



## Telecom Decision CRTC 2018-360

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### **TELUS Communications Inc. – Application for forbearance from the regulation of unbundled local loops**

*The Commission **approves** TCI's application for forbearance from the regulation of unbundled local loops in the 34 exchanges for which it does not already have forbearance. The Commission's determinations in this decision will ensure that Canadians will continue to benefit from a competitive telecommunications system that relies on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives.*

#### **Application**

1. The Commission received an application from TELUS Communications Inc. (TCI), dated 19 January 2018, in which the company requested that the Commission forbear from regulating the provision of unbundled local loops (ULLs)<sup>1</sup> in the 34 exchanges in its operating territory for which it does not already have forbearance.<sup>2</sup>
2. Specifically, TCI requested that the Commission grant forbearance in accordance with section 34 of the *Telecommunications Act* (the Act), and refrain from exercising its powers and duties under sections 24, 25, 27, 29, and 31 of the Act (with the exception of subsections 27(2) and 27(4) of the Act) with respect to ULLs in the exchanges where the provision of ULLs is still mandated.
3. The Commission received interventions from Allstream Business Inc. (Allstream), the Canadian Network Operators Consortium Inc. (CNOC), and Shaw Communications Inc. (Shaw).

#### **Background**

4. In Telecom Decision 97-8, the Commission determined that, to support retail competition, incumbent local exchange carriers (ILECs) would be required to

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<sup>1</sup> ULLs provide, on a wholesale basis, a transmission path via copper facilities between an end-user's premises and an incumbent local exchange carrier's central office. This path can be used by the wholesale users to provide local telephony and lower-speed Internet access services to residential and business customers.

<sup>2</sup> Pursuant to Telecom Regulatory Policy 2015-326, ULLs were forborne from regulation in all of TCI's other exchanges where there was no demand for ULLs.

unbundle their local access facilities to make ULLs available on a wholesale basis to competitive local exchange carriers.

5. However, the regulatory status of ULLs changed with the issuance of Telecom Regulatory Policy 2015-326. In that decision, the Commission applied an essential services test (hereafter referred to as the Essentiality Test) to various wholesale services, including ULLs, to determine whether the provision of these services should continue to be mandated.<sup>3</sup> In addition, the Essentiality Test was supplemented by three policy considerations to inform, support, or reverse a decision to mandate the provision of a wholesale service: (i) public good, (ii) interconnection, and (iii) innovation and investment.
6. The Commission concluded that ULLs did not meet all three components of the Essentiality Test across the country and, given that there was no valid policy reason to continue mandating the provision of these facilities, determined that ULLs were not essential, and would no longer be mandated, subject to a three-year phase-out period. In exchanges where there was no demand for ULLs, the Commission determined that it would forbear from the regulation of the facilities effective the date of its decision. The phase-out period would not apply in these exchanges, and the ILECs could either continue making ULLs available or stop offering them immediately.
7. In exchanges where there was demand for ULLs, an ILEC could file a forbearance application regarding the provision of its ULLs if it intended to continue to make ULLs available following the end of the phase-out period. The ILECs were encouraged to put forth an analytical framework that the Commission could use to assess forbearance in an administratively efficient manner, and were required to justify why their request for forbearance would not impact local forbearance decisions that the Commission had previously made on the basis of ULLs being available.<sup>4</sup>
8. If an ILEC intended to cease offering ULLs, it would be required to provide written notice to existing customers and the Commission. Among other things, the ILEC would have to justify why ceasing the offering of ULLs would not impact local

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<sup>3</sup>To be essential, a facility, function, or service must satisfy all of the following conditions: (i) it is required as an input by competitors to provide telecommunications services in a relevant downstream market (the input component); (ii) it is controlled by a firm that possesses upstream market power such that withdrawing mandated access, or denying access to the facility, would likely result in a substantial lessening or prevention of competition in the downstream retail market (the competition component); and (iii) it is not practical or feasible for a reasonably efficient competitor to reasonably duplicate the functionality of the facility on a sufficient scale (the duplicability component). For a wholesale service to meet the Essentiality Test, all three components must be satisfied.

<sup>4</sup>In Telecom Decision 2006-15, the Commission established the forbearance framework for local exchange services for the large ILECs. To determine whether to forbear from the regulation of local exchange services, the Commission developed a competitor presence test. At the time of that decision, ULLs were more prevalent as a means for competitors to provide voice and Internet services to end-users than they are currently. Consequently, decisions by the Commission to forbear from regulating local exchange services in at least some TCI exchanges were made based on the presence of one or more competitors that provided local exchange service via ULLs.

forbearance decisions that the Commission had previously made on the basis of ULLs being available.<sup>5</sup>

### **Should the Commission grant TCI's request for forbearance from the regulation of ULLs in the 34 exchanges in question?**

9. TCI stated that its application was for forbearance of its ULLs, not withdrawal, and that ULLs would remain available post-forbearance. TCI proposed an analytical framework for the Commission to assess its forbearance request.

#### **TCI's proposed analytical framework**

10. TCI proposed to classify each of the 34 exchanges under one of three parts of its analytical framework. In part (a) of its proposed analytical framework, ULLs would be automatically forborne in all exchanges where no local voice forbearance (residential or business) has been granted (zero exchanges in total). In part (b) of its proposed analytical framework, ULLs would automatically be forborne in all exchanges (4 in total) where, to the extent that retail local forbearance has been granted, it was apparently solely granted on the basis of sufficient competition provided by a wireline competitor (i.e. Shaw) that does not use ULLs. In part (c) of the proposed analytical framework, ULLs would be forborne in any exchange (30 in total) where retail local forbearance was apparently granted on the basis of a telecommunications service provider (TSP) leasing ULLs, unless the Commission has reasonable doubt that end-users in that exchange will continue to benefit from sufficient competition to protect their interests, per section 34 of the Act. TCI categorized these 30 exchanges into those served by Shaw (24 exchanges) and those which are served by a cable company other than Shaw (6 exchanges). A list of the 34 exchanges, which are located in Alberta, British Columbia, and Quebec, is set out in the Appendix of this decision.

#### **TCI's justification for forbearance**

##### **Forbearance from the regulation of TCI's ULLs under subsection 34(1) of the Act**

11. TCI argued that ULL forbearance in the company's part (b) and part (c) exchanges is consistent with subsection 34(1)<sup>6</sup> of the Act and, more specifically, the policy objectives set out in paragraphs 7(f) and 7(g)<sup>7</sup> of the Act. TCI submitted that the local

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<sup>5</sup> See footnote 4.

<sup>6</sup> Subsection 34(1) of the Act states the following: The Commission may make a determination 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 in relation to a telecommunications service or class of service provided by a Canadian carrier, where the Commission finds as a question of fact that to refrain would be consistent with the Canadian telecommunications policy objectives.

<sup>7</sup> The cited policy objectives of the Act are 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(g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services.

forbearance decisions pertaining to part (b) exchanges did not rely on the presence of a carrier that uses ULLs, and, as such, the withdrawal of ULLs cannot change the competitive conditions which led to local forbearance. Due to the presence of these competitive facilities, the presence of multiple wireless carriers offering voice services, and the availability of Internet access through which voice service can be obtained from a variety of voice over Internet Protocol (VoIP) providers, market forces will determine how telecommunications services are provided, which is consistent with the policy objective set out in paragraph 7(f) of the Act.

12. TCI submitted that the residential local forbearance decisions pertaining to part (c) exchanges were based on the presence of cable company networks. TCI stated that, under the assumption that ULLs do not constitute a material proportion of cable companies' access networks to provide service, consumer access to a choice of residential local service providers will not be affected by ULL forbearance.
13. TCI submitted that the business local forbearance decisions pertaining to part (c) exchanges relied on the presence of different TSPs that were not cable companies, but which may have used ULLs. However, the subsequent construction of Shaw's advanced network in business areas in the 24 part (c) exchanges it serves (which TCI stated can be tracked through Shaw's Go WiFi website, as this new network also supports Shaw's Go WiFi service) has altered the competitive conditions such that local business forbearance could be granted today without any dependence on ULLs. TCI therefore submitted that the withdrawal of ULLs cannot change the current competitive conditions which continue to support local forbearance in these exchanges.
14. TCI submitted that the competitive access capabilities of alternative wireline providers in the part (c) exchanges not served by Shaw has not yet been established. However, TCI argued that even in part (c) exchanges where there is no fixed wireline competitor (should there be any such exchanges), local competition no longer depends on the availability of ULLs because of the competitive presence of mobile wireless service and access to VoIP service.
15. TCI argued that, in the presence of competitive facilities, multiple wireless carriers offering voice services, and Internet access and data circuits through which voice service can be obtained from a variety of VoIP providers, the presence of artificially priced ULLs distorts the market for customer access and thus for the retail local exchange services that ULLs support. TCI submitted that the continued regulation of ULLs would therefore violate the policy objective set out in paragraph 7(f) of the Act in that it would not foster increased reliance on market forces for the provision of telecommunications services.
16. TCI submitted that forbearance from the regulation of ULLs satisfies the policy objective set out in paragraph 7(g) of the Act in that the removal of the mandate to provide ULLs may encourage competitors to use more advanced technologies.

### **Forbearance from the regulation of TCI's ULLs under subsection 34(3) of the Act**

17. TCI argued that ULL forbearance will not contravene subsection 34(3)<sup>8</sup> of the Act. Specifically, ULL forbearance will not affect the continuance of a competitive market because local competition no longer depends on the availability of ULLs, but on wireless and VoIP services, and, in some cases, carriers with their own wireless access facilities. Forbearance will not affect the ability of wireless service providers, VoIP providers, or companies with self-provided access facilities to reach their customers, so it cannot harm the continuance of the existing competitive market for local exchange services in TCI exchanges.

### **ULL forbearance and wholesale alternatives**

18. TCI argued that the Commission's determination in Telecom Regulatory Policy 2015-326 that ULLs did not satisfy the competition component of the Essentiality Test was based on two factors which were independent of wholesale alternatives. First, the Commission considered that the demand for ULLs had been steadily declining in the years prior to that decision. Second, the Commission recognized that competitive services which relied on ULLs constituted a very small proportion of the total retail markets for these services.<sup>9</sup>
19. TCI submitted that the Commission's rationale for declaring ULLs to be non-essential is important to its application. In this regard, TCI argued that the Commission did not focus on the availability of wholesale alternatives to ULLs themselves, but on the availability of retail alternatives to local services provided through ULLs. TCI argued that the Commission determined ULLs to be non-essential because there would still be sufficient retail competition. The Commission expected that TSPs which use ULLs could lose some customers because of ULL forbearance.<sup>10</sup>
20. TCI argued that predictions of customers being required to change TSPs due to the price or availability of ULLs or wholesale alternatives should have no bearing on ULL forbearance; TCI stated that the Commission had already accepted this eventuality when it declared ULLs to be non-essential. Including the availability of suitable wholesale alternatives in the test for ULL forbearance would be adding an additional and irrelevant criterion to the Commission's determinations in Telecom Regulatory Policy 2015-326.
21. TCI maintained that competition from wireless and VoIP service providers will ensure that end-users continue to enjoy a choice of service providers in all 34 TCI exchanges when ULLs are forborne.

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<sup>8</sup> Subsection 34(3) of the Act states the following: The Commission shall not make a determination to refrain under this section in relation to a telecommunications service or class of services if the Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.

<sup>9</sup> See paragraph 182 of Telecom Regulatory Policy 2015-326.

<sup>10</sup> See paragraph 184 of Telecom Regulatory Policy 2015-326.

## **Allstream**

22. Allstream submitted that in part (b) of TCI's proposed analytical framework, where retail forbearance did not rely on ULLs, TCI failed to demonstrate that the facts that led to retail forbearance have not changed or that ULLs do not support the competitive environment in these exchanges.
23. Allstream argued that for exchanges in part (c) of TCI's proposed analytical framework, in which retail forbearance relied on the use of ULLs, TCI claimed, with virtually no evidence, that reliance on ULLs would no longer be necessary to meet the retail forbearance tests. Allstream proposed that the proper way to assess TCI's claim would be for TCI to submit the information required as part of a retail forbearance application for these exchanges.
24. Allstream was of the view that although TCI claimed that service alternatives to ULLs are available, it provided no details concerning to what extent these services are being used by either residential or business customers. Moreover, TCI did not provide evidence that they are viable alternatives to services provided over ULLs. For example, Allstream noted that for 24 of the 30 exchanges in part (c) of TCI's proposed analytical framework, TCI relied on the presence of Shaw's Go WiFi hotspot network coverage as evidence of service alternatives for business customers. However, TCI did not provide any evidence that business customers consider this service to be a viable competitive alternative. Allstream submitted that many companies require the reliability and security associated with a dedicated landline connection.
25. Allstream argued that disaggregated wholesale high-speed access (HSA) services are the logical migration path for most ULLs; however, these are not yet viable alternatives and the Commission has not yet begun the process to establish disaggregated wholesale HSA in TCI's ILEC territory. Allstream submitted that ULLs should remain regulated in an exchange for a period of at least two years after disaggregated wholesale HSA services are rolled out in an exchange, under an approved, final tariff.
26. Allstream argued that if forbearance is granted, the Commission should retain its powers concerning the following: imposing conditions on a service (section 24 of the Act); the requirement for just and reasonable rates (subsections 27(1) and 27(5) of the Act); questions of fact (subsection 27(3) of the Act); and, protection against undue preference and unjust discrimination (subsections 27(2) and 27(4) of the Act).
27. Allstream stated that if the Commission agrees that additional transition measures are appropriate but is determined to adhere to the three-year phase-out period, it could exercise its authority under section 24 of the Act to set a price ceiling for ULLs at existing rates.

## CNOC

28. CNOC argued that TCI's proposed analytical framework fails to consider continued demand for ULLs through the lens of section 34 of the Act. If competitive supply exists from TSPs that use ULLs and there continues to be demand for such services, the Commission should apply a test that assesses whether forbearance of ULLs is likely to impair the continuance or establishment of a competitive market for residential and business local voice services in these exchanges. If the competitive market would be impaired, then forbearance would be premature and inconsistent with subsection 34(3) of the Act.
29. CNOC argued that to the extent that post-forbearance rate increases and/or changes to terms and conditions for in-service ULLs impose barriers on TSPs when it comes to providing competitive local voice services through the use of ULLs, the competitive market for retail local voice services in these exchanges will be impaired.
30. CNOC was of the view that forbearance of ULLs in exchanges categorized under each part of TCI's proposed analytical framework will impair the continuance of the existing competitive market for local voice services. CNOC stated that in all of these cases, forbearance is not appropriate pursuant to subsection 34(3) of the Act.
31. CNOC submitted that, where forbearance of local voice services was based on the presence of a cable company (i.e. for residential and business service in the 4 part (b) exchanges, and for residential service in the 30 part (c) exchanges), the Commission should not accept TCI's assumption that ULLs do not constitute a material portion of cable company networks unless it can be confirmed by evidence. CNOC submitted that to the extent that there is continued demand for ULLs in these exchanges, forbearance from the regulation of ULLs would impair competitive TSPs' capacity to offer competitive local services through the use of ULLs, contrary to subsection 34(3) of the Act.
32. CNOC submitted that in all 30 part (c) exchanges, use of ULLs was factored into the business local forbearance decisions. In CNOC's view, to the extent that there is continued demand for ULLs, the forbearance of business ULLs in these exchanges would impair competitive TSPs' capacity to offer competitive local services through the use of ULLs in these exchanges, contrary to subsection 34(3) of the Act. CNOC argued that Shaw's network in 24 of the 30 exchanges does not change the ULL demand conditions and that the competitive market for local voice services would be impaired post-forbearance. According to CNOC, to the extent that Shaw does not offer ULLs, competitor digital network (CDN)<sup>11</sup> services, or other substitutable services in business exchanges, its presence in those exchanges is not a relevant factor to consider with respect to the forbearance of TCI's ULL services. CNOC stated that

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<sup>11</sup> CDN Access: Provides a competitor who is a Canadian carrier or reseller duly registered with the Commission a digital network access (DNA) facility at DS-0 and DS-1 transmission speeds. These access facilities are available for the purpose of providing a competitor's end-user access facility, or a carrier access facility.

this same principle would apply in the six exchanges where TCI indicated that Shaw does not have business coverage.

33. CNOC was of the view that continued regulation of ULLs in TCI's exchanges until different ULL demand conditions are demonstrable will maintain the policy objectives set out in section 7 of the Act, in particular, the objectives listed under paragraphs 7(c) and 7(f).<sup>12</sup>

#### **Shaw**

34. Shaw took no position on the merits of the application; instead, Shaw provided clarification concerning its Shaw Go WiFi network. Shaw stated that this service complements, but does not replace, the network infrastructure that the company deploys to service its business customers (i.e. it is not on its own comparable to, or intended to replace, a dedicated facility). Shaw submitted that it does not use the Shaw Go WiFi network to extend services to business locations in the absence of a wireline access facility, and continues to rely on leased incumbent TSP access facilities where extending its wireline network is not feasible.
35. Shaw stated that the Shaw Go WiFi coverage maps submitted with TCI's application are not representative of Shaw's hybrid-fibre coaxial access network coverage and therefore the label "Shaw Business Network Coverage" is inaccurate. Shaw submitted that the Shaw Go WiFi access points shown on these maps comprise a mix of outside plant access points, premises served by Shaw's hybrid-fibre coaxial plant, and premises served using access facilities leased by Shaw from the incumbent TSP.
36. Shaw concluded its intervention by stating that it does not use ULLs to provide services to business customers in any of the exchanges listed in TCI's application.

#### **TCI's reply**

37. In reply to Allstream's request that forbearance from the regulation of ULLs not be granted until disaggregated wholesale HSA has been in service for at least two years, TCI argued that, in Telecom Decision 2016-246,<sup>13</sup> the Commission rejected Allstream's proposal to delay the phase-out of ULLs until disaggregated wholesale HSA was ready.
38. In reply to Allstream's suggestion that TCI should not receive forbearance from subsection 27(1) of the Act regarding just and reasonable rates, TCI stated that there is no need or justification to restrict the prices for ULLs under forbearance as a condition of forbearance; doing so would be contrary to the rationale for forbearance

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<sup>12</sup> CNOC was of the view that a decision by the Commission to not forbear from the regulation of ULLs will enhance the efficiency and competitiveness of markets for local voice services (paragraph 7(c) of the Act), and would result in regulation that is efficient and effective (paragraph 7(f) of the Act).

<sup>13</sup> See paragraph 31 of Telecom Decision 2016-246.



(i.e. that market forces will prevail to protect the interests of end-users). TCI also submitted that it intends to price its ULLs competitively post-forbearance.

39. In reply to CNOC's proposal that the Commission should apply a test that assesses whether forbearance of ULLs is likely to impair the establishment or continuance of a competitive market for residential and business local voice services in these exchanges, TCI argued that the Commission already considered the impact of ULL forbearance on the local retail marketplace; in Telecom Regulatory Policy 2015-326 the Commission stated that ULL forbearance would not result in a substantial lessening or prevention of local retail voice competition. TCI stated that, accordingly, CNOC's criteria for ULL forbearance has been met and its basis for claiming that ULL forbearance would be inconsistent with subsection 34(3) of the Act is not applicable.
40. In reply to Shaw, TCI stated that it included the Shaw Go WiFi maps only as an indication of the coverage of Shaw's underlying wireline network in business areas. TCI maintained that the coverage maps it submitted with its application remain a reasonably accurate, possibly understated, indication of Shaw's wireline presence in business areas. TCI stated that Shaw's use of leased services to reach some businesses or access points is not relevant to the forbearance from the regulation of ULLs. TCI submitted that its forbearance analytical framework considers where local voice services can be provided without the use of ULLs, not necessarily without the use of other leased access services.

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

### **Forbearance evaluation options**

41. The Act provides two ways for the Commission to forbear from regulating all or part of a telecommunications service. One approach is to conduct a policy analysis under subsection 34(1) of the Act, and the other is to assess, pursuant to subsection 34(2) of the Act, whether there is sufficient competition to protect the interests of users.<sup>14</sup> The Commission typically uses a market power test to determine whether the requirements under subsection 34(2) of the Act are met.<sup>15</sup> Since the Commission already applied a similar test of market power to ULLs as part of the Essentiality Test in Telecom Regulatory Policy 2015-326 and determined that withdrawal of the service would not result in a substantial lessening or prevention of competition, the

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<sup>14</sup> Subsection 34(2) of the Act states the following: Where the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users, the Commission shall make a decision to refrain, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to the service or class of services.

<sup>15</sup> The market power test (set out in Telecom Decision 94-19) consists of several evaluation criteria, including market share, supply and demand, barriers to entry, availability of substitutes, and technological factors.

Commission considers that it is not necessary to reapply a full market power test under subsection 34(2) of the Act. As such, the Commission will examine the forbearance request pursuant to subsection 34(1) of the Act.

### **Subsection 34(1) of the Act**

42. Subsection 34(1) of the Act states that the Commission may make a determination 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 in relation to a telecommunications service or class of services provided by a Canadian carrier, where the Commission finds as a question of fact that to refrain would be consistent with the Canadian telecommunications policy objectives. The policy objectives most relevant to TCI's application are those set out in paragraphs 7(c),<sup>16</sup> (f), and (g) of the Act.
43. ULLs enable competitors to offer wireline voice service and low-speed Internet service to end-users. The Commission is of the view that ULL forbearance would be consistent with paragraph 7(c) of the Act. Specifically, ILECs and wholesale customers may increasingly migrate from ULLs towards more advanced technologies for delivering voice and Internet services to end-users. This migration would have the effect of enhancing the efficiency and competitiveness of Canadian telecommunications and contributing to the provision of a world class communications system in Canada.
44. The Commission considers that forbearing from the regulation of ULLs would be consistent with the policy objective set out in paragraph 7(f) of the Act. In Telecom Regulatory Policy 2015-326, the Commission determined that the withdrawal of mandated access to ULLs would not likely result in a substantial lessening or prevention of competition in the markets for local retail wireline residential and business voice services, regardless of the exchange or the ILEC operating territory.<sup>17</sup> The Commission therefore considers that forbearance would foster increased reliance on market forces for the provision of upstream (wholesale) and downstream (retail) telecommunications services. Conversely, continuing to regulate a service that has little impact on competition would be an inefficient and ineffective application of regulation.
45. In addition, ULL forbearance could result in wholesale customers migrating from ULLs to more technologically advanced substitutes to provide retail voice service (e.g. wireless) and/or retail Internet service (e.g. wholesale HSA service) to end-users. Conversely, continuing to regulate ULLs may result in wholesale customers continuing to rely on traditional technology to provide voice and/or Internet services

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<sup>16</sup> The cited policy objective of the Act is to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications.

<sup>17</sup> See paragraph 185 of Telecom Regulatory Policy 2015-326.

to end-users, which, in the Commission's view, would be an inefficient and ineffective application of regulation.

46. The Commission considers that forbearing from the regulation of ULLs would be consistent with the policy objective set out in paragraph 7(g) of the Act. Specifically, the Commission considers that migrating away from ULLs could encourage competitors to develop alternative provisioning arrangements, thus stimulating research and development within the Canadian telecommunications industry and encouraging innovation in the provision of telecommunications services. As noted in Telecom Regulatory Policy 2015-326, a decision to no longer mandate the provision of ULLs could lead to a greater adoption of advanced or emerging services by consumers; for example, competitors that migrate their end-users from ULLs to their own access facilities or to services provisioned over wholesale HSA service would enable their end-users to access new content and applications that were previously inaccessible.<sup>18</sup>

### **Subsection 34(3) of the Act**

47. The Commission is also required to evaluate TCI's application pursuant to subsection 34(3) of the Act, which states that the Commission shall not make a determination to refrain under this section in relation to a telecommunications service or class of services if the Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.
48. Based on the evidence submitted in this proceeding, the Commission is of the view that forbearing from the regulation of ULLs in the TCI exchanges where local voice service forbearance decisions were based on the presence of cable company networks<sup>19</sup> does not pose a risk of impairing unduly the continuance of a competitive market for retail voice services. Given that cable companies do not use ULLs for a material portion of their access networks in these exchanges, forbearing from the regulation of ULLs in these exchanges will not be likely to impair unduly the continuance of a competitive market for retail voice services.
49. The Commission is also of the view that forbearing from the regulation of ULLs in TCI exchanges where local voice business service forbearance decisions were made on the basis of ULL availability will not be likely to impair unduly the continuance of a competitive market for retail voice services.
50. Market conditions have changed since the forbearance framework for local exchange services was established in Telecom Decision 2006-15; specifically, ULLs have declined in importance as a means of providing retail voice and Internet services.

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<sup>18</sup> See paragraph 188 of Telecom Regulatory Policy 2015-326.

<sup>19</sup> For example, the local voice residential forbearance decisions for the 30 part (c) TCI exchanges were based on the presence of cable company networks.

According to the Commission's 2017 *Communications Monitoring Report* (CMR), industry-wide revenues derived from the provision of ULLs declined by 17.5% from 2014 to 2016, and by 29.8% from 2012 to 2016. Based on the confidential record of this proceeding, the total number of ULLs in-service in the 34 exchanges where TCI has applied for forbearance represents a very low percentage of the addressable market that is served by TCI in these exchanges. The above evidence demonstrates that demand for ULLs is low and has been in decline over the past several years as customers and competitors increasingly migrate to wireless and broadband.

51. Additionally, the presence of a fixed-line, facilities-based competitor, particularly one relying on ULLs to offer retail services, is not as important as it was in 2006 in terms of providing pricing discipline to retail wireline services, due to the advancement of mobile wireless service. Retail wireless service is increasingly a substitute for wireline voice service. According to the 2017 CMR, wireless services accounted for the largest share of industry retail telecommunications revenues in 2016 (52%), whereas wireline voice services accounted for approximately 18%. In 2016, there were nearly 31,000,000 wireless subscriptions in Canada, wireless networks covered 99.4% of Canada, and wireless penetration was at 84.3%.
52. The Commission is also of the view that forbearing from the regulation of ULLs in the 30 part (c) TCI exchanges where local voice business service forbearance decisions were made on the basis of ULL availability will not be likely to impair unduly the continuance of a competitive market for retail Internet services.
53. Wholesale HSA service is a key substitute for ULLs for the provision of Internet service. The 2017 CMR states that industry-wide wholesale HSA revenues increased by 30.2% from 2014 to 2016, while subscriptions to wholesale HSA-enabled service increased by 28.2% during the same period. Likewise, according to the Commission's data, subscriptions to, and revenues from, TCI's wholesale HSA service also increased from 2014 to 2016.
54. The Commission is of the view that forbearing from regulating ULLs should not impact local retail voice forbearance decisions in exchanges where, to the extent that local retail voice forbearance has been granted, it was apparently solely granted on the basis of sufficient competition by a wireline competitor that does not lease ULLs i.e., in part (b) of TCI's proposed analytical framework. The Commission notes that the competitor presence test, as it currently exists,<sup>20</sup> has been met for local residential and business exchange service in all four exchanges, on the basis of the existence of sufficient competition provided by a wireline competitor (i.e. a cable company) that does not use ULLs.

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<sup>20</sup> On 26 June 2018, the Commission issued Telecom Notice of Consultation 2018-214 to review, among other things, the local forbearance regimes for residential and business services. Consequently, the future appropriateness and composition of the competitor presence test in relation to the local forbearance framework may change.

55. Further, the Commission is of the view that ULL forbearance should not affect local retail voice forbearance decisions in exchanges where local business forbearance decisions were, to varying degrees, predicated on the basis of ULL availability, i.e., in the 30 exchanges categorized in part (c) of TCI's proposed analytical framework. The expansion of competitive wireline networks since those forbearance decisions were made, combined with the increased availability of competitive alternatives at both the wholesale and retail levels, will be sufficient to mitigate against any negative local forbearance conditions resulting from potential changes to the availability of ULLs in those exchanges.
56. In its application, TCI stated that predictions of customers being required to change TSPs due to the price or availability of ULLs or wholesale alternatives should have no bearing on ULL forbearance. In Telecom Regulatory Policy 2015-326, the Commission acknowledged that certain subscribers who obtain their local services from competitors that use ULLs could be required to change local service providers in the event that the ILECs withdraw the provision of ULLs. However, the Commission also considered that in such circumstances, these subscribers would typically have access to several alternative service offerings (e.g. wireless).<sup>21</sup>
57. With respect to Shaw's Go WiFi service, the Commission recognizes that Shaw's Go WiFi network supplements, but is not a substitute for, the company's existing wireline access facilities which it uses to provide service to its business customers. However, Shaw's Go WiFi service demonstrates that there are different types of technologies that can be used to provide retail service. As well, forbearing from regulating ULLs could lead to the development of additional innovative technology platforms to provide voice and Internet service to end-users in the future, which would be consistent with the policy objective set out in paragraph 7(g) of the Act.

#### **Interventions from parties to the proceeding**

58. Regarding Allstream's discussion concerning the viability of disaggregated wholesale HSA, the Commission considers that the timeliness of the rollout of disaggregated wholesale HSA should not impact the broader substitutability of HSA services for ULLs. Aggregated wholesale HSA services are available in all 34 exchanges (from both TCI and cable companies) and any future migration towards a disaggregated wholesale HSA service by a wholesale customer would generally be seamless for residential end-users (assuming that the underlying carrier remained the same).
59. With respect to Allstream's request that forbearance of ULLs in an exchange not be granted until at least two years after the availability of, and finalization of permanent tariffed rates, terms, and conditions for, disaggregated wholesale HSA services within the exchange, the Commission notes that, in Telecom Decision 2016-246, it considered Allstream's request that ULLs should not be phased out until wholesale alternatives that are functionally equivalent to the ILECs' ULLs are available was

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<sup>21</sup> See paragraph 184 of Telecom Regulatory Policy 2015-326.

inconsistent with the Commission's finding in Telecom Regulatory Policy 2015-326. Specifically, ULLs failed to meet the competition component of the Essentiality Test, i.e., mandated access to ULLs was no longer necessary to ensure continuance of competition in the downstream market. Moreover, in Telecom Decision 2016-247, the Commission considered that even if demand for ULLs may be growing in a given exchange, the phasing out of mandated access to ULLs would be unlikely to negatively impact the downstream local wireline voice services market to a substantial degree.<sup>22</sup> Therefore, accepting Allstream's submission in this regard would be inconsistent with previous Commission determinations regarding ULLs.

60. Given that aggregated wholesale HSA is available in all 34 of TCI's exchanges, the Commission considers that there would be minimal lead time involved for wholesale customers to migrate over to HSA if ULLs were to be withdrawn from service, or if TCI were to significantly increase the price for its ULL service. However, the Commission is of the view that TCI should be required to provide at least six months' advance written notice to wholesale customers in the event that, post-forbearance, the company decides to withdraw ULLs from service from one or more of its exchanges. Such notification would give time for competitors to make alternative arrangements.
61. Regarding Allstream's proposal to set a price ceiling for ULLs, the Commission considers that this would run counter to the policy objective set out in paragraph 7(f) of the Act, which is to foster increased reliance on market forces, and to subparagraph 1(a)(i) of the Policy Direction,<sup>23</sup> which directs the Commission to rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives.
62. With respect to concerns raised by Allstream and CNOC that TCI may raise the rate for ULLs or change the terms and conditions of the services post-forbearance, TCI has indicated that it plans to price ULLs competitively post-forbearance. However, the Commission acknowledges that, post-forbearance, TCI could increase the price of its ULL service, could change the terms and conditions of the service, and/or could withdraw the service altogether.
63. While these potential outcomes represent risks associated with granting forbearance of TCI's ULL service, alternatives to ULLs (including aggregated wholesale HSA) exist to which wholesale customers can migrate to provide service to end-users, pending the implementation of disaggregated wholesale HSA. Notwithstanding those alternatives, the Commission considers it appropriate to retain its powers under section 24 and subsections 27(2) and 27(4) of the Act in regard to the provision of TCI's ULL service, in order to address any potential future complaints regarding the service. In doing so, the Commission could apply conditions of service or address specific complaints of undue preference and unjust discrimination, as necessary.

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<sup>22</sup> See paragraph 29 of Telecom Decision 2016-247.

<sup>23</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, Order in Council P.C. 2006-1534, 14 December 2006

64. The Commission reiterates that it has determined, and reaffirmed in previous decisions,<sup>24</sup> that ULLs are a non-essential service that the ILECs should no longer be required to provision on a mandated basis. These determinations were made based on a substantial amount of evidence and arguments concerning, among other things, the availability of substitutes for ULLs, including wholesale HSA services. ULL customers were given three years to make alternative arrangements, knowing that ULLs would no longer be mandated and could be either withdrawn as an offering or forborne from regulation at the end of the three-year period.

## Conclusion

65. In light of the above, the Commission concludes that TCI's ULL service meets the criteria for forbearance under subsection 34(1) of the Act such that to forbear from regulating ULLs in the 34 TCI exchanges where demand for the service exists would be consistent with the policy objectives set out in paragraphs 7(c), (f), and (g) of the Act.

66. The Commission also concludes that the exception set out in subsection 34(3) of the Act is not met. Specifically, the Commission does not find as a question of fact that to refrain from regulating ULLs in the 34 exchanges in question would be likely to impair unduly the continuance of a competitive market for retail voice or Internet services in these exchanges.

67. Accordingly, the Commission **approves** TCI's forbearance application. Specifically, the Commission declares that, **effective the date of this decision**, sections 25, 29, and 31, and subsections 27(1), 27(5), and 27(6) of the Act do not apply with respect to the 34 exchanges for which TCI has not already obtained forbearance of its ULLs.

68. The Commission retains its powers to impose conditions on a service pursuant to section 24 of the Act, as well as its powers to protect against undue preference and unjust discrimination pursuant to subsections 27(2) and 27(4) of the Act. These provisions will give the Commission the flexibility to address any future complaints.

69. Pursuant to section 24 of the Act, the Commission requires TCI to provide at least six months' written notice to wholesale customers in the event that, post-forbearance, the company decides to withdraw ULLs from service in any of its exchanges.

## Policy Direction

70. The Commission is required, in exercising its powers and performing its duties under the Act, to implement the policy objectives set out in section 7 of the Act, in accordance with the Policy Direction. The Commission considers that the determinations set out in this decision are in accordance with the Policy Direction for the reasons set out below.

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<sup>24</sup> See Telecom Decisions 2016-246 and 2016-247.

71. The issues under consideration in this proceeding relate to the provision of a service and the associated impact on competition in the downstream market of retail local exchange services and retail Internet services, including whether the Commission should forbear from the regulation of the service. Therefore, subparagraphs 1(a)(i) and (ii) and subparagraphs 1(b)(i), (ii), and (iv) of the Policy Direction apply to the Commission's determinations in this proceeding.
72. In compliance with subparagraph 1(b)(i) of the Policy Direction, the Commission considers that the policy objectives set out in paragraphs 7(c), (f), and (g) of the Act are advanced by the determinations set out in this decision.
73. In compliance with subparagraphs 1(a)(i), 1(a)(ii), and 1(b)(ii) of the Policy Direction, the Commission considers that the regulatory measures being taken are efficient and proportionate to their purpose, minimally interfere with market forces, and neither deter economically efficient competitive entry into the market nor promote economically inefficient entry. The Commission considers that forbearing from the regulation of ULLs promotes reliance on market forces for the provision of retail voice and Internet services by TCI and its wholesale customers to end-users.
74. In compliance with subparagraph 1(b)(iv) of the Policy Direction, the Commission considers that the regulatory measures being taken ensure the technological and competitive neutrality of network interconnection arrangements or regimes for access to networks, to the greatest extent possible, to enable competition from new technologies and to not artificially favour either Canadian carriers or resellers.

Secretary General

### **Related documents**

- *Review of the price cap and local forbearance regimes*, Telecom Notice of Consultation CRTC 2018-214, 26 June 2018; as amended by Telecom Notice of Consultation CRTC 2018-214-1, 31 July 2018
- *Managed Network Systems, Inc. – Application to review and vary certain determinations set out in Telecom Regulatory Policy 2015-326 concerning the phase-out of mandated access to unbundled local loops*, Telecom Decision CRTC 2016-247, 29 June 2016
- *Allstream Inc. – Application to review and vary certain determinations set out in Telecom Regulatory Policy 2015-326 concerning the phase-out of mandated access to unbundled local loops*, Telecom Decision CRTC 2016-246, 29 June 2016
- *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



- *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006; as amended by Order in Council P.C. 2007-532, 4 April 2007
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997
- *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994

## **Appendix to Telecom Decision CRTC 2018-360**

### **List of exchanges based on TCI's proposed analytical framework**

#### **Part (a) (0 exchanges)**

#### **Part (b) (4 exchanges)**

Aldergrove, BC  
Cloverdale, BC  
North Kamloops, BC  
Whistler, BC

#### **Part (c) (30 exchanges)<sup>25</sup>**

Abbotsford, BC  
Baie-Comeau, QC  
Calgary, AB  
Chilliwack, BC  
Edmonton, AB  
Fort McMurray, AB  
Grande-Prairie, AB  
Hauterive, QC  
Kelowna, BC  
Langley, BC  
Lethbridge, AB  
Medicine Hat, AB  
Nanaimo, BC  
New Westminster, BC  
Newton, BC  
North Vancouver, BC  
Penticton, BC  
Port Coquitlam, BC  
Port Moody, BC  
Prince George, BC  
Red Deer, AB

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<sup>25</sup> Cogeco is the cable company in Baie-Comeau, Hauterive, Rimouski, and Saint-Georges-de-Beauce. CoopTel/Câble-Axion is the cable company in Sainte-Marie-de-Beauce. Eastlink is the cable company in Grande Prairie; Shaw is the cable company in the remaining 24 part (c) exchanges and in the four part (b) exchanges.

Richmond, BC

Rimouski, QC

Saint-Georges-de-Beauce, QC

Sainte-Marie-de-Beauce, QC

South Kamloops, BC

Vancouver, BC

Vernon, BC

Victoria, BC

Whalley, BC