



Telecom Decision CRTC 2019-325

PDF version

Ottawa, 20 September 2019

Public record: 8640-B2-201900903

Bell Canada – Application for forbearance from the regulation of agreements and arrangements related to international telecommunications services

The Commission forbears from regulating (i) agreements or arrangements between foreign telecommunications common carriers and certain Bell Canada affiliates; and (ii) agreements or arrangements that these affiliates enter into with another Canadian carrier that provide exclusively for the carriage of traffic into or out of Canada by one of the parties to the agreement or arrangement.

In addition, concurrent with the publication of this decision, the Commission is issuing Telecom Notice of Consultation 2019-326 to consider whether its forbearance determinations should apply to all other Canadian telecommunications common carriers that enter into international telecommunications service agreements or arrangements for the carriage of traffic into or out of Canada that are not currently subject to forbearance from regulation.

Application

1. The Commission received an application from Bell Canada, on behalf of seven affiliated companies (hereafter, the Bell affiliates),¹ dated 6 February 2019, in which it requested that the Commission forbear from regulating agreements or arrangements that the Bell affiliates enter into with foreign telecommunications common carriers (or foreign carriers).
2. Specifically, Bell Canada requested that the Commission forbear, pursuant to subsections 34(1) and (2) of the *Telecommunications Act* (the Act), from the application of section 29 of the Act in relation to the above-noted agreements or arrangements, as it did with respect to Bell Canada and other large incumbent local exchange carriers (ILECs) in Telecom Order 99-1202.²

¹ The Bell affiliates included in Bell Canada's application are DMTS, a division of Bell Canada; Groupe Maskatel L.P.; KMTS, a division of Bell Canada; NorthernTel Limited Partnership; Northwestel Inc.; Ontera; and Télébec, Société en commandite.

² Section 29 of the Act states that no Canadian carrier shall, without the prior approval of the Commission, give effect to any agreement or arrangement, whether oral or written, with another telecommunications common carrier respecting (a) the interchange of telecommunications by means of their telecommunications facilities; (b) the management or operation of either or both of their facilities or any

3. The Commission received interventions from the Independent Telecommunications Providers Association (ITPA) and TBayTel, both of which supported Bell Canada's application and requested that the same forbearance, if granted, apply to all small ILECs.

Background

4. In Telecom Order 99-1202, the Commission stated that, at the time, the former Stentor companies were the only Canadian carriers obliged to file agreements with foreign carriers for the Commission's approval.³ The Commission considered that the former Stentor companies' agreements with foreign carriers were not anti-competitive and that the market for international telecommunications services was sufficiently competitive that it was no longer necessary to require these companies to continue to file for the Commission's approval (i) agreements with foreign carriers, or (ii) agreements with other Canadian carriers for the carriage of international traffic into or out of the country.
5. Consequently, in Telecom Order 99-1202, the Commission forbore from regulating (i) agreements between foreign carriers and certain large ILECs, and (ii) agreements that these companies enter into with other Canadian carriers that provide exclusively for the carriage of international traffic into or out of Canada by one of the parties to the agreement.⁴

Issues

6. The Commission has identified the following issues to be addressed in this decision:
 - Should the Commission forbear from regulating, under section 29 of the Act, international agreements or arrangements for the Bell affiliates in the same way it has for large ILECs in previous decisions?
 - Should the Commission forbear from regulating, under section 29 of the Act, international agreements or arrangements for all other small ILECs in the same way it has for large ILECs in previous decisions?

other facilities with which either or both are connected; or (c) the apportionment of rates or revenues between the carriers.

³ The former Stentor companies refers to Island Telecom Inc., Maritime Tel & Tel Limited, NBTel Inc., and NewTel Communications Inc. (now Bell Aliant, a division of Bell Canada), as well as Bell Canada, MTS Communications Inc. (now Bell MTS Inc.), Saskatchewan Telecommunications (SaskTel), and TELUS Communications Inc.

⁴ SaskTel was excluded from the proceeding that led to Telecom Order 99-1202 and, therefore, the Commission's determinations set out in that order did not apply to the company. Forbearance with respect to the above-noted agreements was granted to SaskTel in Decision 2000-150.

Should the Commission forbear from regulating, under section 29 of the Act, international agreements or arrangements for the Bell affiliates in the same way it has for large ILECs in previous decisions?

Positions of parties

7. Bell Canada noted that the Commission has already forborne from regulating agreements between foreign carriers and most carriers – that is, all non-dominant carriers and large ILECs. It submitted that the continuation of a regulatory requirement for the filing of the agreements or arrangements in question represents inefficient and dated regulation, and is contrary to the telecommunications policy objectives set out in section 7 of the Act (the policy objectives).
8. Bell Canada indicated that its affiliates have not entered into agreements or arrangements with foreign carriers, or with other Canadian carriers exclusively for the carriage of traffic into or out of Canada, since Telecom Order 99-1202 was issued.
9. Bell Canada submitted that it was seeking forbearance to give its affiliates the flexibility to enter into the types of agreements or arrangements in question in the future, whenever it makes sense from a corporate structure point of view.

Commission's analysis and determinations

10. Pursuant to subsections 34(1) and (2) of the Act, the Commission has the authority to forbear from the exercise of certain powers or the performance of certain duties under the Act in relation to a telecommunications service or class of services. It may do so where it finds that to do so would be consistent with the policy objectives (subsection 34(1) of the Act). The Commission must do so where it finds that a service or class of services is or will be subject to competition sufficient to protect the interests of users (subsection 34(2) of the Act).
11. Pursuant to subsection 34(3) of the Act, the Commission shall not forbear from the regulation of a service or class of services if it finds that to do so would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.
12. As noted by Bell Canada, the Commission has previously forborne from regulating international agreements for non-dominant carriers and the large ILECs. In addition, the Commission has largely forborne from regulating intercarrier agreements.⁵
13. The Commission considers that the market for international telecommunications services remains sufficiently competitive such that it is not necessary for the Bell affiliates to file for the Commission's approval any associated agreements or arrangements in order to protect the interests of users.

⁵ See, for example, Telecom Information Bulletin 2010-455-1 and Telecom Decision 2016-65.

14. The continuation of this regulatory requirement would represent an unnecessary regulatory burden and, therefore, a disadvantage for the Bell affiliates to the extent that they are competing with large ILECs and non-dominant carriers in their various incumbent operating territories.
15. In addition, a determination by the Commission to forbear from regulation in this case in the same way it forbore with respect to the large ILECs in Telecom Order 99-1202 and Decision 2000-150 would offer consistent treatment among the large ILECs and other incumbent providers.
16. Further, a determination to forbear from regulation would be consistent with the policy objectives set out in paragraphs 7(c) and (f) of the Act.⁶
17. In light of the above, the Commission determines that it will forbear, pursuant to subsection 34(1) of the Act, from regulating (i) agreements or arrangements between foreign carriers and the Bell affiliates; and (ii) agreements or arrangements that the Bell affiliates enter into with another Canadian carrier that provide exclusively for the carriage of traffic into or out of Canada by one of the parties to the agreement or arrangement.

Policy Directions

18. The Governor General in Council recently issued a new policy direction to the Commission, pursuant to section 8 of the Act (the 2019 Policy Direction).⁷ The 2019 Policy Direction provides that when the Commission is exercising its powers and performing its duties under the Act, it should consider how its decisions can promote competition, affordability, consumer interests, and innovation.
19. Moreover, the Commission should, in its decisions, demonstrate its compliance with the 2019 Policy Direction and specify how those decisions can, as applicable, promote competition, affordability, consumer interests, and innovation.
20. The Commission considers that its forbearance determination in this decision is consistent with paragraphs 1(a)(i), (iii), and (v) of the 2019 Policy Direction, which state that the Commission should consider the extent to which its decisions
 - (i) encourage all forms of competition and investment,
 - (iii) ensure that affordable access to high-quality telecommunications services is available in all regions of Canada, including rural areas, and

⁶ The cited objectives are 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; and (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.

⁷ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

- (v) reduce barriers to entry into the market and to competition for telecommunications service providers that are new, regional, or smaller than the incumbent national service providers.
21. In particular, the Commission considers that its forbearance determination will ensure consistent treatment among ILECs. It will also remove a competitive burden, to the extent that the Bell affiliates are competing with larger service providers within their various, and generally rural, incumbent operating territories. This will enable market forces to operate to a greater extent, to the benefit of consumers.
22. In light of the above, the Commission considers that its determination to forbear from regulation and to rely on market forces will promote competition, affordability, and consumer interests. The Commission also considers that its forbearance determination is consistent with paragraph 1(a)(i) of the 2006 Policy Direction,⁸ which states that the Commission must rely on market forces to the maximum extent feasible as the means of achieving the policy objectives.

Should the Commission forbear from regulating, under section 29 of the Act, international agreements or arrangements for all other small ILECs in the same way it has for large ILECs in previous decisions?

Positions of parties

23. Bell Canada submitted that if the Commission grants the company's request, it should also consider initiating a show cause proceeding to determine whether forbearance should also apply to international agreements or arrangements for all other small ILECs.
24. The ITPA and TBayTel supported Bell Canada's request but did not agree with its proposal to initiate a show cause proceeding. In their view, there is no reason why the Commission should not extend forbearance to all small ILECs at the same time it does so to the Bell affiliates.

Commission's analysis and determinations

25. The Commission notes that the ITPA's and TBayTel's interventions do not represent all of the remaining small ILECs. Therefore, it would not be appropriate for the Commission to make a determination in this decision that would affect all small ILECs without providing them an opportunity to be heard.
26. Further, the Commission considers that in the event that there are other Canadian telecommunications common carriers not covered by previous forbearance determinations, those carriers should also have the opportunity to comment on whether the same determinations should apply to them.

⁸ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

27. Accordingly, the Commission is today issuing Telecom Notice of Consultation 2019-326 to consider whether its forbearance determinations should apply to all other Canadian telecommunications common carriers that enter into international telecommunications agreements or arrangements for the carriage of traffic into or out of Canada that are not currently subject to forbearance from regulation.

Secretary General

Related documents

- *Show cause proceeding and call for comments – Forbearance from the regulation of Canadian telecommunications common carriers' international telecommunications service agreements and arrangements for the carriage of traffic into or out of Canada*, Telecom Notice of Consultation CRTC 2019-326, 20 September 2019
- *Tariff application and intercarrier agreement approval process*, Telecom Decision CRTC 2016-65, 19 February 2016
- *Approval processes for tariff applications and intercarrier agreements*, Telecom Information Bulletin CRTC 2010-455-1, 19 February 2016
- *SaskTel – Transition to federal regulation*, Decision CRTC 2000-150, 9 May 2000
- *Forbearance for agreements between domestic and foreign carriers*, Telecom Order CRTC 99-1202, 22 December 1999