Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Order CRTC 2024-123

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Public record: Tariff Notice 7688

Bell Canada – Disaggregated Broadband Service – new central office

Summary

The Commission approves Bell Canada's application to add a new central office to its tariff pages for its disaggregated wholesale high-speed access service. Competitors can use this service to offer Internet services to customers in the area served by this central office.

Background

1. In Telecom Regulatory Policy 2015-326, the Commission directed incumbent local exchange carriers (ILECs) and cable carriers to offer disaggregated wholesale high-speed access (HSA) services to competitors.

2. Disaggregated wholesale HSA service enables competitors to offer Internet services to end-users served by an ILEC central office or a cable company head-end. To do so, competitors have to (i) invest in transmission facilities to each central office or head-end where they have end-users, or (ii) lease these facilities from another carrier.

Application

3. On 12 March 2024, the Commission received an application from Bell Canada proposing changes to its Access Services Tariff for Disaggregated Broadband Service (DBS), which is Bell Canada's name for its disaggregated wholesale HSA service. Specifically, Bell Canada proposed to add a new central office to its tariff pages, where DBS is now in-service.

4. In the proposed tariff pages associated with its application, Bell Canada claimed confidentiality on the location of the central office where the proposed disaggregated service will be provided.

5. Bell Canada also requested that the three-year transition period for its new central office begin two weeks from approval of the company's application. This transition period is to migrate from the current aggregated wholesale HSA service model to the disaggregated wholesale HSA service model (as outlined in Telecom Regulatory Policy 2015-326).

6. Bell Canada submitted that it is not proposing any price changes to DBS as part of its application.
7. The Commission did not receive any interventions in regard to this application.

Commission's analysis

8. In Telecom Information Bulletin 2010-455-1, the Commission set out the procedures for filing tariff applications for competitor services with the Commission. Bell Canada has filed all necessary documents with its application in accordance with these procedures.
9. In its proposed tariff pages, Bell Canada has claimed confidentiality on the location of the central office where the proposed disaggregated wholesale HSA service will be provided. The proposed tariff pages also state that detailed central office locations are provided upon demand to customers who have signed a non-disclosure agreement (NDA) with the company, where the disaggregated HSA services are available to customers.
10. As highlighted in Telecom Order 2022-184, the Commission notes that competitors are informed about the central offices enabled for DBS through a tariff notice filing. This tariff notice filing would state the date of DBS enablement, and competitors can request the specific location of a central office by signing an NDA. Competitors that have already signed an NDA can request location information without signing additional NDAs, with a minimum delay of two business days.
11. The Commission notes that these provisions in the proposed tariff pages are consistent with the Commission's determination in Telecom Order 2022-184. In that order, the Commission found that the specific direct harm in disclosing such information outweighs the public interest in its disclosure, and therefore determined that Common Language Location Identifier codes and addresses of central offices enabled for DBS should not be released on the public record.
12. The Commission considers that approval of Bell Canada's application would promote competition in the retail HSA service market because competitors subscribing to the service would have access to end-users in that location on a disaggregated basis.
13. Furthermore, in Telecom Order 2023-334, the Commission approved a similar application by Bell Canada related to DBS under the same conditions of central office location confidentiality.
14. The Commission considers that approval of Bell Canada's application is consistent with the 2023 Policy Direction,[1] particularly the objectives outlined in paragraphs 8(a), (b), (c), (d), and (e).[2]

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[1] *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, SOR/2023-23, 10 February 2023

[2] The cited policy objectives are: 8(a) fostering competition; (b) promoting investment in high-quality networks; (c) improving consumer choice; (d) supporting the provision of innovative services; and (e) encouraging the provision of services at reasonable prices for consumers.

Conclusion

15. In light of all of the above, the Commission approves, by majority decision, Bell Canada's application to add a new central office to its tariff pages for DBS.

16. The dissenting opinion of Commissioners Bram Abramson and Claire Anderson is attached.

Secretary General

Related documents

- *Bell Canada – Tariff Notices 7674 and 7674A – Disaggregated Broadband Service*, Telecom Order CRTC 2023-334, 5 October 2023
- *Bell Canada – Approval of a tariff application*, Telecom Order CRTC 2023-188, 4 July 2023
- *Notice of hearing – Review of the wholesale high-speed access service framework*, Telecom Notice of Consultation CRTC 2023-56, 8 March 2023; as amended by Telecom Notices of Consultation CRTC 2023-56-1, 11 May 2023; 2023-56-2, 4 July 2023; 2023-56-3, 6 November 2023; and 2023-56-4, 8 April 2024
- *Bell Canada – Disaggregated Broadband Service*, Telecom Order CRTC 2022-184, 7 July 2022
- *Call for comments – Appropriate network configuration for disaggregated wholesale high-speed access services*, Telecom Notice of Consultation CRTC 2020-187, 11 June 2020; as amended by Telecom Notice of Consultation CRTC 2020-187-1, 22 July 2020
- *Videotron Ltd. – Applications regarding (i) Cablevision du Nord de Québec inc.'s (Cablevision) refusal to sign a third-party Internet access (TPIA) service agreement, and (ii) access to Cablevision's TPIA service at just and reasonable rates, and under just and reasonable terms*, Telecom Decision CRTC 2019-423, 16 December 2019
- *Approval processes for tariff applications and intercarrier agreements* – Telecom Information Bulletin CRTC 2010-455-1, 19 February 2016
- *Review of wholesale wireline services and associated policies*, Telecom Regulatory Policy 2015-326, 22 July 2015; as amended by Telecom Regulatory Policy 2015-326-1, 9 October 2015
- *Procedures for filing confidential information and requesting its disclosure in Commission proceedings*, Broadcasting and Telecom Information Bulletin CRTC 2010-961, 23 December 2010; as amended by Broadcasting and Telecom Information Bulletin CRTC 2010-961-1, 26 October 2012
- *Framework for forbearance from regulation of high-speed intra-exchange digital network access services*, Telecom Decision CRTC 2007-35, 25 May 2007

Dissenting opinion of Commissioners Bram Abramson and Claire Anderson

1. We have reviewed our colleagues' decision, which disposes of a relatively straightforward matter: (i) adding to Bell Canada's tariff another central office (CO) in which a competitor has requested Disaggregated Broadband Service (DBS), Bell Canada's version of disaggregated wholesale high-speed access (HSA), and, accordingly, (ii) initiating the three-year countdown after which aggregated HSA will no longer be available in that CO's serving area.

2. We agree with the majority decision on most points, but we respectfully depart from it in two ways. One relates to transparency. The other relates to structural relationships:

    - **Transparency:** Decisions initiating the three-year countdown towards phasing out aggregated HSA in a CO or head-end (HE) serving area should identify the CO/HE in question. The public interest in this information is high, its disclosure harm is negligible, the requirement to provide it is long-standing, and a basis for its confidentiality is rarely offered—as none was offered here. Yet, in contradistinction to the relevant CO street addresses and latitude/longitude information, whose redaction is appropriate, the COs' very names—for which no basis for confidentiality was advanced—have been redacted without comment. We would have required that the latter be made public. The first portion of two-part CO names (indicating the relevant community) has properly remained on the public record. That is not enough, and it is not what is supported by the reasons both filed and decided. The full CO name (specifying the CO within the relevant community) should be on the public file, too.

    - **Structural relationships:** Incumbents that have, since well before 2015, been HSA providers, are now also HSA users. This changes the balance of incentives underlying the way the three-year countdown is launched. In our view, the Commission should now check, before agreeing to start the three-year countdown for a CO/HE serving area, whether the competitor request grounding that countdown is that of a third party, or merely that of the incumbent's affiliate.

3. We set these views out in greater detail below.

Transparency

4. Telecom Regulatory Policy 2015-326 established a "demand-based" approach to phasing disaggregated HSA in, and aggregated HSA out, for a given CO/HE serving area: "[i]ncumbent carriers are to consult with their wholesale HSA service customers to identify the specific central office and head-end locations where a disaggregated wholesale HSA service will be in demand" (paragraph 152).

5. This order is the fourth decision designating one or more CO/HEs for transition and, in so doing, initiating the three-year countdown for the related serving areas.[3]

6. Bell Canada's initial filing, leading to Telecom Order 2022-184, proposed to list in its tariff the COs where DBS was now in service. The tariff pages it filed, and has since filed, listed "Toronto" as the CO to be transitioned. The pages positioned both the CO's full name, and its corresponding Common Language Location Identifier (CLLI) code, under the heading "Central Office CLLI"—and redacted both of them.

7. Bell Canada went on to underline that it consistently treats three location indicators as confidential information, due to security reasons: its COs' CLLIs, their civic addresses, and their latitude/longitude. Bell Canada further noted that disaggregated points of interconnection are likewise shorn of the exact locations in another carrier's public tariffs.[4] Bell Canada added that, in the disaggregated configuration proceeding initiated by Telecom Notice of Consultation 2020-187, the confidentiality of these three location identifiers was upheld in a 28 September 2020 letter.

8. Bell Canada did not provide any rationale for including, within the scope of its redactions, its COs' names, too. Indeed, the latter letter, on which Bell Canada relied to support its initial confidentiality designation, did not require disclosure of the exact locations of CO/HEs: not their civic address, nor their latitude/longitude. Nor did it require disclosure, to the extent relevant, of their CLLI codes. The opposite is the case: the letter on which Bell Canada's confidentiality rationale relied required, to our point, that Bragg Communications Inc., carrying on business as Eastlink; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Canada Inc.; Shaw Cablesystems G.P.; and TELUS Communications Inc. disclose "Central Office name," "Exchange name," and "Site name." The Commission should likewise have done so in the four decisions designating one or more CO/HEs for transition, including the majority decision on this order.

9. Instead, the Commission was silent on the matter. Telecom Order 2022-184 provided no reasons justifying the redaction of CO names, or even addressing these redactions that are inconsistent with the 28 September 2020 letter. On the contrary: like Bell Canada's submissions, the reasons in Telecom Order 2022-184 addressed, and permitted, only the redaction of exact locations and remained silent on Bell Canada's further redaction of full CO names. As "the information on **the location of** the DBS-enabled COs is required by the competitors in order to plan their transition to the disaggregated HSA service at DBS-enabled sites," the public interest in disclosure of these locations was high. However, as long as competitors could obtain the location information under NDA, "disclosure of **the location of** the DBS-enabled COs on the public record could cause specific harm" outweighing that public interest.[5]

10. The Commission found this approach persuasive in Telecom Order 2023-334, agreeing, once again, to maintain the confidentiality of "the **locations** of the COs where the proposed disaggregated services will be provided"—specifically, of the

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[3] The previous three were Telecom Orders 2022-184, 2023-188, and 2023-334.

[4] Telecom Order 2022-184, paragraphs 19-21.

[5] Telecom Order 2022-184, paragraphs 29, 30, and 33 (emphases added).

"[CLLI] codes and addresses of COs enabled for DBS."[6] Likewise, our colleagues have found the same approach persuasive in their majority decision, and their decision agrees only to the confidentiality of "**detailed** central office locations," "the **specific location** of a central office," and, in particular, the "[CLLI] codes and addresses of central offices enabled for DBS."[7] However, none of this speaks to the further and, in our view, inappropriate redaction of the CO names, which the Commission has since at least 28 September 2020 been careful to elsewhere distinguish from their street addresses and latitude/longitude information.

11. While it is not clear to us what publishing a CLLI code has to do with placing specific location information on the public record or not,[8] we do not take particular issue with it at this time. Nor, more broadly, is our focus on the Commission's approach in Telecom Order 2022-184, in Telecom Order 2023-334, or in the majority decision on this Telecom order, to grant confidentiality over street address and latitude/longitude information of COs (or, generally, of CO/HE buildings).

12. However, Bell Canada's public tariff is not consistent with those decisions or, indeed, with the detailed rationale that it must file to justify any redaction from the public record.[9] That is because Bell Canada's public tariff does not merely redact street addresses, latitude/longitude information, or CLLI codes. It also redacts CO names by listing only community names like "Toronto" or "Montreal," rather than the full CO names themselves, like "Hamilton-Hunter", "London-Clarence", or "Ottawa-O'Connor": CO names that appear in Bell Canada's public tariff in relation to other matters.[10]

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[6] Telecom Order 2023-334, paragraphs 5 and 11, also citing the abbreviated decision in Telecom Order 2023-188, "under the same conditions of CO **location** confidentiality" (emphasis added). Both orders were issued subsequent to the 2023 Policy Direction (registered 10 February 2023): see, for example, section 3 and paragraph 9(c).

[7] Telecom Order 2024-123 above, paragraphs 9, 10, and 11 (emphases added).

[8] CLLI codes are alphanumeric strings. They disclose no location information. Rather, those who already have access to detailed location information are able to use them to easily find their way to the relevant addresses within that information. We observe that the U.S. Federal Communications Commission (FCC) routinely publishes CLLI code lists without similar concerns: see, for instance, "Wireline Competition Bureau Releases List of Common Language Location Identification Codes for Price Cap Incumbent Local Exchange Carrier Wire Centers Subject to UNE [Unbundled Network Element] Transport Forbearance" (press release), DA-19-733, 1 August 2019, with accompanying CLLI lists maintained at https://www.fcc.gov/clli-code-list. We further note, in this regard, Broadcasting and Telecom Information Bulletin 2010-961, paragraph 18: "[…] information that has been made public in other contexts, including information that is disclosed due to securities regulation or put on the public record by the Federal Communications Commission, will generally not be accepted as information designated as confidential."

[9] Broadcasting and Telecom Information Bulletin 2010-961, paragraph 5: "[the designating party] must provide an abridged version of the document along with an explanation of how the information falls into a category of information listed in section 31. The party must provide a detailed rationale to explain why the disclosure of the information is not in the public interest (section 32(1))."

[10] See Bell Canada, General Tariff, item 5410(3)(d) (Digital Access Service, identifying 12 COs, and the related CLLI codes, for which 100-Gbps-Ethernet-based Aggregated High Speed Service Provider Interface interconnects are available).

13. Had Bell Canada formally sought such confidentiality, the fact that CO names are routinely "made public in other contexts"[11]—these include its tariff pages,[12] the Commission's decisions,[13] geomapping databases,[14] and widely available crowdsourced Web pages and chat groups[15]—would have made for a challenging application. However, Bell Canada did not provide the detailed rationale required to complete such an application. Its confidentiality rationales and the Commission's responsive findings relate only to the addresses, latitudes/longitudes, and CLLI codes associated with COs.

14. For these reasons, there is no basis on which to omit specific CO names from Bell Canada's public DBS tariff pages, including the name of the CO approved in this order. Indeed, there is no good reason to omit the relevant CO name from the order itself.

15. Information relating to availability, withdrawal, or changes in the communications services available in a community is fundamentally in the public interest. Already-existing competitors do, certainly, have an interest in such information, as Telecom Order 2022-184 acknowledged. But so do competitors without current HSA plans for the relevant serving area but that are engaged in other activity there and might revise their plans based on new information. So do potential competitors considering market entry or building business cases. So do local community residents anticipating better or different broadband service.

16. "Serendipity, the occurrence and development of events by chance in a happy or beneficial way", as one of Canada's trading partners has noted, "is often touted as an intrinsic value of open data. In short, open data allows for serendipitous connections between a need and a solution to be made with as few hurdles as possible."[16] Serendipity in an open-data environment occurs not only through the interaction between the Commission's decisions and its direct readers, but also through the ways in which the intermediary ecosystem pre-digests them for new audiences through intermediaries, whether search alerts that crawl for a journalist's community's name, or generative news bots relied on to create local newsletters based on contextual clues.

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[11] Footnote 8, above.

[12] Footnote 10, above.

[13] For example, Telecom Decision 2007-35, paragraph 187.

[14] Precisely Software Inc., *ExchangeInfo Plus Product Guide*, Version 2022.05.0: "ExchangeInfo Plus is a comprehensive database used for mapping and analyzing wire center serving areas and central offices throughout the United States and Canada […] ExchangeInfo Plus also contains the following data about each wire center: CLLI […] code, LATA [Local Access Transport Area] assignment, rate center names, exchange names, area codes (NPAs [Numbering Plan Areas]), prefixes (NXXs), carrier type information."

[15] For example, http://www.co-buildings.com/canada/on/416/.

[16] Te Kawanatanga o Aotearoa (New Zealand Government), "Serendipity: the hidden value of open data", online.

17. The Yale Report called on Commissioners to "be the individuals leading the CRTC's shift toward a future-oriented, proactive, and data-driven style of regulation built around market monitoring and enforcement" (section 1.3.3):[17] our goal in tying transparency to fulsome disclosures is partly to rise to that challenge.

Structural relationships

18. When Telecom Regulatory Policy 2015-326 devised the demand-based approach by which incumbent carriers are to consult with their wholesale HSA service customers (paragraph 152) and elicit the applications that start the clock on an aggregated HSA phase-out within a CO/HE-serving area, HSA markets functioned differently. Few incumbents made much use of HSA as access-seekers. Indeed, large incumbents routinely sat to one side of the HSA table. Independent competitors were opposite.

19. Market dynamics have changed. HSA providers also became routine HSA users.[18] HSA providers acquired market participants accounting for a significant portion of HSA use.[19] The ripples of these changes have not yet, in our view, been worked through the Commission's existing frameworks. However, the current proceeding, and the test it applies, is one setting for such ripples.

20. In particular, large incumbents' shift towards including wholesale-HSA-based retail services in their service portfolios—including acquisition, in recent years, of many of the largest independent competitors that provide those services—has also shifted the mix of incentives and opportunities relating to the three-year countdown:

    - Until a practical alternative to aggregated HSA is worked out, incumbents have every incentive to begin the three-year countdown phasing out aggregated HSA in a CO/HE serving area.

    - They can do so on the mere strength of an unspecified competitor's request. The Commission has not made a practice, and in this proceeding, did not verify whether the competitor request initiating the three-year countdown was that of an affiliate.

21. We acknowledge that many aspects of this framework are before certain of our colleagues in the proceeding initiated by Telecom Notice of Consultation 2023-56. In the meantime, however, we must deal with the framework as it currently exists. In that context, it is our view that the Commission ought to have sought information, and placed information on the record, as to whether the competitor request grounding the launch of the CO/HE serving-area phase-out was that of an arm's-length firm, or merely that of the incumbent's own affiliate acting in concert.

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[17] Broadcasting and Telecommunications Legislative Panel, *Canada's communications future: Time to act:* ISED, 2022, section 1.3.3.

[18] See, for example, Telecom Decision 2019-423.

[19] Irene Galea, "Canada's big telecoms on buying spree of independent providers, raising competition concerns", *Globe and Mail,* 28 February 2023.

22. How that information ought to change the test to be applied, if at all, could then have been the object of a public record. Perhaps incumbents ought to be able to trigger their own three-year-phase-out processes in areas where they see continued competition from HSA-based services. Perhaps, on the contrary, an incumbent-affiliated request in respect of that incumbent's own CO/HE ought to be able to seek disaggregated service, but not launch a phase-out of aggregated service in the related serving area. Regardless, a demand-driven approach in which those on either side of the table are under common control is surely different than what was envisioned in 2015.

23. Structural changes in Canadian telecommunications markets will continue to emerge and to evolve. In our view, to slavishly apply existing tests without considering the ways in which these structural changes ought to be accounted for would be not only to betray our roles as administrative deciders,[20] but also to give way to a brittle ossification that would belie the key goal of being resilient, adaptive, and able to respond to changing circumstances in our decisions.[21] Spotting and plugging regulatory loopholes that, as a result of the changing economics of our sector, merge new opportunities with long-standing incentives, is part and parcel of the latter approach.

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[20] See, for example, *Pandurangan v. Alberta Association of Architects,* 1981 CanLII 1051 (AB KB), at paragraphs 33-34 (Miller J.): "It seems to me that a board which is called upon to exercise an administrative discretion cannot be said to be bound by its previous decisions. While its failure to act in the same fashion on the same facts may, in certain circumstances, indicate arbitrariness or a form of discrimination, there is no principle of law in existence that binds it to follow previous decisions, particularly where there may well be a valid reason for not doing so. There is, in fact, a principle of law that suggests that a body to whom a discretion is granted will be committing an error of law if it allows its discretion to be bound by its previous decisions. The fact that such a board binds itself by contract or by an enunciated policy from which it will not deviate has been held to be sufficient to overturn a decision of that board made under that contract or policy."

[21] We note that such an approach is also consistent with paragraphs 9(b) and (c) of the 2023 Policy Direction.