



Telecom Decision CRTC 2018-82

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Ottawa, 5 March 2018

Public record: 8663-J64-201611913

Iristel Inc. – Application regarding the implementation of local competition in the exchange of Aylmer, Ontario

*The Commission finds that Iristel Inc.'s (Iristel) request for local competition in the Aylmer, Ontario, exchange is bona fide. The Commission therefore **directs** Eastlink to file a local competition implementation plan with the Commission within **30 days** following a confirmation by Iristel of its intention to compete in the Aylmer exchange as a Type I competitive local exchange carrier.*

The Commission's determinations in this decision remove a barrier to the introduction of local competition in the Aylmer exchange.

Application

1. The Commission received an application from Iristel Inc. (Iristel), dated 17 November 2016, in which the company requested that the Commission order Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink), to (i) implement local competition in the Aylmer, Ontario, exchange; and (ii) interconnect with Iristel via a shared-cost facility and carry out all other activities necessary to enable Iristel to compete in that exchange.
2. Iristel submitted that it had made a bona fide request for the implementation of local competition in the Aylmer exchange because it is a facilities-based provider in other parts of Canada and plans to deploy transmission facilities in Aylmer. It also submitted that it intends to vigorously compete for the business of end-users in Aylmer as a facilities-based, Type I competitive local exchange carrier (CLEC)¹ and a voice over Internet protocol (VoIP) service provider.
3. The Commission received interventions regarding Iristel's application from Eastlink, the Independent Telecommunications Providers Association, and TELUS Communications Inc. (TCI).²

¹ A Type I CLEC, also known as a full CLEC, is a Canadian carrier that provides local exchange services and fulfills all the local competition entry obligations and requirements defined in Telecom Decision 97-8 and subsequent decisions that modified those requirements.

² Effective 1 October 2017, TELUS Communications Company's (TCC) assets were legally transferred to TCI and TCC ceased to exist. For ease of reference, "TCI" is used in this decision.

Background

4. In December 2015, Iristel asked Eastlink to implement local competition in the Aylmer exchange, which is in Amtelecom Telco GP Inc.'s (Amtelecom) small incumbent local exchange carrier (ILEC) operating territory.³
5. Eastlink, however, rejected Iristel's request in February 2016. In Eastlink's view, Iristel's request was not bona fide.⁴ Eastlink argued that it had reached this conclusion because Iristel did not have infrastructure in Aylmer, did not plan to establish any, and did not intend to serve the exchange as a facilities-based provider. Eastlink also expressed concern that Iristel's high network access service (NAS)⁵ forecast was not reasonable and may be related to Iristel's planned wholesale business of selling direct inward dialing (DID)⁶ telephone numbers outside the exchange.
6. In a letter dated 9 September 2016, Iristel requested that the Commission resolve this dispute.⁷ By letter dated 31 October 2016, Commission staff closed the file associated with Iristel's request because it did not consider that the dispute should be addressed through informal means, but rather through a Part 1 application.

Issues

7. The Commission has identified the following issues to be addressed in this decision:
 - Are there any regulatory issues with the way Iristel plans to offer local exchange services in the Aylmer exchange, such that its request would not be considered bona fide?
 - Are there any regulatory issues with Iristel's business plan and projections regarding telephone numbers, such that its request would not be considered bona fide?

³ Amtelecom is owned by Bragg Communications Incorporated.

⁴ Pursuant to Telecom Decision 2006-14, a small ILEC is required to file proposed tariffs for competitor services only if it receives a bona fide request from a competitor.

⁵ NAS is a wireline connection from a customer to the public switched telephone network (PSTN) that includes (i) a telephone number, (ii) a connection to the PSTN, and (iii) access from the customer's location to the service provider's central office.

⁶ This service enables direct inward dialing to an extension line or local of a private branch exchange (PBX) system from a central office line or Centrex voice local.

⁷ See file number [8663-J64-201610121](#).

Are there any regulatory issues with the way Iristel plans to offer local exchange services in the Aylmer exchange, such that its request would not be considered bona fide?

Positions of parties

8. Iristel submitted that it is registered with the Commission as a Type I CLEC based on its extensive ownership and operation of transmission facilities throughout Canada. With respect to the Aylmer exchange, Iristel indicated that it intends to construct fibre transmission facilities connecting its switch to Eastlink's local and tandem switches. This, according to Iristel, would be a joint-build facility with Eastlink based on the CRTC Interconnection Steering Committee's (CISC) procedures for joint builds.
9. Iristel submitted that the definition of "transmission facility" set out in subsection 2(1) of the *Telecommunications Act* (the Act) is quite clear that such a facility includes any wire or cable used for the transmission of intelligence between network termination points. Iristel submitted that, therefore, its joint-build facility in the form of fibre connecting its switch with Eastlink's local and tandem switches would qualify as a transmission facility.
10. Iristel emphasized that it would not only own the fibre, but it would also be responsible for the operation of the fibre. This, according to Iristel, proves that it is committed to serving the consumers of Aylmer as a facilities-based provider.
11. Eastlink submitted that Iristel's request is not bona fide because Iristel is not a facilities-based provider. In particular, it argued that running a few metres of fibre does not make Iristel a facilities-based provider under the Act or the Commission's regulatory regime for local competition, and that Iristel's plan to operate as a nomadic VoIP service provider⁸ does not qualify it as a facilities-based local exchange carrier (LEC) eligible for local competition.
12. Eastlink interpreted a bona fide request to be one presented by a party that is in the process of building infrastructure within an exchange, or that has existing infrastructure in an exchange. Eastlink argued that it is critical that the benefits of facilities-based interconnection are reserved for those deploying advanced and competitive infrastructure within an exchange; otherwise, there would be no incentive for such deployment. Eastlink indicated that different treatment of non-facilities-based and facilities-based providers is important in ensuring that Canadian service providers are incentivized to build world-class networks, expand their networks in rural areas, and adapt technologies to the changing needs of Canadians.

⁸ Nomadic VoIP service is provided over the Internet and enables callers to access telephone services using any high-speed Internet connection from any location.

13. Eastlink submitted that it would be inappropriate and inconsistent with the Commission's policies on local competition for it to submit a local competition implementation plan⁹ for an over-the-top nomadic VoIP service provider like Iristel. Eastlink also expressed concern about the manner in which Iristel planned to provide 9-1-1 service – that is, as a nomadic VoIP service provider rather than as a Type I CLEC.
14. Eastlink further submitted that the Commission should consider whether the facilities-based local competition framework established in Telecom Regulatory Policy 2011-291 is intended to enable nomadic VoIP service providers to initiate the implementation of local competition in high-cost serving area exchanges where no LEC has built or plans to build a competitive network.
15. TCI supported Iristel's application, conditional on the Commission's acceptance of Iristel as an independent facilities-based telecommunications service provider (TSP) that can be assessed to determine whether there are competitors present in a local exchange for the purpose of the local forbearance test.
16. TCI submitted that Iristel may meet the criteria for being a local competitor, but it would not be considered a facilities-based, fixed-line TSP in the context of a local forbearance application. TCI therefore requested that the Commission reconsider its conclusion in Telecom Decision 2013-290 and accept the presence of access-independent VoIP carriers in the local forbearance test prospectively.
17. Iristel stated that the Commission has approved the VoIP CLEC operating model and that there is no requirement for it to offer its services over the public switched telephone network (PSTN) if it prefers to do so via an Internet Protocol application. Iristel further stated that its choice to use VoIP technology does not change the fact that it is a Type I CLEC. According to Iristel, this is because it will provide its own switching facilities and will interconnect directly with Eastlink instead of relying on the facilities of a third-party LEC for that purpose.
18. Iristel further submitted that it did not object to TCI's proposed condition and that it is more than ready to compete in Aylmer, as well as other exchanges across Canada, whether they are subject to forbearance or not.

Commission's analysis and determinations

19. In Telecom Decision 2006-14, the Commission set out the framework for local competition in the small ILECs' operating territories. It permitted competitive entry in these territories by allowing the resale of the small ILECs' local services. However, the Commission expressed its view that the full benefits of competition could only be

⁹ Local competition implementation plans include details such as when tariffs will be filed; the nature and cost basis of those tariffs; how customer transfer procedures will be managed; the timing of the implementation of local competitor services; the start-up costs to implement local competition, including local number portability, if appropriate, and how those costs will be recovered; and any other implementation issues that may be unique to the small ILEC.

realized with some form of facilities-based competition. In consideration of the small ILECs' limited resources, and given that competitive entry was not expected in every small ILEC operating territory, the Commission concluded that a small ILEC would be required to file proposed tariffs for competitor services only if it received a bona fide request from a competitor. The Commission directed each small ILEC to file an implementation plan with the Commission within 30 days following a formal signed expression of interest from a LEC or a carrier requesting to use competitor services within a small ILEC's operating territory.

20. What is considered a bona fide request was not explicitly defined in Telecom Decision 2006-14. In the Commission's view, a bona fide request is a genuine or good faith request to implement a certain degree of facilities-based local competition in a small ILEC's operating territory. While local competition implementation in the small ILECs' operating territories has, to date, been in response to requests from cable operators or other carriers with more facilities in the exchanges in question than Iristel intends to build, nothing prevents the Commission from applying a broader interpretation of the framework to provide the benefits of local competition to subscribers in the small ILECs' operating territories.
21. Subsection 2(1) of the Act defines "telecommunications facility" as any facility, apparatus, or other thing that is used or is capable of being used for telecommunications or for any operation directly connected with telecommunications, and includes a transmission facility. The Act defines "transmission facility" as any wire, cable, radio, optical, or other electromagnetic system, or any similar technical system, for the transmission of intelligence between network termination points, but does not include any exempt transmission apparatus as defined in subsection 2(1).
22. The Commission considers that Iristel's specific plan to deploy fibre connecting its switch to Eastlink's local and tandem switches at the mutually agreed point meets the definition of a transmission facility. This fibre would therefore also be considered a telecommunications facility under the Act, since the definition of a telecommunications facility includes a transmission facility. Iristel's and Eastlink's switches would be considered network termination points, and the fibre would be considered a wire or cable, used for the transmission of intelligence, that is not an exempt transmission apparatus. Therefore, it is reasonable for the Commission to conclude that Iristel would be implementing telecommunications facilities, as defined in subsection 2(1) of the Act.
23. Further, the CISC Network Working Group's *Consensus Report on Joint Build Facility*, which was approved by the Commission, affirms that facilities that are built between one LEC's point of interconnection and the mutually agreed point are considered to be transmission facilities. As long as Iristel intends to enter Aylmer as a CLEC, then Eastlink has the obligation to interconnect with Iristel via a joint-build facility.

24. In addition, Iristel would be considered a Type I CLEC, or a facilities-based provider, in Aylmer, and would therefore be expected to fulfill the Commission's conditions for Type I CLEC entry into that exchange.
25. With regard to Eastlink's submission about whether it should be required to file a local competition implementation plan for a nomadic VoIP service provider, the Commission notes that in Telecom Decision 2007-109, it determined that aspects of the VoIP regulatory framework for large ILECs would apply to the small ILECs. The key element of that decision, as it relates to the current proceeding, is the Commission's direction for each small ILEC to file a local competition implementation plan with the Commission within 30 days following a formal signed expression of interest from a LEC or a carrier requesting to use competitor services within the small ILEC's operating territory for the purpose of providing VoIP services.
26. The Commission considers that this direction clearly indicates that the small ILEC must file an implementation plan for local competition when requested by a VoIP service provider that is also a LEC or a carrier. As stated above, Iristel would be considered a Type I CLEC in Aylmer as long as it fulfills the Commission's conditions for Type I CLEC status.
27. In light of the above, the Commission finds that there are no regulatory issues with the way Iristel plans to offer local exchange services in the Aylmer exchange, such that its request would not be considered bona fide.

Are there any regulatory issues with Iristel's business plan and projections regarding telephone numbers, such that its request would not be considered bona fide?

Positions of parties

28. Iristel submitted that its main intent is to vigorously compete for the business of end-users in Aylmer, and that it is not seeking to enter Aylmer primarily for access to DIDs to sell in the wholesale market, as Eastlink had suggested.
29. Iristel also submitted that it would not make sense to enter Aylmer as a facilities-based provider if its primary purpose was to sell DIDs on a wholesale basis. It submitted that there would be significant costs associated with the joint build to interconnect to Eastlink's network, and that there is simply no business case for Iristel to proceed as Eastlink had alleged.
30. Iristel further submitted that NAS forecasts are becoming a misleading indicator of the number of subscribers that a CLEC hopes to attract, since there are increasingly advanced Internet of Things (IoT) technologies being deployed in the market that enable a wider range of household devices to connect to the Internet via telephone numbers.

31. Eastlink submitted that there is no requirement to implement local competition simply to enable non-facilities-based service providers to sell local DIDs outside an exchange on a wholesale basis. It submitted that this approach would be outside the regulatory framework for local competition, which aims to promote facilities-based competition within each Canadian exchange; therefore, Iristel's request is not bona fide.
32. Eastlink and TCI noted that a Part 1 application filed by Rogers Communications Canada Inc. (RCCI) regarding traffic stimulation,¹⁰ and Iristel's international marketing of telephone numbers from Canadian high-cost serving areas, raised additional concerns about Iristel's intention with respect to the Aylmer exchange. Eastlink submitted that this is because Aylmer's direct connection rates are also higher than the national average given that it is in a high-cost serving area exchange.
33. In addition, TCI expressed concern that Iristel's entry into Aylmer was driven, at least in part, by the financial opportunities presented by traffic stimulation. However, it submitted that it would not address that topic as part of its intervention since purported traffic stimulation on the part of Iristel was the subject of a separate Part 1 application.
34. Eastlink submitted that telephone numbers are not required to connect end-user devices to the Internet and that relying on telephone numbers for the billions of expected global IoT connections would be economically inefficient and would create extreme number resource constraints. Eastlink submitted that it is therefore not credible that Iristel would have such high demand for IoT connections in Aylmer.
35. Iristel replied that it did not have a forecast of the number of customers using local service that it expected to be physically located outside the Aylmer exchange. The company submitted that it would be impossible for it to develop such a forecast since VoIP numbers can be used anywhere, and end-users may travel within and outside the Aylmer exchange.
36. However, Iristel indicated that it is incredibly optimistic about the future of the IoT market and predicted significant growth in this area in the coming years. Iristel submitted that, based on its experience in other exchanges in Canada, its forecasts were reasonable, and rejected allegations by Eastlink and TCI that its interest in Aylmer is driven by a desire to engage in traffic stimulation.

Commission's analysis and determinations

37. The Commission considers that as long as Iristel respects the rules related to the use and assignment of telephone numbers, such as the number format and dialing protocol included in the Canadian Numbering Administration Consortium's Canadian Numbering Plan and Dialling Plan, it would not be in contravention of any rules regarding how it uses DIDs. For example, there are no rules that prevent a LEC from

¹⁰ Traffic stimulation is a practice by which a telephone carrier inflates, or allows to be inflated, the volume or minutes of calls beyond an anticipated threshold.

reselling DID numbers to other TSPs or from providing local telephone numbers to people or businesses located outside an exchange. In this case, since Iristel has not yet entered the Aylmer exchange as a CLEC, it cannot be considered to be in contravention of any rules in this exchange.

38. The Commission notes that Iristel is planning to make a financial investment in Aylmer by deploying fibre facilities. This would be an indicator that Iristel's request is bona fide for the purpose of implementing facilities-based local competition.
39. With regard to traffic stimulation, such practices may give certain parties an undue preference and subject others to a corresponding undue or unreasonable disadvantage, in contravention of subsection 27(2) of the Act.
40. The Commission notes that the local network interconnection regime has checks and balances in place to correct for significantly imbalanced traffic. For example, in Telecom Decision 2010-787, the Commission implemented a revised compensation regime in the operating territories of Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies) whereby compensation that is payable due to a traffic imbalance is cumulatively reduced in situations where there is a high level of traffic imbalance between LECs (the revised compensation regime).
41. In Telecom Decision 2014-60, the Commission determined that it would be appropriate to extend the revised compensation regime to the operating territories of TCI. In that same decision, the Commission also noted that any LEC operating in MTS Inc.'s ILEC operating territory could also file a tariff application seeking the implementation of the revised compensation regime in that territory.
42. The Commission considers that should it receive evidence of traffic imbalance issues in Amtelecom's operating territory that are similar to those that resulted in Telecom Decision 2010-787, it has the option to initiate a proceeding to examine whether the type of revised compensation regime established in that decision should also apply in Amtelecom's operating territory.
43. While no equivalent mechanism currently exists within the toll termination regime, the Commission notes that in Telecom Decision 2017-456, it found that Iris Technologies Inc. and Iristel, by engaging in regulatory arbitrage activities, had given an undue preference to themselves and to several other entities, and had subjected RCCI to a corresponding undue disadvantage. As a result, the Commission directed Iris Technologies Inc. and Iristel, and any affiliates, to terminate and not re-enter into certain types of agreements, and to file a report with the Commission confirming compliance with this directive.
44. The Commission considers that its determinations in that decision have sent a clear message to Iristel and the industry regarding the use of traffic stimulation practices, and that it would be premature to assess the specific concerns raised in the current case given that the company's local services are not yet available in Amtelecom's operating territory.

45. Accordingly, the Commission finds that there are no current regulatory issues with Iristel's business plan and projections regarding telephone numbers, such that its request would not be considered bona fide.

Conclusion

46. In light of the above, the Commission finds that there are no regulatory issues indicating that Iristel's request for local competition in the Aylmer exchange is not bona fide. In the Commission's view, it is a genuine or good faith request for facilities-based local competition in Amtelecom's operating territory.

47. However, given the time that has passed since the original dispute, it would be appropriate for Iristel to first confirm that it still intends to compete in the Aylmer exchange as a Type I CLEC.

48. Accordingly, the Commission **directs**

- Iristel to confirm with Eastlink and the Commission, by **15 March 2018**, its intention to compete in the Aylmer exchange as a Type I CLEC; and
- Eastlink to file a local competition implementation plan with the Commission within **30 days** following such confirmation by Iristel.

49. The Commission notes that it intends to take action if there is evidence that parties are engaging in regulatory arbitrage activities (such as traffic stimulation) in contravention of subsection 27(2) of the Act.

Other matter

50. In its interventions, TCI requested that the Commission reconsider its conclusion in Telecom Decision 2013-290 and accept the presence of access-independent VoIP carriers in the local forbearance test prospectively.

51. The Commission considers that the current proceeding is not the appropriate forum to address this matter. The Commission notes that it indicated in its *Three-Year Plan 2017-2020* that it intends to initiate a proceeding to review its policies regarding the price cap and local forbearance regimes.

Secretary General

Related documents

- *Rogers Communications Canada Inc. – Allegation of traffic stimulation by Iris Technologies Inc. and Iristel Inc.*, Telecom Decision CRTC 2017-456, 20 December 2017
- *Compensation for traffic termination when traffic volume is unbalanced*, Telecom Decision CRTC 2014-60, 14 February 2014

- *TELUS Communications Company – Application to review and vary Telecom Decision 2012-507 regarding forbearance from the regulation of business local exchange services*, Telecom Decision CRTC 2013-290, 14 June 2013
- *Obligation to serve and other matters*, Telecom Regulatory Policy CRTC 2011-291, 3 May 2011; as amended by Telecom Regulatory Policy CRTC 2011-291-1, 12 May 2011
- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Proposed revision to the treatment of imbalance traffic compensation*, Telecom Decision CRTC 2010-787, 25 October 2010; as amended by Telecom Decision CRTC 2010-787-1, 16 August 2011
- *Small incumbent local exchange carriers’ show cause – Follow-up to Telecom Decision 2006-14*, Telecom Decision CRTC 2007-109, 21 November 2007
- *Revised regulatory framework for the small incumbent local exchange carriers*, Telecom Decision CRTC 2006-14, 29 March 2006
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997