



Telecom Decision CRTC 2019-131

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Ottawa, 7 May 2019

Public record: 8622-E25-201802885

Execulink Telecom Inc. – Application for relief regarding the voice services provided by 676766 Ontario Limited operating as KWIC Internet

*The Commission **denies** Execulink Telecom Inc.’s application for relief. In addition, the Commission clarifies that Telecom Decision 2005-28 does not preclude resellers with existing local exchange customers that become competitive local exchange carriers (CLECs) by owning or operating transmission facilities, from continuing to provide local exchange services to existing customers and offering such services to new customers. However, the resellers must be diligent in taking the necessary steps to become registered CLECs.*

Application

1. The Commission received an application from Execulink Telecom Inc. (Execulink), dated 1 May 2018, in which the company requested that the Commission issue an order requiring 676766 Ontario Limited operating as KWIC Internet (KWIC), a reseller and a proposed Type IV competitive local exchange carrier (CLEC),¹ to do the following:
 - suspend new and pending voice service connections for KWIC’s customers until KWIC is a fully registered Type IV CLEC;
 - notify KWIC’s current voice service customers, in writing, that KWIC is operating as an unregistered CLEC and that, as such, KWIC is not a lawful voice service provider in Canada;
 - release KWIC’s voice service customers from any and all contractual obligations, and declare the contracts void; and
 - allow KWIC’s voice service customers to switch to a registered local exchange carrier with no penalty.
2. Execulink stated that it became aware that KWIC was currently offering voice over Internet Protocol (VoIP) services, including 9-1-1 and long distance services, in the

¹ A Type IV CLEC is a non-dominant Canadian carrier that offers local voice over Internet Protocol (VoIP) services through a resale arrangement with another telecommunications service provider (third party) and that has fewer than 10,000 local exchange service subscribers.

exchange of Delhi, Ontario. Execulink noted that KWIC is registered with the Commission as a non-dominant carrier and a proposed CLEC, but not as a CLEC. Execulink argued that KWIC must operate as a registered Type IV CLEC.

3. Execulink submitted that it attempted to remedy the situation informally by requesting that KWIC suspend its marketing of and cease offering voice services, specifically in the Delhi exchange.

Issues

4. The Commission has identified the following issues to be addressed in this decision:
 - Can a reseller that becomes a CLEC by owning or operating transmission facilities continue providing local exchange services to existing customers and offer local exchange services to new customers pending its CLEC registration?
 - Has KWIC been diligent in meeting the CLEC registration requirements?
 - Can Telecom Decision 2008-106 be used as a precedent in deciding on Execulink's application?

Can a reseller that becomes a CLEC by owning or operating transmission facilities continue providing local exchange services to existing customers and offer local exchange services to new customers pending its CLEC registration?

Positions of parties

5. Execulink submitted that the Commission determined in Telecom Decision 2005-28 that (i) VoIP services fall under the regulatory framework governing local competition set out in Telecom Decision 97-8; (ii) it would not be appropriate to modify the rights and obligations of Canadian carriers providing local exchange services set out in Telecom Decision 97-8, in respect of the provision of local VoIP services; and (iii) non-dominant Canadian carriers must fulfill the CLEC requirements and conform to the market entry procedures set out in Telecom Decision 97-8.
6. Execulink argued that by continuing to offer services while unregistered, KWIC is showing blatant disregard for the long-standing regulatory framework of local exchange services in Canada, and that new entrants into the competitive local exchange service market cannot be treated differently than companies that currently operate within the established framework. Execulink added that if the Commission knowingly allows KWIC to continue operating as an unregistered CLEC, the Commission would be rejecting the concept of regulatory symmetry.
7. KWIC replied that Execulink's application is without merit and requested that the Commission deny the application.

8. KWIC stated that it is not ignoring the Commission's regulatory framework regarding registration, but that the transition from reseller to CLEC requires the completion of steps that take time and effort, particularly with respect to Master Agreements for Local Interconnection (MALIs).

Commission's analysis and determinations

9. In Telecom Decision 2005-28, the Commission found that (i) local VoIP services were to be regulated as local exchange services and were therefore subject to the regulatory framework established in Telecom Decision 97-8, (ii) it would not be appropriate to modify the rights and obligations of Canadian carriers in respect of the provision of local VoIP services, and (iii) in order to provide local exchange services in Canada, non-dominant Canadian carriers must fulfill the requirements of a CLEC and conform to the entry procedures set out in Telecom Decision 97-8.
10. While non-dominant carriers that wish to provide local exchange services must fulfill the requirements of a CLEC before providing services, there is a transition period between the time a reseller with existing customers registers as a proposed CLEC and the time when it achieves full CLEC status (hereafter, the transition period). In Telecom Decision 2005-28, the Commission did not explicitly address situations in which resellers with existing local exchange service customers become non-dominant carriers by acquiring transmission facilities.
11. The Commission considers that it did not intend, in that decision, to discourage resellers with existing local exchange service customers from owning or operating transmission facilities by forcing (i) those resellers to give up their customer base and stop offering services, and (ii) customers to be migrated to another carrier during the transition period.
12. Such an intention would be contrary to some of the telecommunications policy objectives set out in the *Telecommunications Act*, such as in paragraphs 7(b), (c), (f), and (h).² In addition, such an intention would be contrary to the policy objectives set out in subparagraphs 1(a)(i) and 1(a)(ii)³ of the Policy Direction.⁴
13. Accordingly, the Commission clarifies that its regulatory framework does not preclude a reseller with existing local exchange service customers, that becomes a CLEC by owning or operating transmission facilities, from continuing to provide local exchange services to existing customers and offering such services to new

² The cited policy objectives are 7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; 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(h) to respond to the economic and social requirements of users of telecommunications services.

³ These objectives are that the Commission should (i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives; and (ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.

⁴ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, Order in Council P.C. 2006-1534, 14 December 2006

customers from the time when the company registers as a proposed CLEC to the time when it achieves full CLEC status.

14. However, in the interest of regulatory symmetry, the Commission also clarifies that the transition period allowance applies only to entities with existing local exchange service customers that act diligently in meeting the requirements to become registered CLECs in a timely manner.

Has KWIC been diligent in meeting the CLEC registration requirements?

Positions of parties

15. KWIC submitted that it began offering voice services as a reseller, in compliance with the Commission's regulations, and that it then began construction of its fibre network. KWIC indicated that when it learned that, as a result of using fibre facilities to provide services, it was no longer deemed a reseller and became a CLEC, it immediately took steps to come into full compliance with the Commission's regulations.
16. KWIC noted that it registered with the Commission as a non-dominant carrier, applied for and obtained a Basic International Telecommunications Services licence, and applied for proposed CLEC status. KWIC submitted that it was in the process of completing the list of obligations for Type IV CLEC status.

Commission's analysis and determinations

17. When Execulink filed its application, KWIC was registered as a reseller, a non-dominant carrier, and a proposed CLEC. KWIC is therefore currently on the Commission's list of proposed CLECs and is well on its way to fulfilling the various obligations for full Type IV CLEC status.
18. KWIC filed its CLEC Access Services Tariff in May 2018, which the Commission approved on an interim and final basis in Telecom Orders 2018-203 and 2018-225, respectively. In addition, KWIC (i) has completed most of its other CLEC obligations, including registering as a proposed CLEC to provide service in Delhi, Ontario and other exchanges, and (ii) is close to completing its obligation to file MALIs in all the exchanges in which it proposes to operate.
19. Accordingly, the Commission considers that KWIC is taking its obligations to become a Type IV CLEC seriously.
20. In light of the above, the Commission determines that KWIC has been diligent in meeting the CLEC registration requirements. If, however, KWIC were to disengage from the CLEC registration process, the Commission may pursue enforcement measures that could include the imposition of administrative monetary penalties.

Can Telecom Decision 2008-106 be used as a precedent in deciding on Execulink's application?

Positions of parties

21. Execulink submitted that in Telecom Decision 2008-106, the Commission directed a cable operator, which was operating outside the boundaries of the CLEC framework, to immediately cease offering voice services in the exchange in question and to reconnect customers to their previous service provider. Execulink indicated that that decision serves as a precedent for the measures it requested to be taken in the current application.

Commission's analysis and determinations

22. In Telecom Decision 2008-106, the Commission determined that Bluewater TV Cable Ltd. (Bluewater), a cable operator, was providing unauthorized local exchange services to customers in Tuckersmith Communications Co-operative Ltd.'s (Tuckersmith) operating territory. The Commission directed Bluewater to immediately terminate this practice and to ensure that affected customers were reconnected to Tuckersmith.
23. Bluewater had not registered as a proposed CLEC in the Bayfield, Ontario, exchange prior to the issuance of Telecom Decision 2008-106, nor was it diligent in filing a proposed MALI for approval for that exchange. In contrast, in the present case, KWIC began offering local exchange services as a reseller, in compliance with the Commission's regulations, registered as a non-dominant Canadian carrier and proposed CLEC in the exchanges where it intends to offer service, and is working towards meeting the requirements for full Type IV CLEC status.
24. In light of the above, the Commission determines that Telecom Decision 2008-106 has no precedential value in deciding on Execulink's application.

Conclusion

25. In light of all the above, the Commission **denies** Execulink's application.

Secretary General

Related documents

- Telecom Order CRTC 2018-225, 4 July 2018
- Telecom Order CRTC 2018-203, 11 June 2018
- *Tuckersmith Communications Co-operative Ltd.'s application regarding Bluewater TV Cable Ltd.'s offering of competitive local exchange services in Bayfield, Ontario*, Telecom Decision CRTC 2008-106, 13 November 2008
- *Regulatory framework for voice communication services using Internet Protocol*, Telecom Decision CRTC 2005-28, 12 May 2005; as amended by Telecom Decision CRTC 2005-28-1, 30 June 2005
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997