



Telecom Decision CRTC 2005-40

Ottawa, 13 July 2005

Telecom Public Notice CRTC 2005-2 - Public Interest Advocacy Centre's request to strike portions of Bell Canada's and Télébec's joint submission pertaining to discretionary services

Reference: 8640-C12-200505076

In this Decision, the Commission finds that portions of the submission filed jointly by Bell Canada and Société en commandite Télébec requesting forbearance from the regulation of discretionary services are outside the scope of the proceeding on the forbearance from regulation of local exchange services.

Introduction

1. In *Forbearance from regulation of local exchange services*, Telecom Public Notice CRTC 2005-2, 28 April 2005 (Public Notice 2005-2), the Commission initiated a proceeding and invited comments on a framework for forbearance from the regulation of residential and business local exchange services, and among other things, invited comments on Aliant Telecom Inc.'s (Aliant Telecom's) Part VII application for forbearance from regulation of residential wireline local services.
2. In paragraph 20 of Public Notice 2005-2, the Commission identified the scope of the proceeding as follows:

In this proceeding, the Commission will determine the framework, including the criteria, for forbearance from the regulation of residential and business local exchange services. The Commission will also determine whether there should be a transitional regime that provides ILECs with more regulatory flexibility prior to forbearance and, if so, what should be the criteria under which: 1) the competitive safeguards on promotions specified in Decision 2005-25 and the no-contact restriction under the winback rules should be lessened or removed; 2) the *ex parte* filing of tariff applications for promotions should be permitted; and 3) the waiving of service charges for residential local winbacks should be permitted. In this proceeding, the Commission will also apply this framework and these criteria to make a determination on Aliant Telecom's forbearance application.

3. In paragraph 10 of Public Notice 2005-2, the Commission noted:

The Commission intends, in this proceeding, to use these criteria to decide upon Aliant Telecom's forbearance application, and, in future proceedings, to use them to decide upon future applications for forbearance from regulation of local exchange services.

4. In paragraph 43 of Public Notice 2005-2, the Commission invited parties to file written submissions with respect to the issues described in the Public Notice, serving a copy on all other parties, by 22 June 2005. The Commission received numerous submissions by various parties.
5. The Commission received a letter from the Public Interest Advocacy Centre (PIAC), dated 24 June 2005, requesting that portions of Bell Canada's and Société en commandite Télébec's (collectively, the Companies') joint submission asking for immediate forbearance from the regulation of discretionary services be struck from the record.

Process

6. The Commission issued a letter, dated 29 June 2005, stating that parties wanting to file comments on PIAC's 24 June 2005 request were required to do so by 30 June 2005, that the Companies were to file reply comments by 4 July 2005, and that PIAC was to file reply comments by 5 July 2005.
7. The Commission received comments from Aliant Telecom, Saskatchewan Telecommunications (SaskTel), TELUS Communications Inc. (TCI), MTS Allstream Inc. (MTS Allstream), the Canadian Cable Telecommunications Association (CCTA), Xit télécom inc. (Xit), and FCI Broadband (FCI), representing itself and YAK Communications Inc., all dated 30 June 2005; reply comments from the Companies, dated 28 June 2005 and 4 July 2005; and reply comments from PIAC, dated 29 June 2005 and 5 July 2005.

Positions of parties

8. FCI and Xit supported the request made by PIAC.
9. TCI and MTS Allstream submitted that the sections of the Companies' submission to which PIAC objected related to the criteria for forbearance and their application to the discretionary services defined by the Companies. TCI and MTS Allstream submitted that the criteria and their application were within the scope of the proceeding, but the request for immediate forbearance was outside the scope of the proceeding.
10. Aliant Telecom submitted that the Companies' submission, including the sections questioned by PIAC, provided the Commission with comments on the framework for forbearance from the regulation of local exchange services, including discretionary services, and therefore, was within the scope of the proceeding.
11. SaskTel submitted that it was in complete concurrence with the Companies' proposal for immediate forbearance from the regulation of discretionary services, and that examining the case for immediate forbearance caused no prejudice to any party. Furthermore, SaskTel identified the list of its own services that it submitted did not warrant regulatory attention for the reasons provided in the Companies' submission.
12. The CCTA submitted that the decision of whether to forbear from optional services must be examined in conjunction with the question of whether to forbear from the regulation of local exchange services. The CCTA submitted that it considered the Companies' request for

immediate forbearance from the regulation of optional local services to be a request for forbearance effective at the issuance of the Commission's final determinations in respect of the matters arising out of Public Notice 2005-2.

13. In reply, the Companies submitted that there were certain services, i.e. discretionary services, that were not of sufficient economic and social importance to warrant regulation, regardless of the state of competitive activity. The Companies further stated that their comments proposed a framework and criteria for forbearance from the regulation of discretionary services, as contemplated in Public Notice 2005-2, and that granting PIAC's request would restrict the options that the Companies could propose. The Companies also submitted that it would be inefficient if their framework was accepted and, subsequently, the Companies had to submit a new request for forbearance from the regulation of discretionary services.
14. The Companies also noted that PIAC's request raised two issues: first, whether or not the proposed forbearance framework to be applied to discretionary services was within the scope of the proceeding, and second, whether a request for forbearance from the regulation of any service, or services, was within the scope of the proceeding.
15. The Companies submitted that both the proposed framework for forbearance from the regulation of discretionary services and the Companies' request for forbearance, which they stated would be effective at the issuance of the Commission's decision in this proceeding, were within the scope of the proceeding. However, the Companies indicated that paragraph 10 of Public Notice 2005-2 might have been interpreted by some parties as including only Aliant Telecom's application for forbearance within the scope of the proceeding. The Companies noted that if this was the intent of the Commission, only the sentences of their submission that pertained to the Companies' request for immediate forbearance should be removed.
16. In reply, PIAC submitted that the Companies' application for immediate forbearance did not set out a framework for forbearance, did not propose forbearance criteria, and was not a "future" application for forbearance. Rather, PIAC submitted, it was an ad hoc application for immediate forbearance from the regulation of selected services and was outside the scope of the proceeding. PIAC also noted that SaskTel supported the Companies' request for forbearance from the regulation of discretionary services and emphasized that SaskTel also wanted forbearance from the regulation of certain services.

Commission's analysis and determination

17. The Commission notes that the scope of the proceeding was defined in paragraph 20 of Public Notice 2005-2.
18. The Commission also notes that paragraph 10 of Public Notice 2005-2 states that the Commission "intends, in this proceeding, to use these criteria to decide upon Aliant Telecom's forbearance application, and, in future proceedings, to use them to decide upon future applications for forbearance from regulation of local exchange services." The Commission considers that it is clear that Public Notice 2005-2 did not invite new applications for

forbearance as part of this proceeding, but rather that the framework applicable to any future forbearance requests for local exchange services would be developed as part of this proceeding.

19. In light of the above, the Commission determines that the sections of the Companies' submission in the Public Notice 2005-2 proceeding, dated 22 June 2005, with respect to a proposed framework for forbearance from the regulation of discretionary services are within the scope of the proceeding, but the Companies' request for forbearance from the regulation of discretionary services is outside the scope of this proceeding. The Commission also notes that in its submission in the Public Notice 2005-2 proceeding, dated 22 June 2005, SaskTel submitted that it was in complete concurrence with the Companies' request for forbearance from the regulation of discretionary services and submitted a list of its own services for which it was requesting forbearance. The Commission considers that those portions of SaskTel's Public Notice 2005-2 submission, dated 22 June 2005, relating to forbearance from the regulation of discretionary services are equally outside the scope of this proceeding.

Secretary General

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