



Telecom Decision CRTC 2016-306

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Bell Canada – Application to expand determinations set out in Telecom Regulatory Policy 2015-326 concerning the unbundled local loop framework and the rates for certain wholesale legacy services

*The Commission **denies** an application from Bell Canada to expand certain determinations set out in Telecom Regulatory Policy 2015-326 on the basis that Bell Canada has not provided sufficient evidence to justify approving the application.*

Background

1. In Telecom Regulatory Policy [2015-326](#), the Commission made a number of determinations with regard to the regulatory framework for wholesale wireline services. Specific to this decision, the Commission made a number of determinations regarding wholesale legacy services. The Commission determined, for example, that (a) the provision of unbundled local loops (ULLs)¹ would no longer be mandated and would be phased out (referred to in this decision as the ULL framework), and (b) the rates for certain wholesale legacy services² provided by the incumbent carriers would be frozen at existing rate levels.
2. The Commission's determinations on whether wholesale wireline services should be mandated or not were based on the application of an essential services test (referred to in this decision as the Essentiality Test)³ and a set of policy considerations that enabled the Commission to consider factors beyond the Essentiality Test. In addition, the Commission froze the rates for certain wholesale legacy services provided by the incumbent carriers, so as to lower the regulatory burden associated with filing cost studies without impairing the Commission's ability to find rates just and reasonable.

¹ ULLs provide a transmission path between an end-user's premises and an incumbent local exchange carrier's (ILEC) central office by means of copper facilities. ULLs can be used by competitors to provide local telephony and Internet access services to residential and business customers.

² ULLs, digital subscriber line (DSL) services not provided over next-generation mixed fibre/copper networks, such as fibre-to-the-node (i.e. asymmetric DSL (ADSL) service and Gateway Access Service), and low-speed competitor digital network (CDN) access services (i.e. DS-0 and DS-1 CDN accesses)

³ In Telecom Decision [2008-17](#), the Commission set out new criteria for determining whether a facility, function, or service would be classified as "essential." In Telecom Regulatory Policy [2015-326](#), the Commission found that the existing definition and structure of the Essentiality Test remained appropriate for determining whether it should mandate the provision of a particular wholesale service.

Application

3. The Commission received an application from Bell Canada, dated 23 November 2015, in which the company requested that the Commission expand on certain determinations set out in Telecom Regulatory Policy [2015-326](#). Specifically, Bell Canada requested that the ULL framework be expanded to include two other wholesale services: ULL connecting links⁴ and line-sharing service.⁵ Bell Canada also requested that the rates for three wholesale services be frozen at existing rates, similar to what the Commission had determined for certain other wholesale legacy services.
4. The Commission received interventions regarding Bell Canada's application from the Canadian Network Operators Consortium Inc. (CNOc) and the Public Interest Advocacy Centre (PIAC) in early December 2015. Both parties argued that Bell Canada's application should be considered as a request to review and vary Telecom Regulatory Policy [2015-326](#), and that the company should be required to serve its application on all interveners in the proceeding leading to Telecom Regulatory Policy [2015-326](#).
5. Subsequent to receiving these interventions, Commission staff issued a process letter to Bell Canada on 11 December 2015, requiring that the company (a) supplement its application to demonstrate that it satisfied the criteria for a review and vary application set out in Telecom Information Bulletin [2011-214](#), and (b) serve a copy of its supplemented application on all interveners in the proceeding leading to Telecom Regulatory Policy [2015-326](#).
6. Bell Canada filed a supplemented application on 8 January 2016. The Commission received interventions regarding Bell Canada's supplemented application from Allstream Inc. (Allstream), CNOc, Managed Network Systems, Inc. (MNSi), TELUS Communications Company (TCC), and Vaxination Informatique (Vaxination).
7. The public record of this proceeding, which closed on 18 February 2016, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

⁴ ULL connecting links connect the ILEC's facilities and a competitor's facilities within a central office to enable ULL service.

⁵ Line-sharing service allows a competitor to provision high-speed access service to its end-customers while the ILEC provides the voice service, using the same ULL.

Issues

8. The Commission has identified the following issues to be addressed in this decision:
- Should Bell Canada's application be considered a new application or a review and vary application?
 - Should the proposed expansion of certain determinations in Telecom Regulatory Policy [2015-326](#) be approved?

Should Bell Canada's application be considered a new application or a review and vary application?

9. Bell Canada submitted that its application should be considered a new application, arguing that it did not challenge any of the Commission's findings or directions in Telecom Regulatory Policy [2015-326](#). In particular, the company submitted that it was not seeking a modification to the regime for ULLs, and it was not challenging the rate freeze that the Commission had imposed on certain wholesale legacy services. In its view, it was simply requesting an extension of the Commission's determinations to other similar services.
10. CNOC, MNSi, and PIAC considered that Bell Canada's application should be considered a review and vary application, and that it should be denied because (a) it did not meet the review and vary criteria set out in Telecom Information Bulletin [2011-214](#), and (b) it was not filed within the appropriate timelines for such applications.⁶
11. In CNOC's view, the Commission had, in Telecom Regulatory Policy 2015-326, already ruled on many of the matters Bell Canada had raised in its application. CNOC submitted that all of the services that Bell Canada referred to in its application were included in the company's response to a Commission request for information during the proceeding leading to Telecom Regulatory Policy [2015-326](#), and the Commission had ultimately decided that parties to that proceeding had not provided sufficient evidence to justify a change in the regulatory status with respect to all of the services in question.

⁶ Pursuant to subsection 71(1) of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure), an application to review, rescind, or vary a decision of the Commission must be filed with the Commission within 90 days after the date of the decision. Pursuant to subsection 71(2) of the Rules of Procedure, the Commission may extend that deadline if it is of the opinion that it is just and equitable to do so.

Commission's analysis and determinations

12. The proceeding that led to Telecom Regulatory Policy [2015-326](#) was not one in which the Commission considered the regulatory status of every wholesale service provided by the ILECs. Ultimately the Commission decided that there was insufficient evidence to render a decision on the services referenced by Bell Canada in its application.
13. In Telecom Information Bulletin [2011-214](#), the Commission identified five factors to assist it in determining whether an application raises an issue related to (a) the correctness of the original Commission decision, or (b) the continuing correctness of a decision and, accordingly, whether the application should be treated as a review and vary application or a new application.⁷ In that regard, Bell Canada's application does not challenge the original correctness of the decision and does not
 - raise an error of law, jurisdiction, or fact;
 - raise issues that were central to the original, relevant, decisions in Telecom Regulatory Policy [2015-326](#), or
 - challenge the facts or circumstances relied upon by the Commission in making its determinations set out in Telecom Regulatory Policy [2015-326](#).
14. Further, Bell Canada is requesting relief on a prospective, not a retrospective, basis.
15. In light of the above, the Commission considers that Bell Canada's application should not be considered as a request for the Commission to review and vary its determinations set out in Telecom Regulatory Policy [2015-326](#), but rather as a new application.

Should the proposed expansion of certain determinations in Telecom Regulatory Policy 2015-326 be approved?

16. Bell Canada requested that
 - the ULL framework be expanded to also encompass ULL connecting links and line-sharing service; and
 - the rates for (a) dry loops provided in support of legacy Gateway Access Service and High-Speed Access service, (b) DS-1 connecting links, and (c) CDN [competitor digital network] DS-1 Central Office links be frozen,

⁷ The five factors set out in Telecom Information Bulletin [2011-214](#) are (i) whether the application raises an error of law, jurisdiction, or fact; (ii) the extent to which the issues raised in the application were central to the original decision; (iii) the extent to which the facts or circumstances relied upon in the application were relied upon in the original decision; (iv) the length of time since the original decision; and (v) whether the resulting decision would supersede the original decision in a prospective manner as opposed to curing an error on a retrospective basis.

consistent with the Commission's determination to freeze the rates of certain other wholesale legacy services⁸ in Telecom Regulatory Policy [2015-326](#).

17. Bell Canada submitted that the services in question are functionally or technologically similar to the services for which the Commission issued determinations in Telecom Regulatory Policy [2015-326](#). Bell Canada also submitted that some of the requested services are, based on their similarity, subject to the same market dynamics as the services identified in that decision.
18. TCC supported Bell Canada's requests, arguing that the requested services were similar to the relevant services identified in Telecom Regulatory Policy [2015-326](#). TCC also requested similar treatment for its comparable services.
19. CNOC and MNSi submitted that the Commission should not grant the relief requested by Bell Canada due to the absence of supporting evidence. MNSi considered that the onus was on Bell Canada to demonstrate the relief it requested was warranted and appropriate under the Essentiality Test.
20. CNOC submitted that it would be a mistake to assume that all services provided over copper are in the same product market and subject to the same market conditions. In its view, each of the requested services constitutes a distinct product market and the Commission should only proceed to make a ruling on the merits of Bell Canada's requested relief once the Commission has a firm evidentiary basis regarding the market conditions for the requested services.
21. Vaxination submitted that, should Bell Canada provide evidence that ULL connecting links and line-sharing service are integral and exclusive to ULLs, it would not object to those services being treated in the same manner as ULLs.
22. In reply, Bell Canada argued that intervening parties had not provided any evidence invalidating its submission that ULL connecting links, line-sharing service, and ULLs are intrinsically connected. It submitted that, as such, the Commission should grant its proposed relief and determine that the requested services should be treated identically from a regulatory perspective.

Commission's analysis and determinations

23. Although Bell Canada argued that interveners had not provided any evidence invalidating its submission, the onus is on the applicant to provide sufficient evidence to justify the relief it is seeking.⁹

⁸ ULLs, legacy DSL, and low-speed CDN services

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

24. In contrast to its initial intervention and its responses to requests for information in the proceeding leading to Telecom Regulatory Policy [2015-326](#), Bell Canada provided no persuasive evidence in its application and final reply to support its requests.
25. Consideration of Bell Canada's requests should be subject to the same degree of scrutiny as applied by the Commission in Telecom Regulatory Policy [2015-326](#). The onus is on Bell Canada to provide sufficient evidence to justify approval of its requests. In the case of the first request, this would mean that Bell Canada would need to provide sufficient evidence to establish that the requested services should not be mandated based on the Essentiality Test, as supplemented by the policy considerations set out in Telecom Regulatory Policy [2015-326](#). Likewise, approval of Bell Canada's second request would require that it demonstrate that the market conditions are such that a rate freeze would lower the regulatory burden while maintaining rates that are just and reasonable.
26. For both of its requests, the information provided by Bell Canada in this proceeding was limited to a brief description of each service, with a further claim that the services are comparable to the relevant services assessed in Telecom Regulatory Policy [2015-326](#). While Bell Canada argued that the services are similar and warrant the same treatment, it did not provide the Commission with any evidence to conduct an assessment of whether the services in question should continue to be mandated or not. Without, for example, details on the market characteristics, customer demand, and relevant downstream product market for such services, the Commission lacks the evidence to determine whether the relief sought by Bell Canada should be granted.
27. The record of this proceeding does not provide sufficient evidence for the Commission to change the regulatory status quo based merely on Bell Canada's assertion that the services in question are similar.

Conclusion

28. In light of the foregoing, the Commission **denies** Bell Canada's application.

Secretary General

Related documents

- *Review of wholesale wireline services and associated policies*, Telecom Regulatory Policy CRTC 2015-326, 22 July 2015, as amended by Telecom Regulatory Policy CRTC 2015-326-1, 9 October 2015
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008