



Telecom Decision CRTC 2005-51

Ottawa, 9 September 2005

Follow-up to *Allstream v. MTS - Sherbrook Central Office*, Telecom Decision CRTC 2003-62

Reference: 8638-C12-200314211

In this Decision, the Commission directs incumbent local exchange carriers (ILECs) to provide network reconfiguration information to affected competitive local exchange carriers (CLECs) at least six months prior to the planned implementation date of an ILEC-initiated local network reconfiguration.

The Commission also determines that ILECs and CLECs are to bear their own costs with respect to a planned ILEC-initiated local network reconfiguration. However, when a CLEC alleges that a local network reconfiguration has a discriminatory negative impact on its operations or customers and negotiations between the CLEC and ILEC to settle the issue have failed, the Commission will address each situation on a case-by-case basis when brought to its attention by the affected party.

Background

1. In *Allstream v. MTS - Sherbrook Central Office*, Telecom Decision CRTC 2003-62, 19 September 2003 (Decision 2003-62), the Commission expressed the view that when an incumbent local exchange carrier (ILEC) plans to reconfigure its local network, a consultation process should take place between the affected competitive local exchange carriers (CLECs) and the ILEC, in order to ensure that all services provided to the CLEC continue to operate and to minimize any adverse impact on the CLEC.
2. The Commission also expressed the preliminary view that each ILEC should provide the following information to affected parties at least six months prior to the planned implementation date of an ILEC-initiated local network reconfiguration:
 - a) a general description of the reconfiguration, including reasons why it is to be undertaken;
 - b) a planned schedule for the reconfiguration;
 - c) a map, or maps, defining the serving area(s) affected;
 - d) information to each CLEC, detailing how the unbundled loops and other ILEC-provided facilities it uses will be affected;
 - e) reasons why the network reconfiguration cannot be accommodated without impacting a CLEC's network or customers; and

- f) rationale for the proposed change where, as a result of a network reconfiguration, the level of service to a CLEC and its customers would diminish relative to the level of service to the ILEC and its retail customers, and a cost analysis of each CLEC's costs where such a change is proposed. The cost analysis should include items such as the cost of reconfiguring CLEC co-location sites and conditioning of circuits used by CLECs, as appropriate.
3. In Decision 2003-62, the Commission considered that a follow-up proceeding should be held to address these issues and to permit all potentially affected parties the opportunity to comment. Accordingly, the Commission initiated a show cause proceeding to consider procedures for the implementation of network reconfigurations that affect competitors, and also requested interested parties to provide their views on the responsibility of affected carriers for the costs incurred as a result of a network reconfiguration.
 4. The Commission received comments from Aliant Telecom Inc., Bell Canada, MTS Communications Inc. (MTS), Saskatchewan Telecommunications and Société en commandite Télébec (collectively, the Companies); TELUS Communications Inc. (TCI); Microcell Solutions Inc. (Microcell); Allstream Corp. (Allstream),¹ FCI Broadband (FCI); and Call-Net Enterprises Inc. (Call-Net).²
 5. Allstream, the Companies, Call-Net, FCI, and TCI filed reply comments.

Positions of parties

The Companies

6. The Companies submitted that the rules set out in *Notification of Network Changes, Terminal-to-Network Interface Disclosure Requirements and Procedures for the Negotiation and Filing of Service Arrangements*, Telecom Letter Decision CRTC 94-11, 4 November 1994 (Letter Decision 94-11) and in *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997 (Decision 97-8), remained suitable today and need not be altered.
7. The Companies agreed with the Commission's view in Decision 2003-62 that, when a local exchange carrier (LEC) reconfigured its network, it should provide the affected parties with the information referenced at subparagraphs 2 a) to e) above. The provision of such information was, in the Companies' view, consistent with the requirements set out in Letter Decision 94-11 and Decision 97-8 and provided reasonable notice.
8. The Companies submitted, however, that the requirement to provide the information referenced in subparagraph 2 f) was unworkable.
9. The Companies submitted that they had little or no information regarding a CLEC's customers, none regarding the services which a CLEC provided to those customers, and little or none regarding the equipment used by competitors. The Companies argued that it would be virtually impossible for the Companies to provide an assessment of whether an ILEC's services would be improved or diminished in relation to those of a CLEC without detailed information.

¹ Allstream's views expressed in this document reflect its opinions before its acquisition by MTS. MTS is now known as MTS Allstream Inc.

² Call-Net Enterprises Inc. is now known as Rogers Telecom Holdings Inc.

10. The Companies submitted that CLEC representatives at the Network Working Group of the CRTC Interconnection Steering Committee refused to provide any information to the ILECs regarding the services CLECs intended to provide utilizing ILEC loops because such information provided invaluable marketing information about a CLEC roll-out plans.
11. The Companies argued that any assessment of the costs incurred by an affected carrier must be balanced against potential savings and/or network efficiency improvements achieved by such a carrier as a result of the network reconfiguration. The Companies submitted that this information would be even more difficult to generate.
12. The Companies submitted that changes to a LEC's local network were regarded properly as a part of conducting business and were rendered necessary by a number of factors, including geographic and demographic changes, changing customer requirements, evolving technology, and the obsolescence of buildings and other network facilities.
13. The Companies also submitted that the costs borne by the Companies as a result of network reconfigurations were typically greater, by orders of magnitude, than those incurred by any affected competitors.
14. The Companies noted that responsibility for costs associated with network changes was addressed in innumerable interconnection and co-location agreements between Canadian carriers which had received Commission approval. The Companies also noted that network and compatibility requirements in such agreements invariably placed responsibility for maintaining compatibility on each carrier.
15. The Companies submitted that it would be incorrect for the Commission to impose a penalty on the Companies as a result of network reconfigurations by forcing them to pay for costs associated with changes which might need to be made to reconfigure competitors' facilities or services provided to such competitors.

TCI

16. TCI submitted that the information referenced in subparagraphs 2 a), b), c) and d) of this Decision represented reasonable information to be made available to affected parties for a planned network reconfiguration.
17. With regard to subparagraph 2 e) above, TCI indicated that it generally agreed that to the extent possible it would provide such rationale. TCI noted however that there might exist many factors that are unknown to it concerning a CLEC's network and the services it provided its customers that would preclude compliance with this item. TCI submitted that it could provide a CLEC with sufficient information on the planned network reconfiguration such that a CLEC should be able to evaluate impacts to its network and services it provided to its customers.
18. TCI also submitted that the requirements to provide the information referenced in subparagraph 2 f) above were problematic. In TCI's view, implementation of these conditions might not be possible due to unknown factors or lack of information on the configuration of a CLEC's network and its service design practices.

19. TCI considered that a network reconfiguration would often benefit all parties including end-customers. TCI submitted that were it to be penalized with additional costs with a particular network reconfiguration, it may cause TCI to reconsider its network reconfiguration plans or to consider other solutions, which would not bring potential benefits to the CLECs.
20. TCI noted that each network reconfiguration would have distinct characteristics making it inefficient to develop broad general assumptions regarding implementation costs and benefits, and operational issues. TCI submitted that it would be more appropriate to address the issue of a network reconfiguration on a case-by-case basis.
21. TCI submitted that affected parties should bear their respective costs associated with a network reconfiguration and that where sufficient notification of a network reconfiguration was provided this should not create undue hardship on a CLEC.

Allstream

22. Allstream submitted that the Commission's proposed consultation process should apply to all ILEC-initiated network reconfigurations. Allstream argued that the sharing of information pertaining to a planned network reconfiguration would allow parties to determine whether the network reconfiguration was mutually beneficial to both the ILEC and the affected competitors and would enable competitors to contribute to the efficiency of the network changes. Allstream was of the view that the consultation process would also provide a check in the system to ensure that, whether intentionally or otherwise, the network changes did not produce an anti-competitive consequence.
23. Allstream submitted that given that the Commission's proposed consultation process should allow a determination of whether the planned network changes were mutually beneficial to both the ILEC and affected competitor(s), it would provide a basis for determining whether the competitor must reconfigure its network and, if so, whether the cost should be borne solely by the ILEC. Allstream noted that if the planned network changes did not benefit the affected competitor and its customers, or would result in a degradation of the competitor's services, the ILEC should incur all costs resulting from the network reconfiguration.

Microcell

24. Microcell submitted that it fully supported the Commission's preliminary view made in Decision 2003-62. Microcell submitted that timely and informative notification of ILEC-initiated network reconfigurations was the necessary first step to determining whether the planned reconfigurations were driven by competitively-neutral considerations or by less constructive motivations.
25. Microcell submitted that without knowing the full range of ILEC network changes that would be considered 'network reconfigurations' in the current context, it was reluctant to propose absolute rules for CLEC cost recovery. Microcell further submitted that at a minimum, there should be an obligation on the part of the ILEC to pay CLEC costs whenever the planned ILEC network reconfiguration was deemed to have a discriminatory negative impact on CLEC operations or customers.

Call-Net

26. Call-Net submitted that it supported the Commission's preliminary view and requested that the information referenced in paragraph 2 above be the mandatory minimum that ILECs must provide in the event of a proposed network change or reconfiguration.
27. Call-Net submitted that these changes potentially impacted competitors in terms of re-location or reconfiguration of existing customers. Call-Net argued that the inability to reach fair and equal competitive interconnection and access under the ILECs' new network evolution could represent a significant competitive barrier to competitors and undue competitive advantage to the ILECs.
28. Call-Net submitted that the principles of continuity and reliability in services, non-discrimination and maintaining parity of quality of service for CLECs, should govern the manner in which CLECs interconnect with the ILECs in the rapidly evolving ILEC networks. Call-Net further submitted that adherence to these principles required that ILEC-initiated local network changes and reconfigurations should not expose CLECs to financial and competitive disadvantage.
29. Call-Net argued that all ILEC-initiated network reconfigurations might have huge impacts on a CLEC's entire interconnection investment and sunk costs.

FCI

30. FCI submitted that the ILECs should pay all expenses incurred by competitors as a result of an ILEC's network reconfiguration.

Reply comments

The Companies

31. The Companies noted that Allstream, Call-Net, FCI, and Microcell provided no rationale in support of the Commission's analysis of its advance notification proposal and provided no comments on the issues regarding the implementation of the Commission's preliminary view.
32. The Companies submitted that consistent with the Commission's conclusions in Letter Decision 94-11, notification requirements should apply only with respect to bottleneck services and facilities and to essential services.
33. The Companies argued that the introduction of new services and technologies has, on a number of occasions, required customers to replace or upgrade their own systems and equipment if they wished to take advantage of new technologies or services.

TCI

34. TCI submitted that there was general agreement from the interested parties supporting the notification principles established by the Commission in Letter Decision 94-11 and the information described in subparagraphs 2 a) to e) above. TCI submitted that these items represented all the information that is required in order for a CLEC to evaluate the costs/benefits resulting from an ILEC network reconfiguration.
35. In regard to the requirement for the ILEC to perform a cost/benefit analysis on behalf of the CLEC as outlined at subparagraph 2 f) above, TCI argued that such a requirement would only result in creating an unworkable and costly process.
36. TCI submitted that entities that are to treat each other as peers should bear their respective costs for network reconfigurations or other network changes provided the network notification intervals, as required in Letter Decision 94-11, were adhered to.

Allstream

37. In regard to subparagraph 2 f) above, Allstream argued that ILECs would know the rationale for a reconfiguration and, furthermore, would know whether the network reconfiguration would have a negative impact on competitors. Allstream noted that, in fact, TCI recently identified which of Allstream's circuits would or might be negatively affected by a proposed network change and even suggested a variety of solutions to the problems caused to Allstream as a result of that network reconfiguration.
38. Allstream submitted, however, that if an ILEC claimed to be uncertain as to the impact a network reconfiguration would have on competitors, the information provided to the competitors could simply include the ILEC's rationale for the change and the circuits affected by the network change. Allstream considered that if competitors were provided with this information, they would be in a position to ascertain the implications for themselves and their customers. Allstream submitted that this minor modification to the consultation process specified in Decision 2003-62 would eliminate the ILECs' concerns regarding the Commission's preliminary view.

Call-Net

39. Call-Net submitted that the only issue that was contested in this proceeding was the issue of responsibility for the costs incurred as a result of an ILEC-initiated network reconfiguration.
40. Call-Net submitted that the positions taken by TCI and Bell Canada would result in hardship to competitors. Call-Net argued that it would be unfair and inefficient to have competitors strand any of these investments and incur another round of capital commitment due to ILEC-initiated network changes and reconfigurations.
41. Call-Net submitted that sufficient notification of a network reconfiguration would relieve competitors of undue hardship.

FCI

42. FCI submitted that portions of ILEC networks have been deemed essential and/or near essential by the Commission. FCI submitted that access to these ILEC network components was critical to competitors' ability to offer services in competition with the ILECs. FCI also submitted that without regulatory intervention, ILEC network reconfigurations, such as the deployment of remotes, would harm competitive forces as well as have the potential to throw competitors' networks, developed over many years and at great expense and effort, into chaos.
43. FCI argued that ILEC-initiated network reconfigurations were intended to benefit the ILEC. Therefore, the Commission should ensure that the competitors were able to continue to serve customers with the same services after a network reconfiguration as they could before.

Commission's analysis and determinations

44. The Commission notes that the type of network reconfiguration undertaken by MTS, that led to Decision 2003-62, is becoming common as the ILECs deploy more fibre remote facilities in their core networks.
45. In the Commission's view, these network reconfigurations will in some instances impact the competitors' networks and may result in service degradation to existing CLEC customers if affected competitors are not provided with the opportunity to examine the contemplated network reconfiguration and take any required action before the change comes into effect.
46. The Commission notes that there is general agreement from interested parties to this proceeding that ILECs should provide CLECs the information listed in subparagraphs 2 a) to e) above of the Commission's preliminary view, namely:
 - a) a general description of the reconfiguration, including reasons why it is to be undertaken;
 - b) a planned schedule for the reconfiguration;
 - c) a map, or maps, defining the serving area(s) affected;
 - d) information to each CLEC, detailing how the unbundled loops and other ILEC-provided facilities it uses will be affected; and
 - e) reasons why the network reconfiguration cannot be accommodated without impacting a CLEC's network or customers.
47. The Commission notes, however, that there is disagreement amongst the parties in regards to the information to be provided under subparagraph 2 f) above which reads as follows:
 - f) rationale for the proposed change where, as a result of a network reconfiguration, the level of service to a CLEC and its customers would diminish relative to the level of service to the ILEC and its retail customers,

and a cost analysis of each CLEC's costs where such a change is proposed. The cost analysis should include items such as the cost of reconfiguring CLEC co-location sites and conditioning of circuits used by CLECs, as appropriate.

48. The Commission notes that the ILECs submitted that they have little or no information regarding the CLECs' networks or service offerings and therefore, unless the information is provided to them by the CLECs, the ILECs do not have the information required to complete a cost analysis.
49. The Commission further notes that some of the ILECs submitted that for competitive reasons, the CLECs were reluctant to provide the required information to the ILECs as it would put them at a competitive disadvantage. The CLECs did not dispute this notion.
50. The Commission also notes that another difficulty faced by the ILECs in providing a cost analysis is that all network reconfigurations are different. As a result, network reconfigurations will have different impacts on the CLECs' networks and services. These differing impacts, combined with the fact that each CLEC has a different network, greatly increases the complexity of any cost analysis carried out by the ILEC.
51. The Commission is of the view that although Allstream indicated one instance where an ILEC had been able to determine the impact of a reconfiguration on Allstream's network, ILECs generally do not have the required information to make such determinations.
52. Based on the record in this proceeding, the Commission recognizes that it would be difficult for the ILECs to obtain the required information to be able to carry out an accurate and complete cost analysis of any adverse changes to a CLEC's network as a result of a ILEC-initiated network change.
53. The Commission is of the view that without this information being available to the ILECs, it would not be appropriate to require ILECs proposing a network reconfiguration to identify the impacts on affected CLECs' customers, since there is no comprehensive way for the ILECs proposing the network change to know beforehand how the affected CLECs are impacted.
54. The Commission considers that by following the notification process outlined in the Commission's preliminary view, at subparagraphs 2 a) to e) above, CLECs will be in a position to ascertain for themselves the implications on their network and their customers.
55. The Commission therefore directs that ILECs provide the following information to CLECs at least six months prior to a planned ILEC-initiated network reconfiguration:
 - a) a general description of the reconfiguration, including reasons why it is to be undertaken;
 - b) a planned schedule for the reconfiguration;
 - c) a map, or maps, defining the serving area(s) affected;

- d) information to each CLEC, detailing how the unbundled loops and other ILEC-provided facilities it uses will be affected; and
 - e) reasons why the network reconfiguration cannot be accommodated without impacting a CLEC's network or customers.
56. In regard to the responsibility of costs incurred when implementing a network reconfiguration, the Commission notes that there will always be ILEC-initiated local network changes and reconfigurations which may affect a competitor's network. These changes are a result of the natural evolution of the network as new technologies are introduced to either improve services or to provide new services.
57. The Commission is of the view that such changes are part of conducting business and recognizes that they may have different effects on competitors' networks. These changes may be beneficial, adverse, or have little or no impact on competitors' networks.
58. The Commission notes that the responsibility for the costs incurred to complete network changes has been addressed in the many interconnection and co-location agreements between Canadian carriers which have received Commission approval. Provisions in these agreements consistently place the responsibility for costs on each carrier. This approach is based on the principle established by the Commission in Decision 97-8 that CLECs are not simply customers of ILECs but are carriers equal in stature to the ILECs in the local exchange market with both the benefits and obligations of that status.
59. The Commission notes, however, that in some instances CLECs are customers of the ILECs for certain essential services. The Commission is of the view that since CLECs require these services to provide various telecommunications services to their own customers, changes to the ILEC's local network may result in the degradation or disruption of a CLEC's ability to serve its own customers and therefore, greatly disadvantage CLECs in a competitive environment.
60. The Commission considers that the principles of continuity and reliability in services, non-discrimination, and parity of quality of service for CLECs, should govern the manner in which CLECs interconnect with the ILECs. The Commission is of the view that adhering to these principles during ILEC-initiated local network changes and reconfigurations will prevent CLECs from being placed at a financial and competitive disadvantage.
61. The Commission considers that there should be an obligation on the part of the ILEC to pay CLEC costs whenever the planned ILEC-initiated network reconfiguration has a discriminatory negative impact on CLEC operations or customers. The Commission is of the view that if such a negative impact exists when implementing an ILEC-initiated network reconfiguration, it would be more appropriate to address the issue of cost recovery of a network reconfiguration on a case-by-case basis.
62. In light of the above, the Commission determines that ILECs and CLECs are to bear their own costs with respect to a planned ILEC-initiated local network reconfiguration. However, when a CLEC alleges that a local network reconfiguration has a discriminatory negative impact on its

operations or customers and negotiations between the CLEC and ILEC to settle the issue have failed, the Commission will address each situation on a case-by-case basis when brought to its attention by the affected party.

Secretary General

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