDN services were no longer available to TCC upon completion of the applicable phase-out periods set out in the Appendix to Telecom Decision 2010-897.

### **The application**

6. The Commission received an application from TCC dated 8 January 2015, in which the company requested that the Commission review and vary Telecom Decision 2014-487. TCC argued that the Commission made five errors of law and fact in Telecom Decision 2014-487, such that there is substantial doubt as to the correctness of that decision. Specifically, TCC submitted that the Commission erred by
  - relying on a narrow interpretation of Telecom Decision 2010-897;
  - determining that a withdrawal of TBayTel's CDN services occurred with the release of Telecom Decision 2010-897;
  - allowing TBayTel to bypass established process for the withdrawal of a service;
  - causing TBayTel's customers to be unjustly discriminated against; and
  - not directly addressing TCC's argument that withdrawal of CDN services by TBayTel was optional.
7. As such, TCC requested that the Commission review and vary Telecom Decision 2014-487 by ordering TBayTel to provide notice to TCC with respect to the withdrawal of TBayTel's CDN services and to re-rate all the relevant circuits to CDN rating pending TCC receiving such notification that the Commission deems reasonable. TCC submitted that, at the very least, the Commission should consider

that TBayTel provided notice to TCC of the withdrawal of its CDN services in January 2014, and the service should be withdrawn effective that date.

8. The Commission received an intervention from TBayTel and a reply from TCC. The public record of this proceeding, which closed on 20 February 2015, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the file number provided above.
9. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it would use to assess review and vary applications that are filed pursuant to section 62 of the *Telecommunications Act* (the Act). Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, due to, for example, one or more of the following: (i) an error in law or in fact, (ii) a fundamental change in circumstances or facts since the decision, (iii) a failure to consider a basic principle which had been raised in the original proceeding, or (iv) a new principle which has arisen as a result of the decision.
10. The Commission has identified the following issues to be addressed in this decision:
  - Did the Commission make an error in law by interpreting Telecom Decision 2010-897 unduly narrowly?
  - Did the Commission make an error in law or fact by determining that a withdrawal of TBayTel's CDN services occurred with the release of Telecom Decision 2010-897?
  - Did the Commission make an error in law or fact by not following an established process for the withdrawal of a service?
  - Did the Commission allow TBayTel's customers to be unjustly discriminated against?
  - Did the Commission make an error in law by not specifically addressing TCC's argument that withdrawal of CDN services by TBayTel was optional?

**Did the Commission make an error in law by interpreting Telecom Decision 2010-897 unduly narrowly?**

11. TCC noted that, in Telecom Decision 2014-487, the Commission stated that it "considers that the direction set out in paragraph 22 of Telecom Decision 2010-897<sup>4</sup> is clear and establishes no requirement for TBayTel to abide by the end of transition

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<sup>4</sup> In paragraph 22 of Telecom Decision 2010-897, the Commission directed TBayTel to continue to provide CDN services only to MTS Allstream and TCC for existing circuits at existing CDN rates, subject to the phase-out periods provided in the Appendix to that decision. Any new circuits ordered by new or existing customers should be provided at DNA rates.

requirements set out in Telecom Decision 2008-17.”<sup>5</sup> However, TCC submitted that the Commission’s analysis in Telecom Decision 2014-487 did not take into account paragraph 21 of Telecom Decision 2010-897, which makes reference to “phase out plan[s]” for the large ILECs<sup>6</sup> which is a far broader set of requirements than simply compliance with the time period for transition.

12. TCC argued that it is not enough to interpret a single paragraph in isolation, nor can the Commission ignore statements of intention, such as the one expressed in paragraph 21 of Telecom Decision 2010-897, when interpreting that decision.
13. TCC submitted that the Commission’s interpretation of Telecom Decision 2010-897 violated the most basic rule of statutory interpretation, as set out in *Bell ExpressVu Limited Partnership v. Rex* (Bell ExpressVu).<sup>7</sup> In that case, the Supreme Court of Canada quoted Elmer Driedger’s formulation as follows: “Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”
14. TCC submitted that Telecom Decision 2010-897 must be read harmoniously with the intent of the decision, which, in TCC’s submission, was to phase out TBayTel’s CDN service in a manner consistent with the ILECs’ phase-out plans<sup>8</sup> and that the only defensible interpretation is that the Commission intended that a phase-out “plan” form an integral part to the withdrawal of TBayTel’s CDN services. TCC argued that the only “plan” for the withdrawing of CDN services in Canada was the end-of-transition direction found in Telecom Decision 2008-17 at paragraph 191, and that, accordingly, that plan, and the associated notice to both the Commission and customers of CDN services, must be followed.
15. TBayTel submitted that TCC’s reliance on Bell ExpressVu was unfounded, because that case set out the basic rule of interpretation for statutes, and not for decisions. Further, it is clear when reading the full context of paragraphs 21 and 22, combined with the appendix to Telecom Decision 2010-897, that the Commission’s intention was to ensure consistency of TBayTel’s CDN phase-out period to the large ILECs’ phase-out period. Consequently, the Commission correctly did not include a notification requirement as part of Telecom Decision 2010-897.
16. In reply, TCC submitted that the Bell ExpressVu case establishes general principles of interpretation that have application beyond the interpretation of statutes. Even if the Commission were to find that the principles in Bell ExpressVu were not relevant to its decisions, the Commission would still have to contend with the requirements of the federal *Interpretation Act*. TCC submitted that, according to the *Interpretation*

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<sup>5</sup> See paragraph 15 of Telecom Decision 2014-487.

<sup>6</sup> See footnote 1.

<sup>7</sup> *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42

<sup>8</sup> See paragraph 21 of Telecom Decision 2010-897.

Act, a “regulation” includes an order made under the authority of an Act – a description clearly capable of embracing determinations made by the Commission under the *Telecommunications Act*. TCC submitted that this in turn triggers the application of section 12 of the *Interpretation Act* which states that “[e]very enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.”

17. TCC submitted that based on the foregoing, it was clear that the Commission cannot interpret Telecom Decision 2010-897 in a manner that frustrates the attainment of its objectives, nor can the Commission make unduly narrow interpretations and ignore other decisions and portions of decisions.

### **Commission’s analysis and determinations**

18. The argument that the Commission is subject to the rules of statutory interpretation does not support the position that the Commission made an error in law. A contextual and proper interpretation of Telecom Decisions 2008-17 and 2010-897 supports the finding in Telecom Decision 2014-487 that the end-of-transition requirements in Telecom Decision 2008-17 were not imposed in Telecom Decision 2010-897.
19. In Telecom Decision 2010-897, the Commission was in fact considering an application from TBayTel to remove a service that the Commission considered was implemented as a result of a unique set of circumstances and not in response to a regulatory requirement, or, in the alternative, amend its wholesale CDN services tariff.
20. In its direction to TBayTel, the Commission did not stipulate that the end-of-transition requirements in paragraph 191 of Telecom Decision 2008-17 with respect to the large ILECs were to apply to TBayTel, but did stipulate that the phase-out periods did apply.
21. The imposition of the end-of-transition requirements in Telecom Decision 2008-17 was quite different from the context with which the Commission was faced in the proceeding leading to Telecom Decision 2010-897. In Telecom Decision 2008-17, the Commission imposed an end-of-transition regime in the context of services that were no longer being mandated and were subject to prospective forbearance. In that context, subscribers of those services did not know whether the large ILECs would continue to offer the services, and, if they did so, what would be the rates, terms, and conditions.
22. By contrast, Telecom Decision 2010-897 was in response to TBayTel’s application to withdraw its tariffed CDN services. Accordingly, unlike the situation addressed in Telecom Decision 2008-17, parties were clearly on notice that TBayTel did not intend to continue to provide CDN services.

23. In light of that context, the Commission’s intention not to impose the end-of-transition requirements on TBayTel is reflected in paragraph 22<sup>9</sup> of Telecom Decision 2010-897, where the Commission directed TBayTel to continue to provide the service to TCC “subject to the phase-out periods provided in the Appendix,” notwithstanding that the words “phase out plans” are used in paragraph 21<sup>10</sup> of that same decision. The Commission’s intent in using these words was to refer to the phase-out periods of the large ILECs and not to the notice requirements set out in the end-of-transition regime outlined in Telecom Decision 2008-17.
24. Therefore, the Commission concludes that it did not err in law in Telecom Decision 2014-487 in its interpretation of Telecom Decision 2010-897.

**Did the Commission make an error in law or fact by determining that a withdrawal of TBayTel’s CDN services occurred with the release of Telecom Decision 2010-897?**

25. TCC submitted that the Commission erred by characterizing Telecom Decision 2010-897 as a withdrawal order, arguing that what was accomplished in Telecom Decision 2010-897 was the destandardization or grandfathering of TBayTel’s CDN service; this would mean that the service is no longer available to new customers, but continues to be available to existing subscribers.
26. TCC argued that, in Telecom Decision 2010-897, the Commission also provided time frames under which TBayTel could choose to cease offering CDN services. In this regard, TCC noted that under the normal destandardization process, described in Telecom Decision 2008-22,<sup>11</sup> some further process, including a public consultation and notice to all impacted customers, is required to withdraw a service entirely. TCC submitted that in the case of TBayTel’s CDN service, these withdrawal steps never occurred.
27. TCC submitted that TBayTel recognized that Telecom Decision 2010-897 did not withdraw its CDN services because it continued to provide the service after that date and still continues to have the service noted in its tariffs. TCC submitted that TBayTel’s own actions indicate that it understood that notification was required to customers prior to withdrawal of service, and that it had in fact grandfathered the service.
28. As further support for its assertion that no withdrawal had occurred in Telecom Decision 2010-897, TCC cited references made by the Commission to the

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<sup>9</sup> See footnote 4.

<sup>10</sup> Paragraph 21 of Telecom Decision 2010-897 reads as follows: The Commission notes that in Telecom Decision 2008-17, it established phase-out periods for several CDN services provided by the large ILECs. The Commission considers that TBayTel’s CDN services should be phased out, consistent with the large ILECs’ phase-out plan. The phase-out periods are set out in the Appendix to this decision.

<sup>11</sup> Telecom Decision 2008-22 set out the new procedures for the disposition of applications dealing with the destandardization/withdrawal of tariffed services.

grandfathering of TBayTel's CDN services in Telecom Decision 2011-407.<sup>12</sup> TCC submitted that to ignore Telecom Decision 2011-407 when characterizing Telecom Decision 2010-897 represents a fundamental error made by the Commission. TCC argued that if the Commission's intention was to approve TBayTel's withdrawal of CDN services as opposed to grandfathering them in Telecom Decision 2010-897, the Commission would have laid out exactly which steps needed to be taken to effect such a withdrawal.

29. TBayTel submitted that when a service is destandardized the service is generally maintained as is until such time that the customer cancels the service or requests a change to the service at which time the customer would no longer be able to purchase the destandardized service. TBayTel argued that with regard to its CDN service, this was not the case, as there was a defined end-date incorporated into Telecom Decision 2010-897.
30. TBayTel submitted that its CDN service was effectively withdrawn by Telecom Decision 2010-897 and that its CDN tariff rates were noted in its tariffs as a courtesy and only as a matter of reference. TBayTel further submitted that the fact that it did not bill until several months after 3 March 2013 was an oversight which was rectified in accordance with its terms of service and not because a notice was required.
31. In reply, TCC submitted that, contrary to TBayTel's assertion, there was no defined end-date incorporated into Telecom Decision 2010-897, but merely a date at which TBayTel could choose to withdraw its CDN services.

### **Commission's analysis and determinations**

32. After TBayTel filed its application on 22 July 2010 which started the proceeding that resulted in Telecom Decision 2010-897, the Commission received a letter from TCC<sup>13</sup> requesting that the Commission return TBayTel's application. In fact, TCC was of the view that TBayTel's application constituted a service withdrawal application and, as such, should be filed in compliance with the requirements of Telecom Decision 2008-22.
33. By letter dated 30 July 2010, Commission staff considered that TBayTel's application did not solely constitute a request for CDN access services withdrawal, as TBayTel had proposed as an alternative the possibility of amendment of those tariffed services with respect to certain large carriers' entitlement to CDN services and rates. Commission staff did not consider it appropriate to return TBayTel's application. Further, Commission staff considered that TBayTel's application may affect carriers that were not provided with a copy of TBayTel's application and TBayTel was requested to serve its application on all carriers that received CDN access services from TBayTel. Commission staff set out the timelines for the filing

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<sup>12</sup> In Telecom Decision 2011-407, the Commission denied Bell Aliant's request to be granted access to TBayTel's CDN service rates for its existing dedicated services.

<sup>13</sup> Letter from TCC dated 26 July 2010

of comments and reply comments on TBayTel's application. Further, TBayTel was also to advise such carriers of the due dates for comments, when TBayTel served its application on all carriers that received CDN services from TBayTel.

34. As a result of the filing of TBayTel's application and the Commission staff letter, the requirements set out in Telecom Decision 2008-22 to destandardize and withdraw a service, such as a public consultation and notice to all impacted customers, have been fulfilled.
35. TCC had appropriate notice of TBayTel's application to withdraw its service and participated fully in that process. TCC was clearly aware that TBayTel's intent was to withdraw the service even if the application requested, in the alternative, amendments to the tariff. Also, as noted above, TCC itself identified that it was a service withdrawal application.
36. By directing TBayTel to provide CDN services only to MTS Allstream and TCC for existing circuits at existing CDN rates for a limited period of time, the Commission, in Telecom Decision 2010-897, was clearly approving the destandardization of TBayTel's existing CDN services, effective the date of the decision. At the same time, it was approving the withdrawal of the service effective 3 March 2013 for all customers, including existing customers.
37. Contrary to TCC's argument, in Telecom Decision 2010-897, as discussed above, the Commission did set out which steps were to effect a withdrawal of TBayTel's CDN services. Those steps were that TBayTel was to continue to provide CDN services only to MTS Allstream and TCC for existing circuits at existing CDN rates, subject to the phase-out periods provided in the Appendix to the decision. In addition, TBayTel was to provide any new orders for circuits for existing and new customers at retail DNA rates, effective the date of the decision.
38. With respect to TCC's argument that Telecom Decision 2011-407 supports its position, while the Commission states in the decision that the services were grandfathered, the Commission also states that the services were subject to a phase-out period. The Commission's statement on destandardization is not at variance with the approval of a withdrawal of the service after a fixed period of time.
39. Accordingly, the Commission concludes that it did not err in law or fact in Telecom Decision 2014-487 wherein it stated that Telecom Decision 2010-897 resulted in the withdrawal of TBayTel's wholesale CDN services.

**Did the Commission make an error in law or fact by not following an established process for the withdrawal of a service?**

40. TCC stated that for a tariffed service to be removed, TBayTel would need to utilize some sort of withdrawal process, noting that such a process to withdraw a service is in place to protect customers. TCC submitted that even if the Commission again decided that the Telecom Decision 2008-17 withdrawal process does not apply, a

more general framework, such as that established in Telecom Decision 2008-22, would still need to be applied to protect customer interests.

41. TCC submitted that in Telecom Decision 2014-487 the Commission made the incorrect conclusion that Telecom Decision 2010-897 automatically started TBayTel's withdrawal process of its CDN services.
42. TCC noted that the words "withdraw" or "withdrawal" do not appear in Telecom Decision 2010-897 and as a result there is no finding that Telecom Decision 2010-897 stood for the withdrawal of TBayTel's CDN services. In TCC's view, if TBayTel wanted to withdraw its CDN services it was subject to the end-of-transition requirement set out in Telecom Decision 2008-17. TCC argued that, as such, there is no legal basis upon which the Commission could conclude in Telecom Decision 2014-487 that Telecom Decision 2010-897 represents any commencement of the withdrawal of TBayTel's CDN services because such a withdrawal commencement required the strict following of the phase-out notification requirement set out in Telecom Decision 2008-17.
43. TCC submitted that the Commission's ruling in Telecom Decision 2014-487 that a withdrawal had taken place in Telecom Decision 2010-897 was a new finding by the Commission, one that in TCC's view had no basis in fact or in law and thus constituted an error of law.
44. TBayTel submitted that the circumstances surrounding its CDN service tariffs were unique, agreeing with TCC that a unique process to deal with the removal of TBayTel's CDN service rates was applicable.
45. In reply, TCC stated that, from its perspective, the intent of the Commission is clear in Telecom Decision 2010-897, as the manner in which the decision was written is clear, in that only a destandardization occurred as the decision made no mention of a withdrawal.

### **Commission's analysis and determinations**

46. As noted above, after TBayTel filed its application which started the proceeding that resulted in Telecom Decision 2010-897, TCC claimed that TBayTel's application constituted a service withdrawal application and had to be filed in compliance with the requirements of Telecom Decision 2008-22. By Commission staff letter dated 30 July 2010, TBayTel was requested to serve its application on its current customers and to advise such customers of the comment date, as described above.
47. MTS Allstream and TCC, customers of TBayTel's CDN services at that time, filed comments in that proceeding. There was a public consultation and notice was given to all impacted customers, as required by Telecom Decision 2008-22 to destandardize and withdraw a service, as explained above.
48. The Commission considers that notwithstanding that the words "withdraw" or "withdrawal" do not appear in Telecom Decision 2010-897, TBayTel clearly

requested in its application a withdrawal of its CDN services, there was a process followed for that withdrawal, and the Commission set out a phase-out period for the service. Given all this, the Commission had a full and proper record on which to rule in Telecom Decision 2014-487 that a withdrawal had taken place in Telecom Decision 2010-897. This was not a new finding as argued by TCC.

49. Accordingly, the Commission concludes that it did not err in law or in fact in Telecom Decision 2014-897 wherein it concluded that a withdrawal had taken place in Telecom Decision 2010-897.

### **Did the Commission allow TBayTel's customers to be unjustly discriminated against?**

50. TCC submitted that every customer of CDN services in Canada whose supplier was planning a withdrawal of CDN services and a subsequent re-rating of these services to retail DNA terms, conditions, and prices was provided a minimum of six-months' notice prior to the withdrawal of service from the supplier. TCC submitted that it should have been afforded a similar period of time as other CDN customers in order to enact its business and CDN transition strategy.
51. TCC argued that because TBayTel did not notify TCC of its intention to withdraw access to CDN services, TCC was financially harmed. Further, TCC submitted that it was denied the ability to put into effect its migration plan. TCC stated that it was the only CDN customer that was denied notice.<sup>14</sup>
52. TCC submitted that for TBayTel to be permitted to withdraw a service without any notice provided to the company amounts to unjust discrimination against TCC, contrary to subsection 27(2) of the Act. As such, TCC argued that, in Telecom Decision 2014-487, the Commission erred in law by interpreting Telecom Decision 2010-897 in a manner that excluded transition rights and the obligations that are attached to the provision of CDN services by all other ILECs to other customers.
53. TBayTel submitted that unlike the large ILECs' CDN services that remained as available services between the date of Telecom Decision 2008-17 and the end of the phase-out period, its CDN services were no longer available for customers to order from the date of Telecom Decision 2010-897.
54. TBayTel submitted that the parties involved in the proceeding leading to Telecom Decision 2010-897 were aware of who would receive CDN services at existing CDN rates and for how long, and were also notified when the CDN rates would expire and when DNA rates would commence.
55. TBayTel submitted that there was no unjust discrimination against TCC because TCC and the only other customer receiving CDN services from TBayTel received

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<sup>14</sup> MTS Allstream was not impacted by the withdrawal of CDN services as was TCC because MTS Allstream entered into a Master Service Agreement with TBayTel.

significantly more than a six-month notification and were aware of when the phase-out of TBayTel's CDN service rates would occur.

56. In reply, TCC stated that, contrary to TBayTel's argument, it was only aware there was a date at which forbearance could be enacted, subject to some sort of notice to TCC that the forbearance framework was in fact going to be activated. TCC stated that absent this notification, TBayTel should not be permitted to withdraw its CDN services.

### **Commission's analysis and determinations**

57. With regard to TCC's claim of unjust discrimination, an analysis of an allegation concerning a contravention of subsection 27(2) of the Act is conducted in two phases. The Commission first determines whether the conduct in question is discriminatory or preferential and, where it so determines, it then decides whether the discrimination is unjust or the preference is undue or unreasonable.
58. In this case, the Commission notes that the circumstances leading to the withdrawal of CDN services for the large ILECs,<sup>15</sup> set out in Telecom Decision 2008-17, are different from the circumstances leading to the withdrawal of TBayTel's CDN services in Telecom Decision 2010-897.
59. In Telecom Decision 2008-17, the Commission was dealing with a revised regulatory framework for wholesale services and a definition of essential service and the mandating of such service. In that decision, the Commission determined that several of the CDN services provided by the large ILECs that were once considered to be mandatory services, should be classified as non-essential services subject to phase-out. The Commission made a determination of prospective forbearance regarding such services at the end of the phase-out period. As part of the end-of-transition regime established by the Commission in that decision, the large ILECs were also required to provide a written notice, at least six months before the end of the phase-out period for the CDN services which the Commission had made a determination to prospectively forbear from regulating.
60. In contrast, in Telecom Decision 2010-897, the Commission was dealing with an application by TBayTel to remove its CDN services tariff, which the Commission noted had been implemented as a result of a unique set of circumstances and not in response to a regulatory requirement. In considering TBayTel's application to withdraw the service, the Commission determined that the appropriate approach was to require TBayTel to continue to provide CDN services only to MTS Allstream and TCC for existing circuits at existing CDN rates, subject to the phase-out period. The Commission also determined that any new circuits ordered by new or existing customers would be provided at DNA rates. Further, the Commission did not set out a forbearance framework with respect to TBayTel's CDN services.

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<sup>15</sup> See footnote 1.

61. The fact that the customers of the large ILECs' CDN services would receive six-months' notice and the customers of TBayTel's CDN services did not receive a similar notice, did not constitute discrimination against TCC. As discussed previously, the two situations are very different: unlike TBayTel's CDN service, the large ILECs' CDN services were mandated. Further, the Commission's direction in Telecom Decision 2010-897 treated all existing customers of TBayTel's CDN services equally, in the same way that the Commission's direction in Telecom Decision 2008-17 treated equally all of the large ILECs' existing customers of their CDN services.
62. TBayTel customers received ample notice in Telecom Decision 2010-897 given the phase-out period imposed by the Commission. The Commission also finds that given the different set of circumstances that resulted in Telecom Decision 2010-897 and in Telecom Decision 2008-17, TCC not receiving a specific notice as required by the end-of-transition regime in Telecom Decision 2008-17 does not amount to unjust discrimination under subsection 27(2) of the Act.

**Did the Commission commit an error in law by not specifically addressing TCC's argument that withdrawal of CDN services by TBayTel was optional?**

63. TCC noted that during the process that led to Telecom Decision 2014-487, in its reply, it raised the issue that while TBayTel had the ability to withdraw its CDN services at the end of the phase-out periods, the withdrawal was not mandatory and, therefore, some notice needed to be provided to inform TCC that a withdrawal was to occur. TCC submitted that the Commission failed to consider this issue in Telecom Decision 2014-487 and that this constitutes an error in law.
64. In support of its position, TCC submitted that, in its reply, it had noted the phase-out periods referred to in Telecom Decision 2008-17 were optional, as evidenced by some carriers such as MTS Allstream choosing to withdraw its CDN services later than the 3 March 2013 date. TCC argued that given that the phase-out periods from Telecom Decision 2008-17 that the Commission applied to TBayTel in Telecom Decision 2010-897 were optional, then TBayTel's withdrawal of CDN services was also optional.
65. TCC submitted that in both Telecom Decision 2010-897 and Telecom Decision 2008-17 there is no mention that withdrawal is automatic, given that under the Telecom Decision 2008-17 regime, notification was required prior to withdrawal. TCC submitted that by not notifying customers of withdrawal, customers can only assume that the service continues to be available.
66. TBayTel submitted that in the proceedings brought before the Commission, numerous issues and arguments have been raised by parties, and it is common that the Commission does not adopt a position on all issues and arguments in its written decisions. TBayTel further submitted, however, that this does not mean that the Commission does not take into consideration all of the information and arguments brought forward in the proceedings. Rather, the Commission weighs the evidence,

makes reasoned determinations, and renders its decision. Therefore, TCC's contention that the Commission erred in law by failing to consider, in Telecom Decision 2014-487, TCC's argument that withdrawal of CDN services by TBayTel was optional, was unfounded.

67. In reply, TCC submitted that TBayTel's suggestion that not every argument requires a specific written response in the decision is an admission that the Commission failed to consider a pertinent and valid issue raised by TCC, and, more importantly, failed to give any reason as to why it should be dismissed. In TCC's view, these were serious errors of law.

### **Commission's analysis and determinations**

68. While all arguments on the record of a proceeding are taken into consideration in arriving at determinations, all arguments are not specifically mentioned in the decision disposing of an application. In this regard, where a tribunal has a duty to give reasons, it is not necessary that it address each specific argument raised by the parties or that it state what evidence it considered helpful to its deliberations.
69. With respect to TCC's argument, when the Commission made the determination in Telecom Decision 2014-487 that there was no requirement for TBayTel to abide by the end-of-transition requirements, it was simply confirming the withdrawal of TBayTel's CDN services. The fact that the Commission did not specifically note in Telecom Decision 2014-487 TCC's argument that the withdrawal of TBayTel's CDN services was optional, does not mean that TCC's argument was not considered.
70. Accordingly, the Commission concludes that it did not err in law in Telecom Decision 2014-487 by not specifically mentioning in the decision TCC's argument that the withdrawal of TBayTel's CDN services was optional.

### **Conclusion**

71. In light of the foregoing, the Commission finds that there is no substantial doubt as to the correctness of the Commission's determinations in Telecom Decision 2014-487, and **denies** TCC's application.

Secretary General

### **Related documents**

- *TELUS Communications Company (TCC) – Application with respect to the provision and billing of competitor digital network services by TBayTel to TCC*, Telecom Decision CRTC 2014-487, 22 September 2014
- *Bell Aliant Regional Communications, Limited Partnership – Application to access TBayTel's competitor digital network service rates*, Telecom Decision CRTC 2011-407, 4 July 2011

- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *TBayTel – Application for relief regarding provision of competitor digital network services*, Telecom Decision CRTC 2010-897, 2 December 2010
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