



Telecom Decision CRTC 2004-58

Ottawa, 31 August 2004

Application by Société en commandite Télébec for forbearance from regulation of wide area networking services

Reference: 8640-T78-200402090

In this Decision, the Commission forbears, with some conditions, from the exercise of its powers and the performance of its duties pursuant to sections 24 (in part), 25, 29 and 31 and subsections 27(1), 27(5) and 27(6) of the Telecommunications Act in relation to the provision of current and future wide area networking (WAN) services provided by Société en commandite Télébec (Télébec). The Commission directs Télébec to file tariffs for the underlying access and transport components required to provide Ethernet-based WAN services, to the extent that it is currently providing Ethernet-based WAN services, within 45 days of the date of this Decision, or, if it is not currently providing Ethernet-based WAN services, to file such tariffs prior to providing Ethernet-based WAN services.

Introduction

1. The Commission received an application from Société en commandite Télébec (Télébec), dated 15 March 2004, filed under Part VII of the *CRTC Telecommunications Rules of Procedure* and pursuant to section 34 of the *Telecommunications Act* (the Act). Télébec requested that the Commission refrain from exercising any power or performing any duty under sections 24, 25, 27, 29 and 31 of the Act in relation to the company's current and future wide area networking (WAN) services in its operating territory.

Process

2. On 10 May 2004, Allstream Corp. (Allstream), now known as MTS Allstream Inc., filed its comments. As part of its comments, Allstream requested that certain information, which Télébec filed under a claim of confidence, be disclosed.
3. On 18 May 2004, Commission staff issued a procedural letter requesting that Télébec notify other WAN service providers of its application. No further comments were received from interested parties regarding the application.
4. On 15 June 2004, Télébec filed reply comments.
5. On 28 June 2004, Commission staff issued a letter disposing of Allstream's disclosure request.

Background

6. The Commission's power to forbear from regulating a telecommunications service or class of services provided by a Canadian carrier originates from section 34 of the Act, which reads as follows:

34. (1) The Commission may make a determination to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to a telecommunications service or class of services provided by a Canadian carrier, where the Commission finds as a question of fact that to refrain would be consistent with the Canadian telecommunications policy objectives.

(2) Where the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users, the Commission shall make a determination to refrain, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to the service or class of services.

(3) The Commission shall not make a determination to refrain under this section in relation to a telecommunications service or class of services if the Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.

(4) The Commission shall declare that sections 24, 25, 27, 29 and 31 do not apply to a Canadian carrier to the extent that those sections are inconsistent with a determination of the Commission under this section.

7. The Canadian telecommunications policy objectives set out in section 7 of the Act include the following:

...

c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;

f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;

h) to respond to the economic and social requirements of users of telecommunications services.

8. The Commission established a framework for considering whether or not to forbear in *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994 (Decision 94-19). In that Decision, the Commission noted that the first step in assessing whether it is appropriate to forbear involves defining the relevant market. The relevant market is essentially the smallest group of products and geographic area in which a firm with market power can profitably impose a sustainable price increase. The Commission also established

a number of criteria to be examined when determining whether a market was competitive. These criteria include the market shares of the dominant and competing firms, demand and supply conditions, the likelihood of entry into the market, barriers to entry into the market and evidence of rivalrous behaviour.

9. In *Forbearance granted for telcos' wide area network services*, Order CRTC 2000-553, 16 June 2000 (Order 2000-553), the Commission granted forbearance from regulation of current and future WAN services provided by BC TEL, TELUS Communications (Edmonton) Inc. (both companies are now part of TELUS Communications Inc. (TCI)), Bell Canada, MTS Communications Inc., Island Telecom Inc., Maritime Tel & Tel Limited, NBTel Inc., NewTel Communications Inc. (the last four companies are now Aliant Telecom Inc.) and TCI (collectively, the former Stentor members). In that Order, the Commission stated that forborne WAN services do not include Asynchronous Transfer Mode (ATM)-based carrier interconnection services, or ATM services which provide public switched telephone network (PSTN) interconnection or call control capabilities equivalent to interconnection with the PSTN. Further, the Commission indicated that the WAN access is a value-added enhanced service (either ATM, Ethernet or Token Ring protocols) available to WAN customers, and is part of WAN services.
10. Further, the Commission, in Order 2000-553, found that, in the operating territory of the former Stentor members, the WAN services market was sufficiently competitive to protect the interests of users, in that there were numerous competitive suppliers, low barriers to entry, aggressive pricing and knowledgeable customers that could readily switch WAN service providers. Further, competitive WAN service providers could obtain the essential underlying access and transport services from alternate facilities-based service providers or from the incumbent telephone companies at tariffed rates and non-discriminatory terms where there was no alternative source of supply. The Commission also considered, in Order 2000-553, that the former Stentor members had no incentives to engage in anti-competitive below-cost pricing, because they would lose market share if they tried to raise prices.
11. Accordingly, in Order 2000-553, the Commission forbore from the exercise of its powers under sections 24 (in part) and 25, subsections 27(1), 27(5) and 27(6), and sections 29 and 31 of the Act with respect to the provision of WAN services by the former Stentor members. The Commission retained its powers under section 24 of the Act to ensure that the conditions regarding the disclosure of confidential customer information to third parties continued to apply, and to impose conditions as needed in the future. The Commission also retained its powers under subsections 27(2), 27(3) and 27(4) of the Act to ensure that the former Stentor members do not unjustly discriminate against other service providers or customers, or confer an undue or unreasonable preference with respect to the provision of WAN services.
12. In *Forbearance granted to wide area networking services provided by SaskTel*, Order CRTC 2001-118, 6 February 2001 (Order 2001-118), the Commission forbore from regulating the WAN services provided by Saskatchewan Telecommunications (SaskTel) to the same extent as it did in Order 2000-553.
13. In *Provision of Ethernet access service and OC-3 digital network access service*, Telecom Order CRTC 2002-456, 10 December 2002 for TCI, the Commission approved, on an interim basis, the introduction of Ethernet access service.

14. In *Ethernet services*, Telecom Decision CRTC 2004-5, 27 January 2004 (Decision 2004-5), the Commission required that TCI provide, on an interim basis, an Ethernet central office (CO) connecting link service and an Ethernet interface service for competitor use. Also in Decision 2004-5, the Commission approved, on an interim basis, the introduction by Bell Canada of Ethernet access service and Ethernet CO connecting link service that would be available to competitors. In Decision 2004-5, the Commission also directed Bell Canada to provide an Ethernet interface service for competitor use.
15. In *Application by TELUS Québec for forbearance from regulation of wide area networking services*, Telecom Decision CRTC 2004-7, 5 February 2004 (Decision 2004-7), the Commission forbore from regulating the WAN services provided by TELUS Communications (Québec) Inc.¹ (TELUS Québec) to the same extent as it did in Order 2000-553.

Télébec's application

16. Télébec argued, with supporting documentation,² that there was evidence of sufficient competition in the WAN services market for the Commission to forbear from the exercise of its powers and the performance of its duties under sections 24, 25, 27, 29 and 31 of the Act in respect to the company's current and future WAN services, in its operating territory.
17. Télébec indicated that WAN services were used to interconnect Local Area Networks (LANs) installed in premises owned by medium or large enterprises, governments and associations. Télébec further indicated that the WAN service market was composed of two sub-segments:
 - a) WAN services established using Ethernet protocols or cell-based networks; and
 - b) WAN services established using ATM protocols.
18. Télébec submitted that, in all cases, WAN services were offered to customers at an all-inclusive price for all the elements of WAN service. In its application, Télébec identified the following key elements of WAN service:
 - a) equipment and software usually installed at the customer's premises that offer Ethernet, ATM or other cell network interfaces;
 - b) access facilities to transport facilities or services; and
 - c) transport services between the customer's distinct locations.

¹ The Commission has been advised that, effective 1 July 2004, pursuant to an asset purchase agreement, deed of transfer and ancillary assignments and agreements, TELUS Québec transferred or assigned to TCI all or substantially all of TELUS Québec's assets and liabilities.

² Annex 1 of Télébec's submission was filed in confidence. It included the name of seven WAN service customers which Télébec had lost to other competitive service providers.

19. Télébec submitted that it had previously offered these services on a non-regulated basis, through its subsidiary, Télébec Solutions Évoluées. Télébec indicated that, at the time of the application, it directly offered and distributed these services. Télébec stated that it is seeking forbearance to the same extent as granted by the Commission in Orders 2000-553 and 2001-118, and in Decision 2004-7.
20. In support of its application, Télébec argued that the level of competition for WAN services was well established in Canada and in its operating territory, and that there were no significant barriers to market entry in the WAN services market, as evidenced by the number of active competing providers. Télébec submitted that there were many well-established competitors, including Allstream, Cogéco Cable Canada Inc., GT Group Telecom Services Corp., ND SatCom, Persona Communications Inc., Sprint Canada Inc., Telesat Canada, Télédistribution Amos Inc., TCI and Vidéotron ltée. Télébec submitted that while it was possible for WAN service subscribers to sign long-term contracts, the market for WAN services was so competitive that long-term contracts were not popular with WAN services subscribers who preferred to benefit from the constantly evolving promotions and technical features of products available from different service providers. Télébec asserted that all the market conditions present when the former Stentor members requested WAN service forbearance existed in the market for Télébec's WAN services. Further, the company submitted that the level of rivalry between competing providers for market share discouraged anti-competitive pricing by any one provider. Télébec submitted that, therefore, it was not a dominant player in the WAN services market.
21. Télébec submitted that service migration to a competitive WAN service provider was relatively simple, with no major obstacles, and represented a low level of effort and costs for the transferring subscriber. Further, the company submitted that the inconveniences of migrating services were minimized by building parallel facilities to execute the transfer and by having the subscriber select the most appropriate timing for the service migration.
22. In support of its application, Télébec also noted that it offered, via its Carrier Services Group, tariffed services and unbundled network elements that allowed WAN service competitors to extend services in physical locations where WAN service competitors did not have the required facilities.

Allstream's comments

23. Allstream submitted that Télébec had not provided the kind of information necessary to grant forbearance, since it had not identified the WAN services for which it was seeking forbearance. Allstream argued that this made it extremely difficult for interested parties to comment on Télébec's request for WAN forbearance. Allstream submitted that the lack of information on Télébec's WAN service offerings was of real concern because there is considerable confusion as to how Order 2000-553 should be interpreted and what actually constituted a forborne WAN service.
24. Allstream argued that the lack of information on Télébec's WAN service offerings also made it impossible for interested parties to determine what underlying network components and services were being used by these companies to provision their WAN services. Allstream

submitted that one of the conditions of forbearance established by the Commission in Order 2000-553 was the existence of tariffs for underlying access and transport services. Allstream argued that unless interested parties had further and better details relating to the WAN services of Télébec, there was no way of ensuring that competitors would have access to the essential facilities and services that were required to provision their own competitive WAN services.

25. Allstream noted that Télébec did not offer Competitor Digital Network Access (CDNA) service, which meant that if competitors wanted to use Télébec's digital access technology to configure a WAN service, they had to pay for higher priced Digital Network Access (DNA) services because these were the only services that had been tariffed by Télébec. Allstream further noted that Télébec had not filed general tariffs for Ethernet access and transport facilities, even though Télébec was offering WAN services that made use of these underlying network facilities.
26. Allstream argued that the information provided by Télébec with respect to the existence of competitive WAN service providers in its serving area was either flawed or irrelevant. As an example, Allstream noted that Télébec stated that Allstream provided competitive WAN services in Télébec's serving area. Allstream argued that this statement was incorrect, since Allstream did not provide Ethernet-based WAN services in any of the territories served by Télébec. Allstream also argued that although Télébec provided information related to seven customers, it is impossible to determine what percentage of the total WAN services market these seven customers represented, because Télébec had not provided any data regarding the total number of WAN customers in its serving area.
27. Similarly, Allstream argued that although Télébec argued that there were many providers of competitive WAN services in its serving area, it failed to furnish any evidence that these service providers actually offer competitive WAN services in their specific operating territories. Allstream further argued that the existence of customers who deployed their own WANs using customer premises equipment (CPE) in no way demonstrated that these customers were competitors to Télébec.

Télébec's reply comments

28. Télébec stated that it did not understand why it was necessary for Allstream to know the exact list of the WAN services provided to Télébec's clients, and noted that Télébec had simply asked for the same WAN forbearance already extended to most Canadian carriers.
29. In response to Allstream's statement that it was impossible to determine from Télébec's application which network components and services are available from Télébec, Télébec provided a table with details of the facilities and services available from Télébec. Télébec noted that these facilities were available to any competitor at the approved General Tariff rates or through forborne services and were provided without prejudice or any undue preference.
30. In response to Allstream's argument that Télébec's listing of competitive WAN service providers in its serving area was misleading, Télébec stated that this list demonstrated that the major carriers had large capacity fibre routes across Canada and they could easily extend

WAN services into Télébec's operating territory. Télébec also submitted that, in explaining that some customers purchase their own CPE, it was not arguing that customers were competitors, but demonstrating that customers were no longer dependent on Télébec for their equipment or facilities.

31. In response to Allstream's statement that Télébec had not filed Ethernet tariffs, Télébec argued that compliance with Decision 2004-5 was not a requisite in granting prior WAN forbearance requests such as that of TELUS Québec, which was granted in Decision 2004-7. Télébec also noted that in Decision 2004-7, the Commission did not require TELUS Québec to provide CDNA tariffs prior to granting forbearance.

Commission analysis and determination

32. In Order 2000-553, the Commission provided the following service definition:

WAN services are purchased mainly by medium- and large-sized businesses, governments and associations. WAN customers typically possess large internal information processing infrastructures, based on Ethernet, token ring or asynchronous transfer mode (ATM) protocols, usually at several locations. WAN services link the customer's local area networks (LANs) at the various locations. Often WAN services are used as replacements for older dedicated interexchange and intra-exchange private lines, such as Megaplan, and traditional frame relay services, such as Hyperstream.

WAN services consist of interfaces to customer-provided equipment at the customer's various locations, along with the ability to exchange information among locations. WAN services include the following elements:

- any of the service provider's network hardware and software which may be located on the customer's premise in order to provide Ethernet, token ring or ATM protocols at the interface to the customer's network;
- access transport (i.e. transport of packets and/or cells between the interface at the customer's premises and the service provider's network); and
- transport and routing or switching of packets or cells within the service provider's network for the purposes of transmitting data among the access points of a single customer.

33. In Order 2000-553, the Commission further clarified that forborne WAN services do not include ATM-based carrier interconnection services, or ATM services which provide PSTN interconnection or call control capabilities equivalent to interconnection with the PSTN. Further, the Commission clarified that the WAN access is a value-added enhanced service (either ATM, Ethernet or token ring protocols) available to WAN customers, and is part of

WAN service. In Order 2000-553, the Commission noted that the underlying access services are available from the incumbent local exchange carrier (ILEC) applicants at tariffed rates and from competitors.

34. The Commission considers that the definition of services included in Order 2000-553 was sufficiently precise and is also applicable for this forbearance application. The Commission notes that the level of forbearance requested by Télébec is identical to that granted in Orders 2000-553 and 2001-118 where the Commission retained its powers under section 24 of the Act to ensure that the existing conditions regarding disclosure of confidential customer information to third parties continue to apply, and to impose conditions as may be needed in the future, as well as under subsections 27(2), 27(3) and 27(4) of the Act to address issues of unjust discriminations or undue preference.
35. The Commission notes that in Order 2000-553 it determined that the market for WAN services is national or regional in scope (rather than route-specific as in the case of private line services). In that Order, the Commission observed that, although in certain situations WAN services may be an alternative to private lines, WAN services are considerably different than private line services. Unlike private lines, WAN services are neither priced nor offered on a route-specific basis. There are also technological differences in that private line services involve dedicated lines on specific routes for the physical transport of voice and data traffic between sites, whereas WAN services involve networking amongst interconnected sites on lines that are not dedicated.
36. In Decision 94-19, the Commission established a number of criteria to be examined when determining whether a market was competitive. These criteria included the market shares of the dominant and competing firms, demand and supply conditions, the likelihood of entry into the market, barriers to entry into the market and evidence of rivalrous behaviour.
37. In Order 2000-553, the Commission found that the WAN service market was competitive, that entry was relatively easy and that the applicants have no incentives to engage in anti-competitive below-cost pricing, because they would lose market share if they tried to raise prices.
38. The Commission notes that both national and regional competitive WAN service providers compete in Télébec's territory. The Commission finds that, since competitors may obtain essential access and transport services from alternate facilities-based access service providers, or from Télébec at tariffed rates and non-discriminatory terms where there is no alternate source of supply, there are few barriers to entry in Télébec's territory. Accordingly, the Commission is of the view that the conditions for WAN forbearance, as noted in Decision 94-19, exist in Télébec's territory.
39. The Commission notes that while subsection 34(1) of the Act provides that the Commission may refrain from regulating a service or class of services when it finds that such forbearance is consistent with the Canadian telecommunications policy objectives, subsection 34(2) of the Act requires it to forbear where it finds that the market for the service in question is, or will be, subject to sufficient competition to protect the interests of users. The Commission

also notes, however, that subsection 34(3) of the Act provides that the Commission shall not forbear if it finds that to do so would be likely to impair unduly the establishment or continuance of a competitive market for that service.

40. Accordingly, the Commission finds, pursuant to subsection 34(2) of the Act, as a question of fact, that the provision, in Télébec's territory, of WAN services is sufficiently competitive to protect the interests of users so as to warrant forbearance to the extent set out in this Decision.
41. The Commission finds, pursuant to subsection 34(1) of the Act, as a question of fact, that refraining from the exercise of its powers and the performance of its duties, to the extent set out in this Decision, with respect to WAN services in Télébec territory, is consistent with the Canadian telecommunications policy objectives of the Act.
42. The Commission also finds, pursuant to subsection 34(3) of the Act, as a question of fact, that refraining from regulating WAN services to the extent set out in this Decision is unlikely to impair unduly the continuance of a competitive market for that class of services.
43. In Order 2000-553, the Commission noted that it would retain sufficient powers to ensure that the telephone companies' competitors could obtain - at non-discriminatory rates, terms and conditions - access and transport facilities they require to compete in the provision of WAN services. Accordingly, in Decision 2004-5, the Commission found that the access components of DNA and interim CDNA services did not represent appropriate substitutes for Ethernet access.
44. The Commission is of the view that it is not necessary for competitors to know of and have access to all of Télébec's network components and services in order to compete in the provision of WAN services in Télébec's territory. The Commission, however, notes Allstream's statement that Télébec has not filed general tariffs for Ethernet access and transport facilities and Allstream's assertion that Télébec is offering WAN services that make use of these underlying network facilities. The Commission also notes Allstream's statement that it does not provide Ethernet-based WAN services in any of the territories served by Télébec. The Commission is of the view that there is a requirement for Télébec to make essential access and transport elements it uses for the provisioning of its own Ethernet-based WAN services available to competitors.
45. Accordingly, the Commission considers that Télébec should file tariffs for the underlying access and transport components used in the provision of Ethernet-based WAN services.
46. The Commission notes Allstream's argument that Télébec does not provide CDNA service and that this is discriminatory. The Commission considers that the DNA tariffs available from Télébec meet the requirement described in Order 2000-553 that underlying access and transport facilities are available at tariffed rates and under non-discriminatory terms and conditions to competitors where no alternate source of supply exists.
47. In light of these findings, the Commission must determine the extent to which it is appropriate to refrain, in whole or in part, and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 of the Act.

Section 24

48. Section 24 of the Act provides:

24. The offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission.

49. The Commission considers that it is appropriate to retain its powers pursuant to section 24 of the Act to ensure that the confidentiality of customer information continues to be protected. As Télébec's Terms of Service, which ensure the confidentiality of customer information for regulated services, do not apply to forborne services, the Commission directs Télébec, as a condition of providing WAN services, to abide by the existing conditions regarding disclosure of confidential customer information to third parties with respect to the services forborne from regulation in this Decision. The Commission also directs Télébec, on a going-forward basis, as a condition of providing WAN services, to incorporate, where appropriate, the existing conditions regarding disclosure of confidential customer information to third parties into all contracts and any other arrangements for services forborne from regulation in this Decision.
50. Finally, the Commission considers that it is also appropriate to retain sufficient powers under section 24 of the Act to specify possible future conditions relating to the provision of WAN services.

Section 25

51. Section 25 of the Act provides:

25. (1) No Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission that specifies the rate or the maximum or minimum rate, or both, to be charged for the service.

(2) A joint tariff agreed on by two or more Canadian carriers may be filed by any of the carriers with an attestation of the agreement of the other carriers.

(3) A tariff shall be filed and published or otherwise made available for public inspection by a Canadian carrier in the form and manner specified by the Commission and shall include any information required by the Commission to be included.

(4) Notwithstanding subsection (1), the Commission may ratify the charging of a rate by a Canadian carrier otherwise than in accordance with a tariff approved by the Commission if the Commission is satisfied that the rate

- a) was charged because of an error or other circumstance that warrants the ratification; or

- b) was imposed in conformity with the laws of a province before the operations of the carrier were regulated under any Act of Parliament.

52. Based on the record of this proceeding, the Commission considers it appropriate that Télébec no longer be required to file tariffs and obtain the Commission's approval in respect of the services forborne from regulation in this Decision. Accordingly, the Commission will refrain from the exercise of all of its powers and the performance of all of its duties under section 25 of the Act with respect to WAN services provided by Télébec.

Section 27

53. Section 27 of the Act provides:

27. (1) Every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable.

(2) No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

(3) The Commission may determine in any case, as a question of fact, whether a Canadian carrier has complied with section 25, this section or section 29, or with any decision made under section 24, 25, 29, 34 or 40.

(4) The burden of establishing before the Commission that any discrimination is not unjust or that any preference or disadvantage is not undue or unreasonable is on the Canadian carrier that discriminates, gives the preference or subjects the person to the disadvantage.

5) In determining whether a rate is just and reasonable, the Commission may adopt any method or technique that it considers appropriate, whether based on a carrier's return on its rate base or otherwise.

6) Notwithstanding subsections (1) and (2), a Canadian carrier may provide telecommunications services at no charge or at a reduced rate

(a) to the carrier's directors, officers, employees or former employees; or

(b) with the approval of the Commission, to any charitable organization or disadvantaged person or other person.

54. The Commission considers that there is no need to apply the regulatory standards for "just and reasonable" rates to rates that are set in a competitive market. Accordingly the Commission will refrain from the exercise of its powers and the performance of its duties under subsection 27(1) of the Act in respect to the services forborne from in this Decision. The Commission also forbears from the exercise of its powers and performance of its duties

under subsection 27(5) of the Act since it relates to subsection 27(1) of the Act with respect to which forbearance is granted. The Commission also forbears from the exercise of its powers and performance of its duties under subsection 27(6) of the Act since it does not wish to limit the pricing of the services forborne from regulation.

55. However, in view of the dominant position of Télébec for access and transport services and facilities in its operating territory, the Commission considers it necessary to retain its powers under subsections 27(2) and 27(4) of the Act in order to ensure that Télébec does not unjustly discriminate against other service providers or customers, or confer an undue or unreasonable preference with respect to the provision of WAN services forborne from regulation in this Decision.
56. The Commission also considers it necessary to retain its powers under subsection 27(3) of the Act with respect to compliance with powers and duties not forborne from in this Decision.

Section 29

57. Section 29 of the Act provides:

29. No Canadian carrier shall, without the prior approval of the Commission, give effect to any agreement or arrangement, whether oral or written, with another telecommunications common carrier respecting

- (a) the interchange of telecommunications by means of their telecommunications facilities;
- (b) the management or operation of either or both of their facilities or any other facilities with which either or both are connected; or
- (c) the apportionment of rates or revenues between the carriers.

58. The Commission considers it appropriate that Télébec no longer be required to obtain the Commission's approval to enter into agreements with other telecommunications common carriers regarding WAN services forborne from regulation in this Decision. Accordingly, the Commission will refrain from the exercise of all of its powers and the performance of all of its duties under section 29 of the Act with respect to WAN services forborne from regulation in this Decision.

Section 31

59. Section 31 of the Act provides:

31. No limitation of a Canadian carrier's liability in respect of a telecommunications service is effective unless it has been authorized or prescribed by the Commission.

60. The Commission considers it appropriate that Télébec be able to limit its liability in respect of WAN services in the same way as may an unregulated service provider. Accordingly, the Commission will refrain from the exercise of all of its powers and the performance of all of its duties under section 31 of the Act with respect to WAN services forborne from regulation in this Decision.

Declaration pursuant to subsection 34(4) of the Act

61. In light of the above, the Commission declares, pursuant to subsection 34(4) of the Act, that effective two weeks from the date of this Decision, sections 24, 25, 27, 29 and 31 of the Act do not apply to Télébec's current and future WAN services, except with respect to:

- conditions pursuant to section 24 of the Act set out in this Decision with respect to the confidentiality of customer information;
- any future condition that the Commission may impose, pursuant to section 24 of the Act, with respect to WAN services;
- the Commission's powers under subsections 27(2) and (4) of the Act with respect to unjust discrimination and undue preference in respect to the provision of WAN services; and
- the Commission's powers under subsection 27(3) of the Act with respect to compliance with powers and duties not forborne from in this Decision.

Tariff filings

62. The Commission directs Télébec to issue forthwith revised tariff pages, effective two weeks from the date of this Decision, deleting the existing tariff provisions relating to WAN services.
63. In addition, Télébec is directed to file, for the Commission's approval, tariffs for the underlying access and transport components used in the provision of Ethernet-based WAN services as follows:
- i) to the extent that Télébec is offering Ethernet-based WAN services, tariffs are to be filed within 45 days of the date of this Decision; or
 - ii) to the extent that Télébec is not currently offering Ethernet-based WAN services, tariffs are to be filed prior to providing such services.

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>