



Telecom Decision CRTC 2004-43

Ottawa, 30 June 2004

First Media Group Inc. – Competitive provision of 900 services

Reference: 8622-F15-01/02

*In this decision, the Commission confirms that the current regulatory framework already allows for competitive provision of 900 network services. Consistent with its policies to promote facilities-based competition, the Commission **denies** First Media Group Inc.'s (FMG) proposal to provision 900 network services to interested 900 content service providers by reselling the underlying network elements and services of 900 service carriers and local exchange carriers (LECs).*

*The Commission **denies** FMG's request to issue a public notice to further consider mandatory unbundling of network elements and services for 900 service carriers and LECs.*

The Commission instructs FMG and the 900 service carriers to work together (along with other interested 900 content service providers) to discuss improvements to the existing billing arrangements to improve the billing process, accuracy and timeliness of billing information for existing tariff 900 services.

Introduction

1. The Commission received an application from First Media Group Inc. (FMG) dated 25 April 2002 and amended 5 June 2002, filed pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure*. FMG requested that the Commission permit the provision of 900 network service to interested 900 content service providers, using underlying network components and services leased from 900 service carriers and local exchange carriers (LECs).

Process

2. FMG was requested to respond to Commission's interrogatories on 25 June 2002. Aliant Telecom Inc., Bell Canada, and MTS Communications Inc. (collectively, the Companies), TELUS Communications Inc. (TELUS) issued interrogatories to FMG on 5 July 2002. FMG filed replies to the interrogatories on 27 and 29 August 2002.
3. On 13 September 2002, the Commission received comments from the Companies and TELUS. FMG filed reply comments on 27 September 2002.

Background

4. The 900 service is a tariff network service¹ provided by the Companies and TELUS (collectively, the 900 service carriers). FMG and other 900 content service providers subscribe to 900 network service to provide pay-per-call applications, including live and pre-recorded services, to callers calling a 900-prefixed telephone number (900 service caller). These services include adult chat lines, vote casting, psychic consultations, soap opera updates, games, sports scores, weather forecasts, translation, medical, legal or government services.
5. The 900 service carrier provides each subscribing 900 content service provider with two billing options for billing 900 service callers: an Accounts Receivable Management (ARM) agreement or an Alternative Billing Arrangement (ABA) agreement.
6. Under an ARM agreement, the 900 service carrier bills 900 service callers on behalf of the 900 content service provider, using the originating telephone number from which the 900 call is placed. The 900 service carrier pays the 900 content service provider the amount collected from the caller, less certain fees and chargebacks². The ARM agreement has several restrictions³ aimed at protecting the brand name of 900 service carriers and LECs, because 900 service fees appear on the caller's telephone bill and thus may be mistaken for a LEC-hosted service.
7. Under an ABA agreement, the 900 content service provider bills 900 service callers directly, using caller information provided by the 900 service carrier.
8. Both ARM and ABA agreements specify that the 900 content service provider must abide by certain consumer safeguards, such as a requirement to include a preamble or introductory message at the start of a 900 call, as well as a cap on applicable charges.
9. 900 service in Canada operates by converting called 900 numbers to 800 numbers, which are then routed to the 900 content service provider utilising the existing 800 toll-free service⁴. This system allows the Companies and TELUS to separate their 900 service operations from each other, so that TELUS can provide 900 services in the territories of the Companies and vice-versa.

¹ The 900 network service offered by a 900 service carrier enables callers to place calls to 900-prefixed telephone numbers. Such calls must originate in Canada and terminate on one-way incoming telephone access line(s) leased by the 900 content service providers in the designated 900 service's serving territory. With some minor exceptions, access to 900 service numbers is not permitted for collect calls, third number calls, calling card calls, calls made from pay and cellular telephones, calls placed over Business Savings Plan dedicated access lines, and operator-assisted calls placed from hotels and motels.

² Chargeback means 900 service caller charges waived by the 900 service carrier and absorbed by the 900 content service provider.

³ An ARM agreement specifies that the 900 service carrier will not purchase the accounts receivable of a 900 content service provider for certain types of 900 programs, thereby eliminating the option for 900 content service providers of using ARM agreements for these excluded types of 900 programs. The list of excluded 900 program types includes programs contrary to applicable laws, adult programming (as assessed by the 900 service carrier), programs that are potentially fraudulent or deceptive, programs offering group access bridging or chat lines and usage-sensitive programs that use extraneous verbiage, repetitive scripts or holding periods as a means to prolong call duration.

⁴ When a caller dials a 900 number, the incumbent LEC's local switch identifies the 900 service carrier and collects call information. The call is then routed to the appropriate 900 service carrier. The 900 service carrier converts the 900 number to an 800 number and routes the call to the appropriate 900 content service provider.

Position of parties

FMG

10. FMG submitted that the 900 service carriers held a monopoly on the provision of 900 service in Canada that had not been challenged since the service was introduced in 1994. FMG further submitted that the lack of competition in the 900 service market had resulted in an expensive product that lacked service enhancements and featured poor service. FMG submitted that competition would stimulate growth in the industry and would result in greater access to service and content by Canadian consumers, including increased government and business content.
11. FMG submitted that the 900 service rates were too high, stating that the network usage charge for 900 service was \$0.35 per minute, regardless of the location of the caller and that of the 900 content service provider. FMG stated that competition in other telecommunications service markets had reduced rates, noting that the price of a coast-to-coast 800 call was below \$0.06 per minute for medium-sized businesses. FMG submitted that billing and collection was done by the 900 service carriers for other products at substantially lower rates than their tariff rates for 900 service.
12. FMG requested, as an alternative to approval of its application, that the Commission issue a public notice to consider the provision of 900 service by suppliers other than the current 900 service carriers.
13. In reply to interrogatories, FMG submitted that competition would stimulate growth in the industry and provide increased stability of supply should the current provisioning companies exit the business. FMG stated that its proposal included the design and implementation of a competitive 900 service that was more highly featured and more attractively priced than that currently available from the 900 service carriers. FMG suggested that many new enhancements to the 900 service could be introduced. For example, 900 services could be billed for on a subscription basis⁵, could be associated with the option of waiving calling charges or the option of purchasing products.
14. FMG proposed to operate as a 900 network service reseller. FMG noted that it would continue to operate as a 900 content service provider while operating its 900 network service business separately as an arm's length affiliate.
15. FMG submitted that, unlike with toll-free calls, the 900 content service provider may not currently choose an alternate carrier. FMG proposed to lease or rent toll-free 800 services from a third party Canadian carrier in order to transport 900 service calls from the 900 service carrier's local network to 900 content service providers. At the terminating end, the third party Canadian carrier would utilize the local networks of the 900 service carrier to complete the call, as it does with all toll-free calls.

⁵ For example, 900 services could be billed on a daily, weekly or monthly basis rather than on a call-basis or on the basis of call duration.

16. FMG submitted that it would use the existing 900 number to 800 number conversion service, but it needed access to 900 numbers in all NXXs⁶. FMG stated that the 900 service carriers' end offices have all been designed to accept Canadian 900-dialled numbers, convert them to 800 numbers, and then initiate a specific call detail record. Once the calls are converted to 800-type calls, they are routed in the same manner as any other toll-free call.
17. FMG submitted that, although it preferred to perform its own billing, the rates specified in ABA agreements were too high in comparison to those in ARM agreements. FMG noted that the rates specified in ABA agreements were \$0.35 per transaction, compared to the \$0.25 per transaction in ARM agreements. FMG also noted that ABA agreements required an additional monthly fee of \$500 for each 900 program number.
18. FMG noted that it would require timely access to 900 service callers' billing information in order to bill and collect charges. FMG proposed that the 900 service carriers provide this information in a method similar to that used in ABA agreements. FMG submitted that if the 900 service carriers provided FMG with electronic access to 900 service callers' billing information, it would be willing to acquire the information itself. FMG further submitted that a Commission-approved tariff for the provisioning of call details would be required.
19. FMG indicated that if it was not possible to sufficiently improve the ABA process, it was willing to consider the use of the industry standard billing and collection agreement. FMG stated that it would be prepared to review the costs and terms of such an agreement with the Companies and TELUS.
20. FMG submitted that portability of 900 numbers was necessary for 900 service in Canada and argues that a lack of portability would constrain competition. FMG further submitted that new entrants must be permitted the freedom and ability to migrate customers away from competitors with no requirement that a new and different number be assigned.
21. FMG stated that as a 900 network service reseller, it would not be subject to Commission regulation, nor be required to file tariffs for any of its services. FMG indicated that it would, however, adopt all consumer protection and privacy regulations incorporated in the current 900 service tariffs and agreements because it recognized the importance of protecting 900 service callers. FMG stated that this would include, for example, the current practice of excusing first time occurrence charges where the caller had cause to reasonably dispute them. FMG further recommended that the Commission consider a licensing arrangement for all 900 network service providers in order to regulate their performance.

The Companies

22. The Companies stated that they supported competition in the 900 service market. They were of the view that competition, if developed in a structured manner, benefited everyone involved as innovative services and pricing options were developed. The Companies submitted that FMG, however, had oversimplified the process of provisioning 900 service, resulting in concerns with regard to the balance between the needs of consumers and industry players.

⁶ Central Office Code representing the first three digits of a telephone number.

23. The Companies indicated that they would need to develop a new 900 number to 800 number conversion service and file tariffs with the Commission for approval. The Companies submitted that the design of the conversion service with supporting processes and procedures would require development work by the Companies, and potentially by other LECs.
24. The Companies noted that the 900 NXXs were initially assigned to Stentor Resource Centre Inc., and that with the evolution of that organization, Bell Canada and TELUS were in the process of transitioning the 900 NXXs to company-specific assignments. The Companies explained that there were no provisions for portability of existing 900 number assignments between Bell Canada and TELUS. The Companies noted that in *Service provider portability for 500 and 900 service access codes abandoned*, Order CRTC 2000-172, 7 March 2000 (Order 2000-172), the Commission suspended consideration of 900 service provider portability following a recommendation by the Canadian Steering Committee on Numbering (CSCN)⁷, which referred to a lack of interest in the issue.
25. The Companies stated that they were willing to support either billing arrangement proposed by FMG. They also stated that it may be possible to adjust the current ABA framework, but if not, it would be necessary to construct a new framework and negotiate an appropriate billing arrangement between all parties involved. The Companies submitted that this would likely require substantial development activity and cost, which might not be warranted given the relatively limited demand for 900 service.
26. The Companies submitted that the standard billing and collection agreement used with other telecommunications service providers was developed from the perspective of charging for facilities, and further submitted that billing for 900 service content was materially different than billing for facilities. The Companies argued that their brands could be negatively impacted by direct association with certain types of content of 900 programs and that they must have some control over the types of content billed on their respective bills.
27. The Companies submitted that FMG had not been clear on which consumer safeguards it intended to adopt or the manner in which they would be enforced. The Companies further submitted that consumer safeguards and their enforcement should be uniform for all companies offering 900 service to ensure consumer protection and competitive equity.
28. The Companies stated that it was not clear how FMG could impartially determine the reasonableness of a 900 service caller's dispute related to one of its own 900 programs. The Companies submitted that unless a first time chargeback was made mandatory, regardless of the merits of a 900 service caller's dispute, FMG could be in a conflict of interest position.

TELUS

29. TELUS submitted that, contrary to FMG's contention, the 900 service market is already open to competition for the supply of facilities for alternative 900 network service. TELUS stated that FMG's demands for 900 service carriers' services and facilities, which would allow it to operate

⁷ The CSCN is a CRTC Interconnection Steering Committee (CISC) working group that studies numbering resource issues.

as an alternative 900 network service provider in the manner and configuration it desired, would not serve the best interests of the telecommunications industry in general and the 900 service market in particular.

30. TELUS was of the view that FMG was attempting to secure a vehicle by which 900 content service providers could charge rates that were unconstrained by 900 service carriers' tariffs. TELUS submitted that the technical requirements that would enable FMG to provide its proposed 900 network service as a reseller were already available, and suggested that FMG's application appeared to be predicated on securing a better business arrangement for the services it needed as a 900 content service provider. TELUS argued that FMG's proposal would result in significant and unreasonable costs to 900 service carriers, an increased administrative burden on the Commission and LECs with little benefit to end-customers.
31. TELUS rejected FMG's claim that the lack of competition restricted the development of service enhancements and prevented Canadian consumers from having access to a greater variety of content, features, clarity of billing and lower prices. TELUS submitted that 900 content service providers had developed and offered a variety of service enhancements, introduced new content and added billing options to their service offerings.
32. TELUS noted that in *Competition in the provision of public long distance voice telephone services and related resale and sharing issues*, Telecom Decision CRTC 92-12, 12 June 1992 (Decision 92-12), the Commission allowed inter-exchange carriers (IXCs) to offer 900 service by giving them access to the necessary number resources. TELUS submitted that Canadian carriers involved in either the long distance market or the local market were not barred by regulation or by circumstance from being 900 network service providers. TELUS further submitted that the fact that no other carrier had chosen to enter the market could not be used to support FMG's contentions that network provisioning for 900 service constituted a cash-cow service for the 900 service carriers and that the rates 900 service carriers were charging 900 content service providers were exorbitant. TELUS submitted that, on the contrary, if those contentions were true, other carriers would have entered the 900 network service market where they could presumably easily undercut the high rates and the high margins enjoyed by the 900 service carriers.
33. TELUS submitted that FMG's assertion that high ABA and ARM rates constrained the ability of a 900 content service provider to reduce 900 service caller rates was implausible. TELUS stated that the ABA and ARM rates charged by TELUS were in the range of cents per minute while the 900 service caller rates charged by 900 content service providers were in the range of dollars per minute.
34. TELUS stated that an additional cost burden could be unduly imposed on 900 service carriers if alternate 900 network service providers were entitled to bill their customers' 900 service callers through the 900 service carriers' bills. Although FMG stated that it would handle complaints, TELUS submitted that the 900 service caller would generally contact the 900 service carrier if their complaint was not satisfactorily resolved. TELUS further submitted that 900 service carriers should not be required to provide an ARM or an ABA service to an alternative 900 network service provider because the 900 service carriers would be burdened with billing issues arising

from a service over which they had no control. TELUS stated that 900 service carriers should not be required to provide billing services for a 900 service that they would not normally bill for, but rather, that billing services should be provided by the 900 network service provider.

35. TELUS stated that it was unsure who would be required to enforce obligations on 900 network service providers that were resellers. TELUS noted that FMG proposed licensing 900 network service resellers but did not suggest who would bear the burden of ensuring that licensees were fulfilling the conditions of their licence. TELUS submitted that 900 service carriers should not be responsible for monitoring or investigating resellers, as that would unduly place a cost burden on them.

FMG reply comments

36. FMG stated that the 900 service carriers operated as IXCs for the toll portion of 900 services and as LECs for interconnection and billing services. FMG submitted that this afforded them a bundling advantage not available to competing carriers. FMG further submitted that this unique advantage could be one reason why competing IXCs had not entered the 900 service provisioning market.
37. FMG proposed, as an alternative to its original proposal of portability of 900 numbers, the awarding of a block of spare and surplus NXXs to new competitors. FMG submitted that if it was awarded a spare block of 900 numbers in an existing Canadian NXX of choice, the 900 service carriers would merely direct FMG's block of numbers to its carrier. FMG suggested that this alternative would reduce the operational impact that the 900 service carriers would incur if they opened a totally new 900 NXX numbering block.
38. FMG indicated that it was prepared to demand a regulated billing and collection arrangement if the 900 service carriers refused or were unable to deliver the necessary improvements to the current ABA-type process. FMG submitted that the Companies' objections to a billing and collection arrangement due to branding concerns were entirely without merit as the 900 service carriers used the billing and collection agreement for 900 service charges due from competitive local exchange carriers (CLECs) callers. FMG noted that the 900 service carriers were not required to award reciprocal control over their managed programs to those CLECs.

Commission analysis and determination

39. While FMG requested that the Commission approve competition in the provision of 900 services to ensure improvements in caller billing options and in the development of lower prices for 900 content service providers, the Commission notes that in Decision 92-12, it allowed competitive provision of 900 network services by CLECs and IXCs.
40. The Commission notes that FMG intends to act as a 900 network service reseller without having to supply any network facilities for its provision of 900 services. FMG indicated that it would use a 900 number to 800 number conversion service, an 800 carrier selection service and the 800 service of an IXC. In the Commission's view, FMG's proposal to provide competitive 900 network services appears predicated on the development and provision of new 900 service offerings by existing 900 service carriers and other LECs.

41. The Commission considers that this gives rise to the following issue. Should the competitive provision of 900 network services be promoted by directing existing 900 service carriers to make available underlying network elements and new 900 service offerings for resale by 900 network service resellers. If so, how should this be achieved and what safeguards should 900 network service resellers comply with when offering their services to subscribing 900 content service providers or to the public. If not, should the Commission issue a public notice, as requested by FMG, to further consider the competitive provision of 900 network services using underlying network elements and developing and provisioning new 900 service offerings for resale by 900 network service resellers.
42. In reaching its determination, the Commission will analyse and consider the following: the existing regulatory framework and competitive opportunities for 900 services; the current 900 services and opportunities for enhancements or price reductions; and the impacts and implementation issues of mandating unbundling of 900 network service for resale purposes.
43. In regard to the existing regulatory framework and competitive opportunities for 900 services, the Commission promotes the development of telecommunications markets with a view to implementing the Canadian telecommunications policy objectives set out in section 7 of the *Telecommunications Act* (the Act). In fostering the development of competition, the Commission has sought to ensure that service providers can access and serve subscribers in a number of ways, including resold services, leased facilities, and by installing and operating their own facilities. At the same time, the Commission has determined that the full benefits of local competition, including high quality, affordable service, innovation and service differentiation, would best be realized through facilities-based competition, and that facilities-based competition would, in the long run, be the most effective and sustainable form of competition to achieve the policy objectives set out in section 7 of the Act.
44. In Decision 92-12, the Commission allowed competitors to provide 900 service. The Commission notes that although it is possible for Canadian carriers such as CLECs and IXC's to offer 900 service, they have not chosen to do so. The Commission notes that since content services similar to that offered through 900 services can also be offered through alternate means, competitive substitutes to the 900 network services already exist. For example, 900 content services can be offered using toll-free 800 services coupled with either credit card billing or pre-paid subscription services. 900-like content services are also offered using audio capabilities of the Internet or offered as international premium rate services, billed as international telephone calls.
45. In regard to the current 900 services and opportunities for enhancements or price reductions, the Commission is of the view that since the charges for the 900 network services are generally only a fraction of the charges for the 900 content service, the charges levied by the 900 service carriers do not impair the 900 content service providers' ability to provide service. The Commission is of the further view that the 900 content service providers have the flexibility to lower their prices for competitive purposes.

46. The Commission notes that certain types of 900 programs are excluded from ARM agreements. The Commission understands that although some 900 content service providers might wish to expand the list of 900 programs eligible for billing by 900 network service carriers through ARM agreements, the Commission notes that these guidelines were established to protect the brand name of 900 network service carriers and LECs.
47. The Commission also notes that 900 service carriers have indicated their willingness to discuss improvements to the 900 service billing process to address FMG's concerns with the 900 service billing process and the accuracy and timeliness of billing that is currently provided by the 900 service carriers.
48. In regard to the impact and implementation issues associated with mandating unbundling of underlying 900 network service elements and introducing new 900 service offerings by 900 service carriers, the Commission notes that in their submissions, the 900 service carriers identified several items that needed to be addressed as well as preoccupations about costs, competitive equity with would-be 900 network service resellers and enforcement of safeguards.
49. The Commission notes that consistent with numbering assignment guidelines, as a service reseller FMG could not be assigned its own block of NXXs, and instead must acquire numbers from a carrier in the same way that a subscriber obtains numbers for a direct-in-dial PBX⁸. The Commission notes that this arrangement would require 900 service carriers to develop tariffs for reserving and/or using 900 numbers, performing the 900 number to 800 number conversion, determining the carrier and transporting the call to the appropriate carrier.
50. In Order 2000-172, the Commission agreed with the CSCN recommendation to suspend consideration of implementing 500/900 service provider portability due to lack of interest. The Commission notes that CLECs, IXC's and 900 content service providers did not provide comment in this proceeding. The Commission is of the view that the lack of comment in this proceeding indicates that there is insufficient interest in the industry to support recommencing work on this issue.
51. The Commission can establish consumer safeguards through the 900 service carriers' tariffs, ensuring that the 900 service carriers monitor the services provided and take action when safeguards are violated. The Commission notes that the 900 service carriers are not affiliated with 900 content service providers, and therefore, do not face a conflict of interest when monitoring or enforcing consumer safeguards. The Commission is of the view that when a 900 network service provider also operates as a 900 content service provider, there is potential for conflict of interest. The Commission considers that 900 service carriers should not be required to investigate complaints against other 900 network service providers and/or their 900 content service providers. Although the Commission could directly license and monitor 900 network service resellers, this arrangement would require additional regulatory oversight.

⁸ Private branch exchange is an in-house telephone switching system that interconnects telephone extensions to each other as well as to the outside telephone network (PSTN). From Computer Desktop Encyclopedia, 2002, True Query, Inc., <http://www.truequery.com/truequery/search/results.jsp>

52. In the Commission's view, FMG's proposal would require the development and implementation of new 900 service options, modifications to the ABA agreement or the development of a new billing and collection agreement, as well as licensing and monitoring of 900 network service resellers. In light of the above, the Commission is not persuaded that competition in the 900 network services market should be promoted by mandating the unbundling of underlying network elements of 900 service carriers for resale by 900 network service resellers.
53. While competitive provision of 900 network services by resale could possibly reduce rates and promote service enhancements, opportunities for such rate decreases and enhancements can currently be realised by the competitive provision of 900 network services by IXC's and CLECs, or be realised by 900 content service providers using substitutes to 900 network services.
54. Consistent with the above and its policies to promote facilities-based competition, the Commission **denies** FMG's proposal to provision 900 network services to 900 content service providers by mandating the resale of the underlying network elements and services of 900 service carriers and LECs.
55. In light of the limited participation by interested parties in this proceeding and limited support for FMG's proposals, the Commission **denies** FMG's request to issue a public notice to further consider mandatory unbundling of network elements and services of 900 service carriers and LECs.
56. However, in light of the billing-related problems indicated by FMG and the interest expressed by some parties to discuss billing arrangements, the Commission instructs FMG and the 900 service carriers to work together (along with other interested 900 content service providers) to review existing billing arrangements to improve the billing process, accuracy and timeliness of billing information for existing 900 services. The Commission directs the Companies and TELUS, separately or together, to provide a report on the outcome of these consultations within 90 days of the date of this decision and to file appropriate updates to their respective 900 service tariffs to implement consensus improvements.

Secretary General

This document is available in alternative format upon request and may also be examined at the following Internet site: <http://www.crtc.gc.ca>