



Telecom Decision CRTC 2019-74

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TELUS Communications Inc. – Application to modify the provision of various wholesale services

The Commission concludes that TCI's [Asymmetric Digital Subscriber Line] ADSL Access to Individual Line Service (line-sharing) and Unbundled Loop Connecting Link A/B service (unbundled loop connecting links) do not meet the Essentiality Test, and should therefore cease to be mandated wholesale services. Specifically, the Commission

- ***approves** TCI's request that its line-sharing and unbundled loop connecting links cease to be mandated, subject to a two-year phase-out period from the date of the Commission's decision;*
- ***approves** TCI's request for its line-sharing and unbundled loop connecting links to be immediately forborne where there is no demand; and*
- ***denies** granting forbearance for TCI's line-sharing and unbundled loop connecting links where demand for either service currently exists.*

With respect to TCI's request for the freezing of rates for certain of its legacy wholesale services, the Commission

- ***approves** TCI's request to freeze the rates for its line-sharing and [competitor digital network] CDN Other [central office] CO Connecting Link (copper-based) services; and*
- ***denies** TCI's request to freeze the rate for the company's DS-1 Central Office Link service.*

Introduction

1. The Commission received an application from TELUS Communications Inc. (TCI), dated 1 March 2018, in which the company requested that the Commission grant it forbearance for certain of its wholesale services that are closely associated with unbundled local loops (ULLs).¹ TCI also requested that the Commission freeze rates for certain of its legacy wholesale services. In support of its requests, TCI noted that the Commission had, in Telecom Decision 2018-18, recently granted forbearance and frozen rates for similar services offered by Bell Canada.

¹ A ULL is the copper connection path between a premises and a central office (CO). A ULL allows a competitor to provision both voice and Internet access services to its end-customers.

2. Specifically, TCI requested that, for its serving territory in Alberta, British Columbia, and Quebec (except as noted below), the Commission
 - forbear from regulating the company's
 - [Asymmetric Digital Subscriber Line] ADSL Access to Individual Line Service (line-sharing);² and
 - Unbundled Loop Connecting Link A/B service (unbundled loop connecting links);³ and
 - freeze rates for the company's
 - DS-1 Central Office Link service;
 - [competitor digital network] CDN Other [central office] CO Connecting Link (copper-based) service⁴ (applicable to TCI's serving territory in Alberta and British Columbia only); and
 - ADSL Access to Individual Line Service (line-sharing).
3. TCI stated that the services included in its application are equivalent to those that were the subject of the Bell Canada application – that is, Bell Canada's ADSL Access service (line-sharing),⁵ Unbundled Loop Connecting Link A/B service (ULL Connecting Links),⁶ DS-1 Connecting Link service, and CDN DS-1 Central Office (CO) Link service, respectively.
4. The Canadian Network Operators Consortium Inc. (CNO) participated in the proceeding. CNO stated that in principle it did not oppose the application of the Commission's determinations in Telecom Decision 2018-18 to equivalent TCI services, provided that the market conditions for TCI's services are similar to the market conditions for the equivalent Bell Canada services that were the subject of the Commission's determinations in Telecom Decision 2018-18.

² ADSL Access to Individual Line Service (line-sharing): Allows a competitor to provision high-speed Internet access service to its end-customers while the incumbent local exchange carrier (ILEC) provides the voice service, using the same ULL. It uses the copper connection path between a premises and a CO.

³ Unbundled Loop Connecting Link A/B service (unbundled loop connecting links): Connects the ILEC's facilities and a competitor's facilities within a CO to enable wholesale services that use the ULL. Connecting Link A: Is an analogue transmission path that supports the transmission of a voice grade signal of approximately 3 kilohertz (kHz) usable bandwidth. Connecting Link B: Is a digital transmission path that supports the transmission of an integrated services digital network (ISDN) Basic Rate Interface (BRI) type signal.

⁴ CDN Other CO Connecting Link (copper-based) service: Provides a copper-based link to connect a CDN service to another CDN service or to any other company-provided services within a company CO.

⁵ ADSL Access service (line-sharing): See footnote 2.

⁶ See footnote 3.

5. The Commission's determinations in this proceeding take into account the policy objectives set out in section 7 of the *Telecommunications Act* (the Act), as well as the Policy Direction.⁷

Background

Telecom Regulatory Policy 2015-326

6. In Telecom Regulatory Policy 2015-326, the Commission established its current framework for mandating wholesale services, which requires the application of an "essentiality test" and an assessment of policy considerations in order to determine whether the Commission should mandate the provision of a wholesale service. The Commission stated that for regulated wholesale services, it would base its decision about whether to mandate the provision of a wholesale service on two elements: (i) the Essentiality Test, and (ii) a set of policy considerations that could modify or support its decision.
7. In that decision, the Commission applied the Essentiality Test to several wholesale services, including ULLs, which are primarily used to support retail competition for local telephone services and lower-speed Internet access. It determined that ULLs did not satisfy the Essentiality Test, and that there was no valid policy reason to support its continued mandated provision.
8. The Commission thus decided that ULLs would no longer be mandated, subject to a three-year phase-out period. During this period, ULLs were made available in exchanges where there was demand, based on Commission-approved tariffs. In exchanges where there was no demand, no phase-out period was needed; ULLs were immediately forborne.

Telecom Decision 2018-18

9. In March 2017, Bell Canada submitted an application requesting that two of its legacy wholesale services, namely line-sharing and ULL Connecting Links, no longer be mandated by the Commission, and that they be forborne. It also requested that the Commission freeze the existing rates for line-sharing and three other legacy wholesale services.
10. In Telecom Decision 2018-18 issued on 17 January 2018, the Commission concluded that Bell Canada's line-sharing and ULL Connecting Links did not meet the Essentiality Test, and thus were no longer mandated. Specifically, the Commission
 - approved Bell Canada's request that line-sharing and ULL Connecting Links cease to be mandated, subject to a two-year phase-out period from the date of the Commission's decision;
 - approved Bell Canada's request for line-sharing and ULL Connecting Links to be immediately forborne where there was no demand; and

⁷ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

- denied granting forbearance of line-sharing and ULL Connecting Links where demand for either service still existed.

11. With respect to Bell Canada's request for the freezing of rates for certain legacy wholesale services, the Commission

- approved Bell Canada's request to freeze the rates for line-sharing, DS-1 Connecting Links, and CDN⁸ DS-1 Central Office (CO) Links;⁹ and
- denied Bell Canada's request to freeze the rates for the company's legacy Gateway Access Service (GAS)¹⁰ and High-Speed Access (HSA)¹¹ Dry Loops¹² service.

Telecom Decisions 2018-200 and 2018-360

12. In Telecom Decisions 2018-200 and 2018-360, the Commission approved Bell Canada's and TCI's respective applications for forbearance from the regulation of ULLs where the companies did not already have forbearance. ULLs are therefore now forborne from regulation throughout TCI's and Bell Canada's serving territories.¹³

Issues

13. The Commission has identified the following issues to be addressed in this decision:

- Should the Commission continue to mandate TCI's provision of its line-sharing and/or unbundled loop connecting links services?
- If not, should the Commission forbear from regulating TCI's line-sharing and unbundled loop connecting links services?

⁸ CDN service provides competitors with a digital access facility and link from an end-user's (predominantly business customers) premises or competitor point-of-presence to an ILEC's serving CO.

⁹ DS-1 Connecting Links and CDN DS-1 CO Links connect the ILEC's facilities and a competitor's facilities within a CO to enable the use of low-speed, copper-based data services such as CDN and ADSL access services. ADSL access service is available at ILEC COs and provides a connection to customer premises using the high-frequency bandwidth above the voice band on copper loops; it is another term for line-sharing. ADSL access service supports the provision of high-speed Internet access service. With ADSL access service, competitors can either provision their own digital subscriber line (DSL) equipment in conjunction with ULLs or use DSL equipment provisioned by the ILECs.

¹⁰ GAS is a wholesale high-speed access service that enables a service provider to establish a high-speed access path between its end-user's premises and a company serving wire centre. GAS allows for the simultaneous use of the end-user's telephone line for voice services – for example, voice transmission, permissive data, or facsimile.

¹¹ HSA is a broadband access service that enables a competitive local exchange carrier or a digital subscriber line service provider (DSLSP) to establish a high-speed data access path between its end-user's premises and a company serving wire centre. HSA allows for the simultaneous use of the end-user's telephone line for voice services – for example, voice transmission, permissive data, or facsimile.

¹² Dry Loops are ULLs that are leased by a competitor from an ILEC to provide Internet service.

¹³ On 4 September 2018, the Commission received from Allstream Business Inc. and Zayo Canada Inc. an application to review and vary Telecom Decision 2018-200.

- Should the Commission freeze rates for TCI's line-sharing, DS-1 Central Office Link, and CDN Other CO Connecting Link (copper-based) services?

Should the Commission continue to mandate TCI's provision of its line-sharing and/or unbundled loop connecting links services?

Introduction

14. TCI referred to its line-sharing and unbundled loop connecting links services collectively as "ULL Related Services" in its Essentiality Test analysis. It also used "ULL Related Services" to refer collectively to Bell Canada's equivalent services – that is, line-sharing and ULL Connecting Links. The Commission's analysis and determinations set out below will address both services together where appropriate, and separately for each service as required.

Application of the Essentiality Test

15. The first step in applying the Essentiality Test is to define the relevant markets for the wholesale service, which include product and geographic components. Once they are defined, the Commission assesses the wholesale service in question against each component of the Essentiality Test: the input component, the competition component, and the duplicability component. For a wholesale service to meet the Essentiality Test, all three components must be satisfied. The Commission then applies the following policy considerations to inform, support, or reverse a decision to mandate the provision of a wholesale service: public good, interconnection, and innovation and investment.
16. Following its application of the Essentiality Test and the assessment of the policy considerations, the Commission may also establish the terms and conditions pursuant to which a wholesale service should be mandated or no longer mandated, depending on the outcome of its review.

Relevant product and geographic markets

17. The product and geographic markets are typically characterized as the smallest group of services and geographic area over which a firm could profitably impose a significant and non-transitory price increase.
18. TCI submitted that when a ULL is ordered, both local telephone and Internet access services can be provided by the competitor. Further, when the end-user retains telephone services from the incumbent local exchange carrier (ILEC), only a portion of the ULL is required and the competitor will order line-sharing service so that the loop can be shared. In this way, the ILEC reserves the voice band to provide telephone services while the competitor accesses the higher band on the loop to provide Internet data services to the end-user. In TCI's view, line-sharing provides similar functionality to a ULL; in essence, it is a partial ULL, which the Commission recognized in Telecom Decision 2018-18.
19. TCI submitted that when either a ULL or line-sharing is ordered, unbundled loop connecting links are also ordered to connect the ILEC and the competitor facilities within

the CO to enable the service. In this regard, the company stated that unbundled loop connecting links are only ordered in conjunction with ULLs and line-sharing, and that this is why both line-sharing and unbundled loop connecting links are considered ULL Related Services.

20. TCI submitted that the product market for ULL Related Services is a subset of the product market for ULLs. Therefore, ULL Related Services fall within the downstream product market for ULLs outlined by the Commission in Telecom Regulatory Policy 2015-326, which is defined as the local wireline voice market, including both residential and business markets. TCI noted that in Telecom Decision 2018-18, the Commission considered that this same approach applied to ULL Related Services.
21. TCI submitted that ULL Related Services share the same geographic market as ULLs. The company noted that in Telecom Regulatory Policy 2015-326, the relevant geographic market for ULLs for applying the Essentiality Test was determined to be the rate band,¹⁴ and that the Commission had confirmed this approach to be appropriate for ULL Related Services in Telecom Decision 2018-18.

Commission's analysis and determinations

22. The Commission considers that TCI's line-sharing and unbundled loop connecting links services are equivalent to Bell Canada's line-sharing and ULL Connecting Links services, respectively. This conclusion is based on a comparison of the descriptions provided for each service and the information available in the companies' respective tariffs.

Line-sharing

23. In Telecom Decision 2018-18, the Commission considered that line-sharing is effectively a partial ULL, noting that line-sharing lacks the local voice functionality available on a full ULL. The Commission also considered that
 - the downstream market for line-sharing is the retail Internet market and that line-sharing forms its own distinct upstream product market; and
 - similar to ULLs, the local exchange is the appropriate geographic market for line-sharing, but that aggregation at the rate band level would be appropriate for the purpose of applying the Essentiality Test.
24. Given the similarities between TCI's and Bell Canada's services, the Commission considers that its determinations in Telecom Decision 2018-18 regarding the product and geographic market definitions also apply to TCI's line-sharing service.

¹⁴ A rate band represents a group of exchanges or wire centres with similar characteristics, such as number of lines and loop length. While the criteria applied to classify exchanges into bands are uniform across the country, band costs may vary by ILEC or by region within the ILEC's serving territories.

Unbundled loop connecting links

25. In Telecom Decision 2018-18, the Commission considered that since there are no alternatives to Bell Canada's ULL Connecting Links, they – like ULLs – form their own upstream product market. The Commission also considered that the primary relevant downstream retail market for Bell Canada's ULL Connecting Links is the same as for ULLs: the local wireline voice market, including both residential and business markets. The Commission further considered that, when used in conjunction with line-sharing, the relevant downstream market for ULL Connecting Links would be retail Internet services.
26. In that same decision, the Commission considered that, given that Bell Canada's ULL Connecting Links are only used where ULLs are present, the appropriate definition of the geographic market for ULL Connecting Links is the ILEC exchange, but that, similar to ULLs, aggregation at the rate band level would be appropriate for the purpose of applying the Essentiality Test.
27. Given the similarities between TCI's and Bell Canada's services, the Commission considers that its determinations in Telecom Decision 2018-18 regarding the product and geographic market definitions also apply to TCI's unbundled loop connecting links service.

Input component

28. Under the input component of the Essentiality Test, if the Commission finds that the wholesale service in question is a required input for competitors to provide downstream retail services, and that there is and would continue to be sufficient demand for the wholesale service in question, the input component would be satisfied.
29. TCI submitted that the input component evaluates a few factors, but particularly relevant to ULL Related Services is the current low demand and continuing trend for that demand to decline in the future. TCI stated that while it does not argue that ULLs and ULL Related Services are inputs for downstream services, the current and expected lack of demand is what causes the failure of the input component. TCI submitted that the lack of current demand for ULLs in some rate bands and declining demand in others was recognized by the Commission in Telecom Regulatory Policy 2015-326 and for Bell Canada's ULL Related Services in Telecom Decision 2018-18. It submitted that, as a result, the Commission had determined in the latter decision that Bell Canada's ULL Related Services did not meet the input component.
30. TCI submitted that the decline in ULLs represents a continuing trend first shown in the proceeding leading to Telecom Regulatory Policy 2015-326, which led to ULLs being forborne. It noted that the demand for ULLs has continued to decline since 2013, which is the last year for which the ULL data was provided by the ILECs in the proceeding leading to Telecom Regulatory Policy 2015-326.
31. TCI submitted that its ULL service has continued to decline since 2013. It also submitted that because line-sharing is a subset of ULLs, it has seen the same rate of decline. In TCI's view, ULL Related Services do not have sufficient demand to meet the input component of

the Essentiality Test. Moreover, it submitted that as the market trends towards higher speeds and away from the use of lower speeds that ULL Related Services facilitate, demand can only be expected to decrease further.

32. TCI further submitted that there were reasonable alternatives to line-sharing service, including wholesale HSA services provided by TCI or other competitors.

Commission's analysis and determinations

Line-sharing

33. Evidence provided during the proceeding shows that, for the period 2013 to 2017, the demand for TCI's line-sharing service is low and in decline.¹⁵ In light of the low and declining demand for TCI's line-sharing service, the sufficient demand requirement for the input component of the Essentiality Test has not been met.
34. In Telecom Decision 2018-18, the Commission determined that Bell Canada's line-sharing service was not a required input for competitors to provide downstream retail services, due to the availability of functional substitutes such as wholesale HSA. In the Commission's view, this determination also applies to TCI's line-sharing service, due to the availability of HSA as an alternative to line-sharing.
35. In light of the above, the Commission considers that TCI's line-sharing service does not meet the input component of the Essentiality Test.

Unbundled loop connecting links

36. In Telecom Decision 2018-18, the Commission considered that as a result of their close association with ULLs, Bell Canada's ULL Connecting Links were subject to the same market dynamics as ULLs, which were previously deemed to be a non-essential input in the provision of downstream services. As TCI's unbundled loop connecting links service is similar to Bell Canada's ULL Connecting Links, the Commission concludes that TCI's service is also subject to the same market dynamics as ULLs, which were recently forborne for both companies.
37. Evidence provided during the proceeding shows that, for the period 2013 to 2017, the demand for TCI's unbundled loop connecting links service is in decline. Given the significant decline in demand for TCI's ULLs and in the use of TCI's unbundled loop connecting links from 2013 to 2017, and in light of the fact that wireline services supported by ULLs can be provided via alternatives to unbundled loop connecting links – for example, fibre, cable, and wireless – the Commission considers that TCI's unbundled loop connecting links do not meet the input component of the Essentiality Test. This conclusion is consistent with the Commission's determinations in Telecom Decision 2018-18 regarding Bell Canada's ULL Connecting Links service.

¹⁵Data is as of 31 December for all years referenced.

Competition component

38. Under the competition component of the Essentiality Test, the Commission must examine (i) the upstream market conditions – specifically, whether a firm or group of firms have market power, and (ii) the impact that any upstream market power might have on competition levels in the associated downstream retail market(s). If, on balance, the Commission finds that there is upstream market power and that the associated downstream retail market(s) could be negatively affected to a substantial degree if it does not mandate the provision of the wholesale service, the competition component would be satisfied.
39. TCI noted that, in Telecom Regulatory Policy 2015-326, the Commission recognized that ULLs do not meet the competition component of the Essentiality Test, given that the withdrawal of mandated access to ULLs would not likely result in a substantial lessening or prevention of competition. It submitted that this conclusion was reached given the small and declining number of overall subscribers that rely on ULLs and that, coupled with the availability of alternative service offerings, there would be no negative impact to competition if ULLs were withdrawn. TCI submitted that these same conditions apply to ULL Related Services, which the Commission similarly recognized in Telecom Decision 2018-18.
40. TCI submitted that because ULL Related Services represent a small and declining portion of the overall market for Internet services, withdrawal of mandated access would not affect the overall competitiveness of the market. TCI stated that in the absence of the wholesale service, it expected the retail impact to be minimal due to the availability of substitutes and the already declining demand for the services.
41. TCI submitted that competitors that rely on its wholesale services as an input for the provision of retail digital subscriber line (DSL) Internet services remain a very small part of the overall marketplace.

Commission's analysis and determinations

Line-sharing

42. In Telecom Regulatory Policy 2015-326, the Commission considered that ULLs are only accessible from the ILECs' COs, and are therefore controlled by these companies. Consistent with its findings for ULLs in Telecom Regulatory Policy 2015-326, in Telecom Decision 2018-18 the Commission considered that since line-sharing entails the use of ULLs for a competitor to provide high-speed Internet access to an end-user, ILECs possess upstream market power with respect to the provision of line-sharing.
43. However, in Telecom Decision 2018-18, the Commission also considered that no longer mandating Bell Canada's line-sharing service would not have a significant impact on competition in the retail wireline Internet market. This determination was based on the low and declining demand for Bell Canada's line-sharing service, and the fact that Bell Canada's line-sharing service accounted for a very small percentage of wireline Internet

subscribers across the company's exchanges. Moreover, functional substitutes to line-sharing were available.

44. Similar to Bell Canada's circumstances, demand for TCI's line-sharing service is low and in decline. Additionally, TCI's line-sharing service accounts for a very small percentage of subscribers to the company's wholesale and retail Internet services, and functional substitutes are available. Consequently, no longer mandating TCI's line-sharing service would have a minimal impact on competition in the retail wireline Internet market. As such, the Commission concludes that TCI's line-sharing service does not meet the competition component of the Essentiality Test.

Unbundled loop connecting links

45. In Telecom Regulatory Policy 2015-326, the Commission considered that the ILECs possess upstream market power with respect to the provision of ULLs.
46. Since TCI's unbundled loop connecting links only exist in conjunction with ULLs, the Commission considers that TCI possesses upstream market power with respect to the provision of unbundled loop connecting links.
47. In assessing whether the withdrawal of mandated access to unbundled loop connecting links would likely result in a substantial lessening or prevention of competition, the Commission must consider the primary relevant downstream market for TCI's unbundled loop connecting links, which, as noted above, is the local wireline voice market (residential and business) and would also extend to retail Internet services, if they are used in conjunction with line-sharing.
48. In Telecom Regulatory Policy 2015-326, the Commission considered that ULLs do not meet the competition component of the Essentiality Test, given that withdrawal of mandated access to ULLs would not likely result in a substantial lessening or prevention of competition in the local retail wireline residential and business voice services markets, regardless of the exchange or the ILEC serving territory. Moreover, and as discussed above, with respect to the Internet access services market, the Commission has assessed the competition component of the Essentiality Test in relation to line-sharing service and considers that the same rationale applies to unbundled loop connecting links.
49. Given that TCI's unbundled loop connecting links exist only in conjunction with the provision of ULLs and line-sharing, and given the decline in demand for TCI's ULLs and unbundled loop connecting links – plus the availability of functional substitutes to ULLs – the Commission considers that TCI has demonstrated that its unbundled loop connecting links service does not meet the competition component of the Essentiality Test.

Duplicability component

50. Under the duplicability component of the Essentiality Test, the Commission must determine whether it is practical or feasible for competitors to duplicate the functionality of a facility, either through self-supply or third-party supply. If the Commission finds that the functionality of a particular wholesale service cannot reasonably be duplicated by a

reasonably efficient competitor on a sufficient scale, the duplicability component would be satisfied.

51. TCI submitted that, although the Commission had determined in Telecom Decision 2018-18 that ULL Related Services met the duplicability component of the Essentiality Test, it maintained that, based on functionality, ULL Related Services fail the test for duplicability.
52. TCI submitted that it considers the functionality of the service facilitated by ULL Related Services to be duplicable even if the loops to the end-user premises are not. TCI also submitted that the growth in wholesale HSA services, which provide another means for competitors to sell Internet services to end-users, is proof of this duplicability of functionality as the end-user receives Internet access in either case.

Commission's analysis and determinations

Line-sharing

53. In Telecom Decision 2018-18, the Commission considered that in the absence of the ILECs' provision of line-sharing services, competitors would have to construct their own wireline networks on a large scale in order to provide Internet service that duplicates the functionality of line-sharing, which would entail considerable time and expense. The Commission considered that a reasonably efficient competitor could not feasibly duplicate the functionality of line-sharing on a sufficient scale and, therefore, line-sharing meets the duplicability component of the Essentiality Test. Given the similarity of the services in question, the Commission considers that TCI's line-sharing service meets the duplicability component of the Essentiality Test.

Unbundled loop connecting links

54. In Telecom Regulatory Policy 2015-326, the Commission considered that ULLs meet the duplicability component of the Essentiality Test, given that it is not practical or feasible for competitors to duplicate the functionalities of ULLs.
55. In Telecom Decision 2018-18, the Commission considered that in the absence of ULL Connecting Links, competitors have no means of connecting to an ILEC's ULLs at the ILEC's CO; consequently, a competitor would not be able to duplicate the functionalities associated with ULLs. Therefore, the Commission determined that ULL Connecting Links meet the duplicability component of the Essentiality Test.
56. Similarly, the Commission concludes that TCI's unbundled loop connecting links meet the duplicability component of the Essentiality Test.

Conclusions regarding the Essentiality Test

57. In light of the above, the Commission considers that TCI's line-sharing and unbundled loop connecting links services do not meet two of the three components of the Essentiality Test and that these services should therefore no longer be mandated.

Policy considerations

58. As discussed earlier in this decision, there are three policy considerations that could inform, support, or reverse a decision to mandate the provision of a wholesale service. These policy considerations are as follows:
- **Public Good:** There is a need to mandate the service for reasons of social or consumer welfare, public safety, or public convenience.
 - **Interconnection:** The service would promote the efficient deployment of networks and facilitate network interconnection arrangements.
 - **Innovation and Investment:** Mandating or not mandating the facility or wholesale service could affect the level of innovation/investment in advanced or emerging networks or services for incumbents, competitors, or both, or impact the associated level of adoption of advanced or emerging services by users of telecommunication services.
59. TCI submitted that when reviewing the policy considerations for ULLs in Telecom Regulatory Policy 2015-326, the Commission had focused on the impact on innovation and investment, and determined that a decision to no longer mandate the provision of ULLs could lead to increased adoption of advanced services, which would outweigh the risk to stranded investments previously made for co-location of competitor facilities. As such, there was no policy reason that supported the continued mandating of ULLs.
60. TCI submitted that this decision was reinforced in Telecom Decision 2018-18 when the Commission considered Bell Canada's ULL Related Services and determined that the services do not stimulate innovation or investment in networks or new technologies and therefore do not meet this policy consideration.

Commission's analysis and determinations

Line-sharing

61. In Telecom Decision 2018-18, the Commission determined that it did not view line-sharing as meeting the criterion for the public good policy consideration, as there is no need to mandate the service for reasons of social or consumer welfare, public safety, or public convenience. The Commission also considered that line-sharing did not meet the criterion for the interconnection policy consideration, since it is an access service.
62. However, the Commission determined that, similar to ULLs, the innovation and investment policy consideration was relevant to the issue of whether or not to mandate line-sharing. The Commission considered that mandating line-sharing did not stimulate innovation or investment in networks or new technologies. The Commission therefore determined that the review of policy considerations support the conclusions reached by the application of the Essentiality Test for line-sharing. The Commission considers that the same conclusion applies to TCI's line-sharing service.

Unbundled loop connecting links

63. The Commission considers that unbundled loop connecting links do not meet the criterion for the public good policy consideration, as there is no need to mandate the service for reasons of social or consumer welfare, public safety, or public convenience.
64. While unbundled loop connecting links are an element of local network interconnection that connect TCI's ULLs to a competitive local exchange carrier's network, the Commission considers that mandating unbundled loop connecting links would not promote the efficient deployment of networks and facilitate network interconnection arrangements in the absence of ULLs and line-sharing service.
65. Similar to its findings in Telecom Regulatory Policy 2015-326 and in Telecom Decision 2018-18, the Commission considers that no longer mandating TCI's unbundled loop connecting links could lead to a greater adoption of advanced or emerging services by competitors – for example, HSA service. The Commission therefore considers that TCI's unbundled loop connecting links do not need to be mandated to support the innovation and investment policy consideration.
66. In light of the above, the Commission concludes that the review of policy considerations support the conclusions reached by the application of the Essentiality Test.

Conclusions

67. Based on the above, the Commission finds that it would be appropriate to cease mandating the provision of TCI's line-sharing and unbundled loop connecting links services across all exchanges in TCI's serving territory.
68. Typically, the obligation to provide a service that is no longer mandated is phased-out over a period of time to give competitors time to make alternative arrangements. Consistent with its determinations in Telecom Decision 2018-18, the Commission implements a two-year phase-out period, from the date of this decision, in exchanges where there is demand for line-sharing and unbundled loop connecting links services. In exchanges where there is no demand for these services, no phase-out period is required.

Should the Commission forbear from regulating TCI's line-sharing and unbundled loop connecting links services?

69. The decision to forbear from the regulation of a service is made pursuant to section 34 of the Act. In short, the Commission may forbear if it is satisfied that doing so would be consistent with the policy objectives listed in section 7 of the Act (subsection 34(1)). The Commission must forbear where it is satisfied that there is sufficient competition in the provision of the service to protect the interests of users (subsection 34(2)). However, the Commission must not forbear where it finds that to do so would impair unduly the establishment or continuance of a competitive market (subsection 34(3)).
70. TCI requested that the same relief granted to Bell Canada in Telecom Decision 2018-18 be extended to TCI's equivalent services.

71. CNOC submitted that although TCI's application indicated that the Commission should treat the company's services in the same manner as it had treated Bell Canada's, the specific relief requested at the conclusion of TCI's application was different from the relief granted by the Commission in Telecom Decision 2018-18. CNOC therefore requested that the Commission similarly apply a phase-out period to any forbearance determination resulting from this proceeding where demand exists for TCI's ULL Related Services. CNOC submitted that this measure is necessary for consistency in the application of the framework to equivalent services offered by TCI and Bell Canada.

Commission's analysis and determinations

72. In Telecom Decision 2018-18, the Commission determined that its findings in Telecom Regulatory Policy 2015-326 regarding forbearance of ULLs in exchanges where there is no current demand could also be applied to Bell Canada's line-sharing and ULL Connecting Links services. As a result, pursuant to subsection 34(4) of the Act, the Commission declared that, effective the date of its decision, sections 25, 29, and 31, and subsections 27(1), 27(5), and 27(6) of the Act no longer applied with respect to exchanges where there was no demand for the Bell Canada service(s) in question – that is, for line-sharing, ULL Connecting Links, or for both services, where applicable. However, subsections 27(2) and 27(4) of the Act were retained to address any issues of unjust discrimination or undue preference. Additionally, section 24 of the Act continued to apply, to enable the Commission to impose conditions on forbearance, if necessary.
73. However, the Commission denied forbearance following the end of the phase-out period in exchanges where there was demand for the Bell Canada service(s) in question. The Commission determined that if Bell Canada's intention was to continue to make line-sharing and/or ULL Connecting Links available in concerned exchanges after the end of the phase-out period, the company could choose to file a forbearance application, including an analytical framework or appropriate test that the Commission could use to assess forbearance.
74. The Commission further determined that if Bell Canada's intention was to cease making line-sharing and/or ULL Connecting Links available after the expiry of the phase-out period, the company must provide written notice to its customers and to the Commission one year prior to the end of the phase-out period. This notice was to include details on the specific exchanges that would be affected, the date on which the service(s) would no longer be available in the exchanges in question, and any potential arrangements that might be available to wholesale customers.
75. Given its finding that the TCI services in question are equivalent to those detailed in Telecom Decision 2018-18 for Bell Canada, the Commission considers that its determinations in Telecom Decision 2018-18 regarding forbearance for Bell Canada's line-sharing and ULL Connecting Links services should apply to TCI's ULL Related Services. As a result, pursuant to subsection 34(4) of the Act, 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 no longer apply with respect to TCI's line-sharing or unbundled loop connecting links services in exchanges where there is no demand for these services.

However, subsections 27(2) and 27(4) of the Act continue to apply to address any issues of unjust discrimination or undue preference. Section 24 of the Act will also continue to apply, to enable the Commission to impose conditions on forbearance, if necessary.

76. Consistent with Telecom Decision 2018-18, in exchanges where demand exists for TCI's line-sharing and/or unbundled loop connecting links services, forbearance will not automatically follow the end of the phase-out period. If TCI's intention is to continue to make either service, or both, available in concerned exchanges after the expiry of the phase-out period, TCI can choose to file a forbearance application regarding the provision of the service(s), including an analytical framework or appropriate test that the Commission could use to assess forbearance.
77. However, if TCI intends to cease making line-sharing and/or unbundled loop connecting links services available, it is to provide written notice to its customers and to the Commission one year prior to the end of the phase-out period. This notice should include details on the specific exchanges that will be affected, the date on which the service(s) will no longer be available in those exchanges, and any potential alternative arrangements that may be available to wholesale customers.

Should the Commission freeze rates for TCI's line-sharing, DS-1 Central Office Link, and CDN Other CO Connecting Link (copper-based) services?

78. TCI submitted that the Commission had approved Bell Canada's request in the proceeding leading to Telecom Decision 2018-18 for a rate freeze for that company's line-sharing service and Additional Legacy Services – that is, Bell Canada's DS-1 Connecting Link and CDN DS-1 Central Office Link services – on the basis that the market conditions for these services were such that a freeze would lower the regulatory burden¹⁶ while maintaining just and reasonable rates. TCI requested that the rates for its line-sharing and Additional Legacy Services – that is, TCI's DS-1 Central Office Link and CDN Other CO Connecting Link (copper-based) services – be frozen on the same basis.
79. TCI submitted that freezing the rates of its Additional Legacy Services is justified, as they are low-speed, copper-based services that are only used to complement the CDN DS-1 access services that were already made subject to the rate freeze.¹⁷ For CDN DS-1 accesses, which support these services, it stated that demand has continually declined over the last four years and that it expected the trend to continue, which would decrease the demand for these associated tariff elements.
80. TCI was of the view that freezing the rates for line-sharing prior to forbearance would prevent cost reductions for this service that could encourage competitors to use it as a functional substitute for ULLs instead of migrating to more innovative technologies. TCI

¹⁶ In the absence of a rate freeze, pursuant to Telecom Decision 2007-27, ILECs are required to reduce the prices of their services year-over-year, using the formula I-X (I = rate of inflation; X = productivity offset).

¹⁷ Rates for CDN DS-1 accesses were frozen pursuant to Telecom Regulatory Policy 2015-326. Bell Canada and TCI have submitted Part 1 applications to the Commission that request forbearance from the regulation of their low-speed – that is, DS-0 and DS-1 – CDN access services.

stated that it has offered line-sharing via a tariff for many years but has never seen any material demand for this service and that, currently, the demand is quite low. TCI indicated that it did not expect an increase in demand for the service given the move to disaggregated wholesale HSA.

Commission's analysis and determinations

81. In Telecom Decision 2018-18, the Commission found that there was low and declining demand for Bell Canada's line-sharing, DS-1 Connecting Link, and CDN DS-1 Central Office Link services. Consequently, the Commission approved Bell Canada's request for a rate freeze for these services, as the market conditions were such that a rate freeze would lower the regulatory burden while maintaining rates that were just and reasonable.
82. As demonstrated by the company in the current application, demand for TCI's line-sharing and CDN Other CO Connecting Link (copper-based) services is low, and the demand for both services has declined from 2013 to 2017.
83. The Commission considers that TCI has provided sufficient evidence to demonstrate that market conditions for its line-sharing and CDN Other CO Connecting Link (copper-based) services are such that a rate freeze for these services is justified. Therefore, the Commission **approves** TCI's request for a rate freeze for its line-sharing and CDN Other CO Connecting link (copper-based) services.
84. However, the present market conditions for TCI's DS-1 Central Office Link service do not justify a rate freeze for this service. Demand for this service is significantly higher than the demand for TCI's line-sharing and CDN Other CO Connecting Link (copper-based) services. More importantly, and contrary to the trends for Bell Canada's comparable service, demand for TCI's DS-1 Central Office Link service increased from 2013 to 2017. This increase in demand does not support the company's submission that the expected continued decline in demand for its CDN DS-1 accesses will reduce the demand for its DS-1 Central Office Link service. Accordingly, the Commission **denies** TCI's request for a rate freeze for its DS-1 Central Office Link service.

Policy Direction

85. The determinations made in this decision are consistent with the Policy Direction for the reasons set out below.
86. The Policy Direction states that the Commission, in exercising its powers and performing its duties under the Act, shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(a), (b), and (c) of the Policy Direction.
87. The issues under consideration in this proceeding relate to the provision of the services and the associated impact on competition in the downstream market of retail local exchange services and retail Internet services, including whether the provision of the services should

no longer be mandated. Therefore, subparagraphs 1(a)(i) and (ii)¹⁸ and subparagraphs 1(b)(i), (ii), and (iv)¹⁹ of the Policy Direction apply to the Commission's determinations in this proceeding. Consistent with subparagraph 1(a)(i), in ceasing to mandate the provision of TCI's line-sharing and unbundled loop connecting links services, the Commission is relying on market forces to the maximum extent feasible as the means of achieving the objectives set out in section 7 of the Act.

88. In compliance with subparagraph 1(b)(i) of the Policy Direction, the Commission considers that the policy objectives set out in paragraphs 7(a), (b), (c), and (f) of the Act²⁰ are advanced by the regulatory measures established in this decision.
89. Consistent with subparagraphs 1(a)(ii) and 1(b)(ii) of the Policy Direction, the Commission considers that the regulatory measures approved in this decision, including its approval of TCI's request for a rate freeze for its line-sharing and CDN Other CO Connecting Link (copper-based) services, as well its denial of TCI's request for a rate freeze for its DS-1 Central Office Link service, are (i) efficient and proportionate to their purpose, and minimally interfere with market forces, and (ii) neither deter economically efficient competitive entry into the market nor promote economically inefficient entry.

Secretary General

Related documents

- *TELUS Communications Inc. – Application for forbearance from the regulation of unbundled local loops*, Telecom Decision CRTC 2018-360, 11 September 2018
- *Bell Canada – Application for forbearance from the regulation of unbundled local loops*, Telecom Decision CRTC 2018-200, 5 June 2018

¹⁸ Paragraph 1(a) states that “the Commission should (i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, (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.”

¹⁹ Paragraph 1(b) states, among other things, that “the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that (i) specify the telecommunications policy objective that is advanced by those measures and demonstrate their compliance with [the Policy Direction], (ii) if they are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry, ... and (iv) if they relate to network interconnection arrangements or regimes for access to networks, buildings, in-building wiring or support structures, ensure the technological and competitive neutrality of those arrangements or regimes, to the greatest extent possible, to enable competition from new technologies and not to artificially favour either Canadian carriers or resellers.”

²⁰ The cited policy objectives of the Act are 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; (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; (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.

- *Bell Canada – Application to modify the provision of various wholesale services*, Telecom Decision CRTC 2018-18, 17 January 2018
- *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
- *Price cap framework for large incumbent local exchange carriers*, Telecom Decision CRTC 2007-27, 30 April 2007