



Telecom Decision CRTC 2019-243

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Bell Canada – Application for forbearance from the regulation of retail analogue services

Application

1. The Commission received an application from Bell Canada, dated 7 December 2018, in which the company sought forbearance, pursuant to subsections 34(1) and 34(2) of the *Telecommunications Act* (the Act), from the regulation of all the analogue services that it provides on a retail basis.¹ The application covers 74 tariff items provided by Bell Aliant, a division of Bell Canada; Bell Canada; Bell MTS Inc.; DMTS, a division of Bell Canada; Groupe Maskatel LP; KMTS, a division of Bell Canada; La Compagnie de téléphone de St-Victor; La Compagnie de téléphone Upton inc.; Le Téléphone de St-Éphrem inc.; NorthernTel, Limited Partnership; Ontera; and Télébec, Société en commandite (collectively, Bell Canada et al.).
2. Bell Canada described analogue services as point-to-point or point-to-multi-point services that provide for the transmission of low-bandwidth data between customer locations within an exchange or between exchanges via copper access facilities or microwave. The company indicated that these services rely on analogue transmission (not digital or Internet Protocol [IP] transmission) and are typically used by business customers. The company described four broad uses of analogue services: (i) to monitor equipment and for telemetry purposes, (ii) to support the retail alarm services of business security providers, (iii) to complement a pre-existing local voice service subscription, and (iv) to transmit sound for relatively rudimentary applications.
3. Bell Canada submitted that it is becoming increasingly difficult to repair and maintain analogue services, and that it wants to phase them out. In Bell Canada's view, forbearance would support its transition from analogue to IP-based alternatives. It submitted that analogue services have been destandardized in the operating territory of TELUS Communications Inc. since 2015, and that no interexchange analogue services have been available from Saskatchewan Telecommunications (SaskTel) since 2017.

¹ Pursuant to subsection 34(1) of the Act, the Commission may forbear from the regulation of a service if it finds that doing so would be consistent with the telecommunications policy objectives set out in section 7 of the Act. Pursuant to subsection 34(2) of the Act, the Commission shall forbear from the regulation of a service if it finds that the service is or will be subject to competition sufficient to protect the interests of users.

4. Bell Canada proposed that the Commission retain a requirement, as a condition of forbearance, that Bell Canada et al. continue to provide the services for a one-year period following forbearance. However, it also submitted that it should be allowed to modify the rates for the services during that period.
5. The Commission received an intervention from SaskTel in support of Bell Canada's application. However, SaskTel noted that, while it has withdrawn some analogue services, it continues to provide others. As such, SaskTel requested that, if the Commission accepts Bell Canada's arguments that forbearance is appropriate in all provinces in which Bell Canada is the incumbent local exchange carrier (ILEC), it apply the same determination to all ILECs.

Commission's analysis and determinations

6. In determining whether there is competition sufficient to protect the interests of users, the Commission generally applies a market power test using the criteria set out in *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994 (Telecom Decision 94-19). The first step in the market power test is to define the relevant market, which has two components: (i) the relevant product market, and (ii) the relevant geographic market. The Commission considers that Bell Canada's application did not contain a clear definition of either of these components – for example, it was unclear whether there is more than one product market for the identified analogue services.
7. The next step in the market power test is to determine whether market power exists. In Telecom Decision 94-19, the Commission defined market power as the ability of a provider to raise or maintain prices above those that would prevail in a competitive market. The Commission identified three factors to be assessed in determining market power: (i) the market share held by the dominant firm, (ii) demand conditions affecting customers' responses to a change in price, and (iii) supply conditions affecting the ability of other firms in the market to respond to a change in the price of the product or service.
8. The Commission considers that the application did not contain sufficient detail for it to make a determination on whether Bell Canada has market power. For example, with respect to market share, there was no information about the total number of subscribers or the number of new subscribers for the identified services in each of the ILECs' operating territories. Moreover, while Bell Canada submitted some information about total analogue service revenues between 2015 and 2017, greater detail – for example, by company and by service – would provide a better basis for analysis, and a longer time period would provide a better picture of long-term trends.
9. With respect to demand conditions, Bell Canada did not include sufficient information about the costs of substitutes for the services. Moreover, it did not include information on whether any of the services covered in the application are an essential input into the customer's production process.

10. With respect to supply conditions, Bell Canada did not indicate whether there are any barriers to entry in the relevant market, nor did it provide an analysis on whether there is rivalrous behaviour in the relevant market.
11. Notwithstanding whether Bell Canada would meet the market power test under subsection 34(2) of the Act, the Commission also considered whether forbearance would be warranted solely under subsection 34(1) of the Act. Bell Canada indicated that forbearance under subsection 34(1) would be consistent with the policy objectives set out in section 7 of the Act, including those cited in paragraphs 7(a), (c), (f), and (g). However, since the company did not adequately define the relevant product and geographic markets and clearly link its rationale to each of those policy objectives, the Commission was unable to determine whether the services should be forborne from regulation under subsection 34(1) of the Act.
12. In light of the above, the Commission **denies** Bell Canada's application. Bell Canada and other parties are reminded, when submitting applications for forbearance (including if Bell Canada chooses to make a new application in respect of its retail analogue services) or for destandardization of services, as appropriate, to include sufficient information for the Commission to thoroughly analyze their applications.

Secretary General