



Telecom Circular CRTC 2005-8

Ottawa, 23 June 2005

Basic international telecommunications services (BITS) licensing regime - Amendments

Purpose of this Circular

1. The purpose of this Circular is to provide notification of amendments to the conditions of licence of Class A and Class B basic international telecommunications service (BITS) providers, as well as changes to the application (affidavit) forms and the length of the term of BITS licences.

Background

2. In *Regulatory regime for the provision of international telecommunications services*, Telecom Decision CRTC 98-17, 1 October 1998 (Decision 98-17), the Commission established a licensing regime for BITS in which the licensees were, by condition of licence, subject to various filing requirements designed to enable the Commission to detect activities that could be symptomatic of anti-competitive conduct. The Commission subsequently amended certain filing requirements for Class A licensees in *Changes to reporting requirements of class A licensees*, Order CRTC 2001-4, 11 January 2001 (Order 2001-4), as some of the reports were found to be of little benefit in detecting anti-competitive conduct.
3. In a letter dated 11 February 2005, the Commission called for comments on a number of proposals to streamline the licensing regime for BITS providers. The Commission proposed to eliminate a number of filing requirements, given that in the six-year period the licensing regime had been in place the Commission had not received any complaints regarding anti-competitive conduct of BITS providers. The Commission also noted that there had been a number of complaints by BITS licensees concerning the administrative burden flowing from the current filing requirements. In addition to proposing reduced filing requirements, the Commission proposed streamlined application (affidavit) forms and longer terms for BITS licences.
4. Specifically, the Commission proposed for both Class A and Class B BITS licensees to:
 - amend the condition of licence number 1 to add the following sentence:
"The licensee shall file with the Commission, should it become necessary to investigate whether or not the licensee is engaging in practices having an anti-competitive effect in Canada, any information that the Commission may deem necessary";
 - eliminate all other conditions of licence except those that (i) require licensees to keep current any information filed with the Commission in connection with their applications, and (ii) require licensees to file information in such form as may be prescribed by the Commission;

- eliminate the information required in the application (affidavit) form under sections 7 (corporate ownership), 8 (list of affiliates) and 9 (list of agreements and arrangements);
- change the information required under section 6 (contact person) of the application (affidavit) form to reflect the requirements established in *Telecommunications industry data collection: updating of CRTC registration lists, telecommunications fees, Canadian contribution mechanism fund administration, international licences and monitoring of the Canadian telecommunications industry*, Telecom Circular CRTC 2003-1, 11 December 2003 (Circular 2003-1), regarding the designation of a Response Manager; and
- increase the term of BITS licences to 10 years, which is the maximum term allowed under section 16.3(4) of the *Telecommunications Act* (the Act).

Position of parties

5. The Commission received comments from Aliant Telecom Inc; AT&T Global Services Canada Co. (AT&T Canada); Bell Canada; Call-Net Enterprises Inc.; Canadian Alliance of Publicly-Owned Telecommunications Systems on behalf of Bruce Municipal Telephone Systems, Prince Rupert City Telephones, Dryden Municipal Telephone System, Kenora Municipal Telephone System and TBayTel; Canquest Communications (Canada) Inc.; MTS Allstream Inc. (MTS Allstream); Primus Telecommunications Canada Inc.; Rogers Communications Inc.; Saskatchewan Telecommunications and TELUS Communications Inc. (TELUS).
6. All parties supported the proposed amendments, noting that the revised procedures and the reduction in the scheduled reporting requirements would lessen the regulatory burden on licensees while allowing the Commission to obtain the necessary information to ensure that the terms and conditions of international licences are met.
7. AT&T Canada proposed that the condition of licence requiring licensees to keep current the information contained in the application filed with the Commission be amended to require all licensees to keep current only the information which new applicants would be required to provide in the streamlined application (affidavit) forms. AT&T Canada noted that, without this change, existing licensees would still be burdened with the additional reporting obligations for the current term of their licence.
8. TELUS submitted that the competitive nature of the market for international toll services generated frequent changes in ownership structures, affiliation, and agreements and arrangements. In TELUS's view, continuing the obligation to file updated corporate ownership, affiliation and agreement and arrangement information as changes were made throughout the year represented an unnecessary burden for licensees, given the limited use being made of the information.

9. MTS Allstream noted that the proposed amendments would eliminate the condition of licence relating to the reporting and contribution requirements set out in *Changes to the contribution regime*, Decision CRTC 2000-745, 30 November 2000, as amended by *Changes to the annual contribution reporting requirements*, Telecom Decision 2002-35, 31 May 2002 (the contribution regime). MTS Allstream submitted that, while the contribution regime would continue to apply to contribution-eligible revenues of BITS licensees regardless of a specific condition of licence to this effect, there was value in retaining this condition of licence to alert all BITS licensees that they are subject to this regime. MTS Allstream also submitted that any change to the term of the licences should apply to both existing and new licences, so that the current term of existing BITS licences would also be extended.

Commission's analysis and determinations

Amendments to conditions of licence

10. The Commission notes that Class A and Class B BITS licensees are currently required, by condition of licence, to annually file consolidated lists of agreements and arrangements, as well as information regarding their corporate ownership structure and the affiliates that provide basic telecommunication services.
11. The Commission considers that these detailed annual reporting requirements should no longer be required, given the absence of complaints over the last six years regarding anti-competitive conduct in relation to the provision of BITS and the administrative burden associated with such obligations.
12. The Commission notes that with the elimination of annual filing requirements the Commission would still retain the ability to respond to any complaints or problems that may arise. Under the Commission's proposed approach, licensees would continue to be subject to the current condition of licence prohibiting them from engaging "in anti-competitive conduct in relation to the provision of international services", where anti-competitive conduct is defined as including "entering into or continuing to participate in an agreement or an arrangement that has or is likely to have the effect of preventing or lessening competition unduly in Canada, or otherwise providing telecommunications services in a manner that has or is likely to have an effect of preventing or lessening competition unduly in Canada". The Commission considers that this prohibition, coupled with the proposed general requirement that licensees file any information that the Commission may deem necessary in an investigation concerning anti-competitive conduct in Canada, provides the necessary safeguards to address anti-competitive concerns.
13. In light of the above, the Commission deletes the conditions of licence relating to the annual reporting requirements and amends condition of licence number 1 to include the general requirement that licensees file with the Commission any information that the Commission may deem necessary to pursue any investigation into alleged anti-competitive activities.
14. The Commission agrees that there is merit in retaining the condition of licence relating to the obligations under the contribution regime as a means of alerting all BITS licensees that they are subject to this regime. Accordingly, the Commission retains this condition of licence. Similarly, BITS licensees are currently required to file information through the annual

telecommunications industry data collection process set out in Circular 2003-1, as amended in *Telecommunications industry data collection: updating of CRTC registration lists, telecommunications fees, Canadian revenue-based contribution regime, international licences and monitoring of the Canadian telecommunications industry*, Telecom Circular CRTC 2005-4, 9 February 2005 (Circular 2005-4). Accordingly, the Commission, as a reminder to all BITS licensees, includes a reference to this requirement in the existing condition of licence that requires licensees to file any required information in such form as may be prescribed by the Commission.

15. The Commission notes that, following Order 2001-4, Class A licensees were required by condition of licence to retain all data pertaining to basic international traffic until notified by the Commission. The Commission eliminates this condition of licence considering the limited use the Commission has made, or would likely make, of this information. The Commission notes that as a result of this amendment Class A and Class B licensees are now subject to the same conditions of licence.

Application (affidavit) forms

16. Consistent with the above streamlined approach, the Commission eliminates the sections in the application (affidavit) form requiring information on corporate ownership (section 7), affiliates (section 8) and agreements and arrangements (section 9).
17. Furthermore, in order to reflect the approach taken in the telecommunications industry data collection process set out in Circular 2003-1, as amended in Circular 2005-4, the Commission amends section 6 (contact person) of the application (affidavit) form in order to require information on the applicant's designated Response Manager.
18. Presently, Class A and Class B licensees are required by condition of licence to keep current any information filed with the Commission in connection with their licence application and to file particulars of any change to such information within 30 days of the licensees becoming aware of the change in question. The Commission considers that it is important that the information provided in the application form be kept current, however, the Commission agrees that existing licensees should be required to keep current only the information which new applicants would be required to provide in the streamlined application (affidavit) forms. Accordingly, the Commission amends the condition of licence to this effect.

Term of BITS licences

19. The Commission considers that it is appropriate to streamline the licensing process by extending the term of BITS licences to the 10-year maximum allowed under section 16.3(4) of the Act. Accordingly, effective as of the date of this Circular, all new licences will generally be issued for a term of up to 10 years, expiring on the 30 June immediately preceding the 10-year maximum allowed under the Act.
20. The Commission also considers that any changes to the terms of licences should be applied to both existing and new licences. In Circular 2003-1, the Commission extended the five-year anniversary-based licences of existing licensees to a common expiration date of 30 June in

order to harmonize the data collection and reporting processes with the licence renewal process. Thus, taking into consideration the 10-year maximum term allowed under the Act and the fact that extensions have been made to the original five-year term of existing licensees, the Commission extends the term of all existing licences for a period of four years from the date of expiration determined in Circular 2003-1. For example, a licence that was to expire on 30 March 2004 and was subsequently extended to 30 June 2004, pursuant to Circular 2003-1, will now expire on 30 June 2008.

Conclusion

21. In light of the above, pursuant to section 16.3(3) of the Act, the Commission hereby amends the conditions of licence for Class A and Class B BITS licences, effective as of the date of this Circular. The conditions of licence for Class A and Class B licensees are set out in the appendix to this Circular.
22. The Commission also amends the application (affidavit) forms for the issuance or renewal of Class A and Class B BITS licences, effective as of the date of this Circular. The amended forms are available on the Commission's website at <http://www.crtc.gc.ca/eng/public/8190.htm>.
23. The Commission also extends all existing Class A and Class B BITS licences for a period of four years, effective as of the date of this Circular.

Secretary General

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APPENDIX

Class A and Class B Basic International Telecommunications Service Licences

Conditions of licence

1. The licensee shall not engage in anti-competitive conduct in relation to the provision of an international telecommunications service or services. For the purposes of this condition, anti-competitive conduct includes entering into or continuing to participate in an agreement or an arrangement that has or is likely to have the effect of preventing or lessening competition unduly in Canada, or otherwise providing telecommunications services in a manner that has or is likely to have the effect of preventing or lessening competition unduly in Canada. The licensee shall file with the Commission, should it become necessary to investigate whether or not the licensee is engaging in practices having an anti-competitive effect in Canada, any information that the Commission may deem necessary.
2. The licensee shall comply with the requirements set out in *Changes to the contribution regime*, Decision CRTC 2000-745, 30 November 2000, as amended by *Changes to the annual contribution reporting requirements*, Telecom Decision CRTC 2002-35, 31 May 2002, and as amended from time to time by the Commission.
3. The licensee shall keep current the information required by the Commission in the application (affidavit) form for the issuance or renewal of basic international telecommunications licences, as amended from time to time by the Commission. The licensee shall file with the Commission particulars of any change to such information within 30 days of the licensee becoming aware of the change in question.
4. The licensee shall file with the Commission any information required to be filed, in such form as may be prescribed by the Commission. For example, the licensee shall comply with the telecommunications industry data collection process requirements set out in Telecom Circular CRTC 2003-1 and Telecom Circular CRTC 2005-4, as amended from time to time by the Commission.