



Telecom Decision CRTC 2020-128

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Bell Canada – Request for forbearance from the regulation of line-sharing and unbundled local loop connecting links

*The Commission **approves** Bell Canada’s application for forbearance from the regulation of line-sharing and unbundled local loop connecting links in all of the company’s exchanges in which they are not already forborne from regulation.*

Application

1. The Commission received an application from Bell Canada, dated 3 June 2019, in which the company sought forbearance from the regulation of two legacy wholesale services in all of its exchanges: line-sharing¹ and unbundled local loop (ULL) connecting links.²
2. The Commission received an intervention from TELUS Communications Inc. (TCI) regarding Bell Canada’s application.

Background

Unbundled local loops

3. In Telecom Regulatory Policy 2015-326, the Commission established a new wholesale services framework. In particular, the Commission determined that ULLs, a legacy service used primarily to support retail competition for local phone and lower-speed Internet access services, would no longer be mandated and would be phased out over a three-year period ending on 22 July 2018. In exchanges where there was no demand, forbearance from the regulation of ULLs was granted immediately, effective 22 July 2015.
4. In Telecom Decision 2018-200, the Commission approved an application by Bell Canada for forbearance from the regulation of ULLs in 88 exchanges where demand remained, effective 22 July 2018.

¹ Line-sharing service enables a competitor to provide Internet access service to its end-customers while the incumbent local exchange carrier (ILEC) provides voice service using the same ULL.

² A ULL is the copper connection path between a customer’s premises and a central office (CO). A ULL enables a competitor to provide both voice and Internet access services to its end-customers. ULL connecting links connect the ILEC’s facilities and a competitor’s facilities within a CO to enable wholesale services that use the ULL.

5. In Telecom Decision 2019-94, the Commission denied a request by Allstream Business Inc. and Zayo Canada Inc. to review and vary Telecom Decision 2018-200, thus confirming its decision to forbear from the regulation of ULLs in those 88 exchanges.

Line-sharing and ULL connecting links

6. In Telecom Decision 2018-18, the Commission determined that Bell Canada's line-sharing and ULL connecting links did not pass its essential services test (the Essentiality Test)³ and would cease to be mandated, subject to a two-year phase-out period ending 17 January 2020.
7. In exchanges where there was no existing demand for those services, the Commission immediately forbore from their regulation. However, in exchanges where demand existed, the Commission denied Bell Canada's request for forbearance. The Commission stated that if Bell Canada intended to continue to make line-sharing and ULL connecting links available in those exchanges after the phase-out period, it could file an application for forbearance and include an appropriate test for the Commission to use in assessing the request. If the company chose to stop offering those services, it was to inform its customers and the Commission in writing one year prior to the end of the phase-out period.

Should the Commission forbear from regulating line-sharing and ULL connecting links in Bell Canada's exchanges where demand exists?

Positions of parties

8. Bell Canada requested that in-service line-sharing and ULL connecting links be forborne from regulation in all exchanges where there continued to be demand, effective 17 January 2020, the end date of the phase-out period. In its view, forbearance would be consistent with section 34 of the *Telecommunications Act* (the Act), and would be a logical and necessary extension of the Commission's determinations regarding ULLs in Telecom Decision 2018-200.
9. Bell Canada requested that the Commission grant forbearance in accordance with section 34 of the Act, and refrain from exercising its powers and duties under sections 25, 29, and 31, and subsections 27(1), (3), (5), and (6) of the Act.

³ To be essential, a facility, function, or service must satisfy all of the following conditions: (i) it is required by competitors to provide telecommunications services in a relevant downstream market (the input component); (ii) it is controlled by a firm that possesses upstream market power such that withdrawing mandated access, or denying access to the facility, would likely result in a substantial lessening or prevention of competition in the downstream retail market (the competition component); and (iii) it is not practical or feasible for a reasonably efficient competitor to reasonably duplicate the functionality of the facility on a sufficient scale (the duplicability component). For a wholesale service to meet the Essentiality Test, all three components must be satisfied.

10. Bell Canada submitted that the appropriate test for the Commission to use to evaluate forbearance from the regulation of line-sharing and ULL connecting links would be one of policy analysis under subsection 34(1) of the Act.
11. Bell Canada noted that the Commission determined, in Telecom Decision 2018-18, that neither line-sharing nor ULL connecting links met the Essentiality Test. Bell Canada stated that, because the competition component of the Essentiality Test is similar to the market power test⁴ typically applied under subsection 34(2) of the Act, it would be unnecessary for the Commission to evaluate forbearance under subsection 34(2) of the Act. It submitted that this approach would be consistent with the approach the Commission took in its forbearance evaluation of ULLs.

Line-sharing

12. Bell Canada submitted that line-sharing, as a legacy facility limited to providing slow Internet services, is outdated and nearly obsolete; that it represents a small fraction of the wholesale Internet market and even less of the overall Internet market; and that demand for line-sharing has been decreasing for several years.
13. Bell Canada noted that line-sharing is essentially a partial ULL dedicated only to Internet services, for which there are adequate competitive alternatives. It submitted that the Commission's conclusions about ULLs and the appropriateness of granting forbearance from their regulation apply equally to line-sharing.
14. TCI agreed that line-sharing is an outdated technology, and submitted that it is becoming unsuitable as consumers demand Internet access speeds that cannot be provided over copper loops.

ULL connecting links

15. Bell Canada submitted that ULL connecting links function only in conjunction with ULLs and line-sharing, and are not sold as a stand-alone product.
16. In Bell Canada's view, therefore, all of the Commission's policy conclusions in Telecom Decision 2018-200 in relation to ULLs should also apply to ULL connecting links. It submitted that forbearance from their regulation would be consistent with the policy objectives set out in section 7 of the Act for the same reasons in both cases.
17. TCI submitted that ULL connecting links should be forborne from regulation because they serve only as adjuncts to ULLs and line-sharing, and that the policy analysis that supported forbearance in the case of ULLs should also apply in the case of ULL connecting links, for the same reason.

⁴ The market power test (set out in Telecom Decision 94-19) consists of several evaluation criteria, including market share, supply and demand, barriers to entry, availability of substitutes, and technological factors.

Commission's analysis and determinations

18. The Commission determines whether or not to forbear from regulating a service pursuant to section 34 of the Act. One approach is to conduct a policy analysis under subsection 34(1) of the Act. The other is to assess, pursuant to subsection 34(2) of the Act, whether there is sufficient competition to protect the interests of users, typically by conducting a market power test.⁵
19. The Commission considers that it is not necessary to conduct a full market power test under subsection 34(2) of the Act with respect to line-sharing and ULL connecting links because those services function only in conjunction with ULLs, which the Commission has already determined do not meet the competition component of the Essentiality Test.
20. Furthermore, in Telecom Decision 2018-200, the Commission's decision to forbear from the regulation of ULLs did not include an assessment under subsection 34(2) of the Act. In that decision, the Commission determined that Bell Canada's ULL service met the criteria for forbearance under subsection 34(1) of the Act, in that to forbear from its regulation would be consistent with policy objectives outlined in paragraphs 7(c), (f), and (g) of the Act.⁶
21. In view of the above, the Commission considers it appropriate to examine Bell Canada's forbearance request pursuant to section 34(1) of the Act.

Line-sharing

22. In Telecom Decision 2018-18, the Commission indicated that line-sharing is closely associated with ULLs and agreed that it is effectively a partial ULL, since it lacks the local voice functionality available on a full ULL.
23. In that decision, the Commission determined that line-sharing did not pass the Essentiality Test because it did not meet the input or competition components of that test, and its review of the associated policy considerations supported that conclusion.
24. In the proceeding that led to Telecom Decision 2018-18, Bell Canada submitted evidence to the Commission that showed a significant decline in demand for line-sharing between 2013 and 2016. The evidence provided by Bell Canada in the current

⁵ Subsection 34(2) of the Act states the following: Where the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users, the Commission shall make a decision to refrain, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to the service or class of services.

⁶ The cited policy objectives of the Act are 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; (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 (g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services.

proceeding shows that the downward trend in the number of subscriptions has continued since 2016, although at a slower pace.

ULL connecting links

25. In Telecom Decision 2018-18, the Commission noted that ULL connecting links do not function independently of ULLs.
26. In that decision, the Commission determined that ULL connecting links did not pass the Essentiality Test because they did not meet the input or competition components of that test, and its review of the associated policy considerations supported that conclusion.

Subsection 34(1) of the Act

27. Subsection 34(1) of the Act states that the Commission may make a determination to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29, and 31 in relation to a telecommunications service or class of services provided by a Canadian carrier, where the Commission finds as a question of fact that to refrain would be consistent with the Canadian telecommunications policy objectives.
28. The Commission considers that the policy objectives most relevant to Bell Canada's application are those set out in paragraphs 7(c) and (f) of the Act.
29. The Commission considers that forbearing from the regulation of line-sharing would be consistent with paragraph 7(c) of the Act. Specifically, Bell Canada's wholesale customers may increasingly migrate from a legacy facility towards more advanced technologies that can deliver higher-speed Internet services to end-users.
30. Forbearing from the regulation of line-sharing would also be consistent with the policy objective set out in paragraph 7(f) of the Act. Specifically, forbearance would foster increased reliance on market forces for the provision of telecommunications services.
31. In Telecom Regulatory Policy 2015-326, the Commission determined that the withdrawal of mandated access to ULLs would not likely result in a substantial lessening or prevention of competition in the markets for local retail wireline residential and business voice services, regardless of the exchange or the incumbent local exchange carrier operating territory. The Commission subsequently determined, in Telecom Decision 2018-200, that forbearance from the regulation of ULLs would foster increased reliance on market forces for the provision of upstream (wholesale) and downstream (retail) telecommunications services. The Commission found that it would be inefficient and ineffective to continue to regulate a service that has little impact on competition.
32. The Commission notes that information provided by Bell Canada shows that the number of subscriptions for line-sharing is only a small fraction of the number of

subscriptions for ULLs. Therefore, forbearance from the regulation of line-sharing would have much less impact on competition than forbearance from the regulation of ULLs.

33. Furthermore, if line-sharing continues to be regulated, wholesale customers may continue to rely on legacy technology to provide Internet services to end-users, which, in the Commission's view, would be an inefficient and ineffective application of regulation.
34. With regard to ULL connecting links, which only function in conjunction with ULLs and line-sharing, the Commission considers that forbearing from their regulation would be consistent with the policy objectives set out in paragraphs 7(c) and (f) of the Act for the same reasons as were indicated for line-sharing. Additionally, forbearance from the regulation of ULL connecting links would be consistent with the Commission's previous decision to forbear from the regulation of ULLs in Telecom Decision 2018-200, which was subsequently reaffirmed in Telecom Decision 2019-94.

Subsection 34(3) of the Act

35. The Commission considers that line-sharing and ULL connecting links also meet the criteria for forbearance under subsection 34(3) of the Act. Specifically, the Commission does not consider that to refrain from their regulation would be likely to impair unduly the continuance of a competitive market for retail voice or Internet services in Bell Canada's exchanges where there continues to be demand.
36. The Commission notes that competitive alternatives, such as wholesale high-speed access service, are available to wholesale customers should Bell Canada decide to stop offering line-sharing or ULL connecting links, or to significantly increase prices for those services. However, in the event that Bell Canada decides to stop offering either service in any of its exchanges, the Commission considers that the company should give its wholesale customers sufficient notice to allow them to make alternative arrangements.

Conclusion

37. In light of the above, the Commission **approves** Bell Canada's application. Specifically, the Commission determines that, effective the date of this decision, sections 25, 29, and 31, and subsections 27(1), (5), and (6) of the Act no longer apply with respect to line-sharing and ULL connecting links in all of Bell Canada's exchanges in which those services are not already forborne from regulation.
38. The Commission retains its powers to impose conditions on a service pursuant to section 24 of the Act, as well as its powers to protect against undue preference and unjust discrimination pursuant to subsections 27(2) and (4) of the Act, and to determine compliance with all retained requirements pursuant to subsection 27(3) of the Act. Those provisions give the Commission the flexibility to address any future complaints.

39. Further, pursuant to section 24 of the Act, the Commission requires Bell Canada to provide at least six months' written notice to existing wholesale customers in the event that the company decides to stop offering either line-sharing or ULL connecting links in any of its exchanges.

Policy Directions

40. The Commission is required, in exercising its powers and performing its duties under the Act, to implement the policy objectives set out in section 7 of the Act, in accordance with the 2019 Policy Direction⁷ and the 2006 Policy Direction⁸ (collectively, the Policy Directions). The Commission considers that its determinations in this decision are in accordance with the Policy Directions.

41. 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.

42. 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.

43. The Commission considers that forbearing from the regulation of line-sharing and ULL connecting links services is consistent with subparagraphs 1(a)(i), (vi), and (vii) 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,
- (vi) enable innovation in telecommunications services, including new technologies and differentiated service offerings, and
- (vii) stimulate investment in research and development and in other intangible assets that support the offer and provision of telecommunications services.

44. In particular, the Commission finds that forbearance will provide the requested regulatory relief with respect to two non-essential legacy wholesale services. While the migration of consumers away from lower-speed services towards higher-speed alternatives has been underway for many years, forbearance from the regulation of those wholesale services, given the availability of superior wholesale alternatives, will further support this trend within the downstream retail market.

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

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

45. The Commission also considers that forbearance is consistent with subparagraph 1(a)(i) of the 2006 Policy Direction, which states that the Commission should rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives.
46. Further, in compliance with subparagraph 1(b)(i) of the 2006 Policy Direction, the Commission considers that forbearance from the regulation of ULL connecting links and line-sharing will advance the policy objectives set out in subsections 7(c) and (f) of the Act because it will enhance the efficiency and competitiveness of Canadian telecommunications and foster an increased reliance on market forces.

Secretary General

Related documents

- *Allstream Business Inc. and Zayo Canada Inc. – Application to review and vary Telecom Decision 2018-200*, Telecom Decision CRTC 2019-94, 3 April 2019
- *Bell Canada – Application for forbearance from the regulation of unbundled local loops*, Telecom Decision CRTC 2018-200, 5 June 2018
- *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
- *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994