



Telecom Decision CRTC 2007-80

Ottawa, 6 September 2007

MTS Allstream Inc. – Part VII application regarding the incumbent local exchange carriers' Centrex and Enhanced Exchange Wide Dial services

Reference: 8622-M59-200701500

In this Decision, the Commission denies an application by MTS Allstream Inc. requesting that the Centrex and Enhanced Exchange Wide Dial tariffs of the incumbent local exchange carriers be amended to allow customers to migrate without penalty to alternative service providers in certain circumstances.

Introduction

1. The Commission received an application by MTS Allstream Inc. (MTS Allstream), dated 26 January 2007, requesting that the Commission direct each incumbent local exchange carrier (ILEC) to amend
 - (i) the terms of its Centrex tariffs to allow customers in the first term of a minimum contract period (MCP) to reduce without penalty their committed lines and/or term commitment (as applicable) within six months of a Commission-approved price increase; and
 - (ii) its Centrex and Enhanced Exchange Wide Dial (EEWD) tariffs to allow customers in the second or subsequent renewal term of a Centrex or EEWD MCP to migrate to the networks and service platforms of competitors at any time during the term of those MCPs without being subjected to increased rates, contractual penalties, or diminished service levels during the period of time required to complete the migration exercise.
2. The Commission received comments from Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, Saskatchewan Telecommunications, and TELUS Communications Company (collectively, the Companies); and Primus Telecommunications Canada Inc. (Primus). The record of this proceeding closed on 8 March 2007 with the filing of MTS Allstream's reply comments.

The Policy Direction

3. The Governor in Council's *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the Policy Direction) applies to the disposition of MTS Allstream's application. The Policy Direction sets out, among others, the following directives:

1(a) the Commission should (i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives; and (ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.

Relevant issues

4. The Commission considers that the relevant issues in this proceeding are as follows:
 - I. Whether there is a causal relationship between what MTS Allstream has identified as barriers to entry in the Centrex service market and the state of competition in the local exchange services market for large and very large business customers; and
 - II. Whether the state of competition in the market for local exchange services for large and very large business customers otherwise justifies regulatory intervention.
5. A preliminary issue raised by the Companies was whether MTS Allstream's application should be treated as a review and vary application.

Whether the application should be treated as a review and vary application

Positions of parties

6. The Companies argued that MTS Allstream's application was an application to review and vary Telecom Order 2004-256 and Telecom Order 2006-281 because it raised the same issues and arguments as had been raised, and rejected by the Commission, in those Orders. The Companies submitted that this application should be denied because it failed to meet the criteria for a review and vary application set out in Telecom Public Notice 98-6.
7. MTS Allstream submitted that its application was not a review and vary application, as it was not seeking to change the Commission's findings in the Orders cited by the Companies. Rather, MTS Allstream submitted that it was asking the Commission to consider the larger issue of the state of competition in the local exchange services market for large and very large business customers, and the barriers to entry in the Centrex market.

Commission's analysis and determinations

8. The Commission considers that MTS Allstream's application should be treated as a new application rather than as a review and vary application. In reaching this conclusion, the Commission considered that the arguments it rejected were tangential to the primary issues that were the subject of those Orders. Further, MTS Allstream's application does not request that the dispositions of the applications considered in those Orders be varied, either prospectively or retrospectively.

I. Whether there is a causal relationship between barriers to entry in the Centrex service market and the state of competition in the local exchange services market for large and very large business customers

Positions of parties

9. MTS Allstream submitted that the ILECs had created significant barriers to entry in the Centrex services market, which were anti-competitive and had resulted in a lack of competition in local telephone service in the large and very large business segments. In support of its argument, MTS Allstream relied on data regarding local business services drawn from the *CRTC Telecommunications Monitoring Report: Status of Competition in Canadian Telecommunications Markets – Deployment/Accessibility of Advanced Telecommunications Infrastructure and Services, July 2006* (the 2006 Monitoring Report).
10. MTS Allstream submitted that the barriers to entry in that market were as follows:
 - The monetary penalties and/or higher Centrex service rates faced by a customer if it decided to migrate to the service platform of a competitor;
 - Lengthy and highly complex customer transfer processes; and
 - The lack of technical solutions available to allow inter-working of Centrex service platforms to ensure that the migration exercise would be seamless to the end-user.
11. MTS Allstream submitted that the ILECs were leveraging these barriers to entry as a means of migrating their existing base of Centrex customers over to their next-generation Internet Protocol Centrex offerings, thus further blocking new entrants' efforts to compete for next-generation services on a fair and equitable basis.
12. MTS Allstream submitted that the Centrex tariffs prevented ILECs' Centrex customers from migrating to the local telephone service platforms of competitors and that any attempts by a customer to either terminate or reduce its consumption of Centrex service elements during the term of its contract would be met with early termination penalties and/or significantly increased rates. MTS Allstream noted that when the term of a customer's contract was over, there were no transition provisions that allowed this customer to maintain the discounted rates contained in its Centrex contract during the period of time that it took to migrate to the service platform of a competitor.
13. MTS Allstream further submitted that the inter-working issues were discussed at length by MacPherson Telecom Consulting Inc. in a report prepared for the federal government titled *Local Telephone Competition and Service to Government Departments: A Report on Options and Strategies for the Industry Canada Telecommunications Policy Division* (the MacPherson Report). MTS Allstream argued that the MacPherson Report described the ILECs' Centrex services as using a "closed system" that prevented inter-working with the service platforms of alternate providers.

14. Primus submitted that the contract provisions covering termination penalties made it impossible for customers to look for alternatives in the face of a price increase from the ILECs.
15. In their comments, the Companies submitted that large customers re-evaluated their telecommunications needs at regular intervals through competitive tender processes. The Companies were of the opinion that this demonstrated that the rate structures and penalty provisions in the Companies' Centrex and EEWD tariffs and contracts had no bearing on the extent of competitive entry.
16. Regarding the matter of the barriers to entry, the Companies submitted the following:
 - The ILECs' Centrex and EEWD tariffs provided customers with an assortment of contract terms, rates, volume, and migration options that provided options for managing a transition to a new service arrangement. Customers wishing to transition from Bell Canada- or Bell Aliant-provided Centrex and/or EEWD services could do so without incurring any form of penalty by assigning their Centrex and/or EEWD contract to an alternate supplier.
 - Based on the MacPherson Report, it did not appear that there were "serious technical impediments," as argued by MTS Allstream, to migrating customers from one service provider's system to another, but rather that a particular group of lines could be moved from the incumbent's system without serious operational difficulties.
 - One of the Companies had successfully migrated thousands of lines of two large Centrex customers to a competitor as a "flash-cut" on two separate occasions without having any impact on either customer's service.
 - Centrex services nationally were all contestable and substitutable. Further, competing companies offering these services had been successful in taking customers away from incumbent providers.
17. MTS Allstream replied that it did not object to tariff provisions that provided customers with greater overall discounts if they signed up for a longer term of service or if they committed to higher volumes of service, but rather to the fact that these provisions also included numerous penalty and float provisions, as well as an automatic rate increase if the customer did not sign up to an identical term immediately at the expiration of the first term. MTS Allstream submitted that these types of provisions were not commonplace in a competitive market. MTS Allstream further argued that it was simply not possible to carry out a large Centrex migration program without incurring penalties under the terms of the incumbents' existing Centrex contracts.

Commission's analysis and determinations

18. The Commission notes that no customers filed submissions in support of MTS Allstream's application. Further, the only party supporting MTS Allstream's application, Primus, limited its comments to supporting MTS Allstream's request that customers subject to rate increases be allowed to migrate to other service providers without penalty.
19. The Commission notes that the MacPherson Report suggested that the most significant barrier to competitive entry with respect to providing Centrex services to the federal government was the closed dialing plan, which allowed for dialing between departments by way of seven digits, but only if all the users were served by the same Centrex platform; otherwise, an extra digit needed to be dialed. At the same time, the MacPherson Report suggested that users would adapt to the requirement to dial an extra digit if required to do so. The Commission notes that the MacPherson Report did not address the issues of monetary penalties, increased Centrex rates during a transition, or the duration of a migration.
20. The Commission acknowledges that migrations for large and very large Centrex customers to a competitor can be complex and are likely to require a transition period, which could result in the customer paying higher rates per line as their consumption volume decreases or higher monthly uncontracted rates after an MCP expires. At the same time, however, the Commission considers that the record of this proceeding does not demonstrate that these barriers have prevented customers from changing service providers.
21. In light of the above, the Commission is not persuaded that there is a causal relationship between the barriers to entry to the provision of Centrex and EEWD services identified by MTS Allstream and the state of competition in the local exchange services market for large and very large business customers.

II. Whether the state of competition in the market for local exchange services for large and very large business customers otherwise justifies regulatory intervention

Positions of parties

22. As previously noted, MTS Allstream relied on data from the 2006 Monitoring Report to support its argument that there was a lack of competition in the large and very large business local exchange market segments. Specifically, MTS Allstream asserted that the ILECs' market share in local exchange services for the large and very large business segments were 96 and 98 percent, respectively (based on revenue). MTS Allstream submitted that, after nine years of competition, the level of competition in these market segments should be far greater because these market segments included some of the most vigorously contested and sought-after customers, who were among the most knowledgeable and sophisticated users of telecommunications services in Canada.
23. In their comments, the Companies disagreed with MTS Allstream's submission that the provision of local exchange services to large and very large business customers was not competitive. The Companies submitted that MTS Allstream itself was a significant competitor in the provision of these and many other business services nationally, along with other service providers.

24. The Companies were of the opinion that the measures sought by MTS Allstream were contrary to the fundamental thrust of the Policy Direction. The Companies submitted that MTS Allstream's application called for the Commission to pre-empt reliance on market forces with a regulatory solution that would interfere with contractual terms that had been established with business customers.
25. In reply, MTS Allstream submitted that with respect to the Policy Direction, contrary to the Companies' view, market forces could not be relied upon, given the ILECs' significant market power in the local exchange services market for large and very large business customers. Further, MTS Allstream disagreed with the Companies that it was seeking additional regulation, arguing that the relief sought was designed to allow market forces to operate more freely by removing very serious barriers to entry. MTS Allstream argued that the proposed measures were consistent with the Policy Direction as they were efficient and proportionate to their purpose and neither deterred economically efficient competitive entry into the market nor promoted economically inefficient entry.

Commission's analysis and determinations

26. The Commission notes that MTS Allstream's arguments that there was a lack of competition in the local exchange services market for large and very large customers were predominantly based on market share revenue. However, the Commission notes that market share is but one measure of competition, and that competitive presence, which was not addressed by MTS Allstream, is an alternative measure of market competition. In this regard, the Commission notes that there are at least four local exchange carriers that generally compete to provide services nationally to the large and very large business market. Further, the Commission notes that the MacPherson Report considered that the participation of three service providers, as well as the incumbent, in the tendering process for phone services was evidence of a competitive environment.
27. The Commission is not persuaded that the data cited by MTS Allstream indicates that there is a lack of competition in the local exchange services market for large and very large business customers. The Commission notes that the 96 and 98 percent revenue market share data with respect to large and very large business customers includes the share held by the ILECs operating out-of-territory. In this regard, the Commission notes that the ILECs operating out-of-territory are competitors to the in-territory incumbent.
28. By contrast, other data in the 2006 Monitoring Report does distinguish between the ILECs' in- and out-of-territory activity revenues with respect to the total local business market, aggregated over all customer segments. The Commission notes that such data shows that competitors' market share based on revenue (including ILECs operating out-of-territory) was 13.65 percent in 2005.
29. As noted above, the relief sought by MTS Allstream was limited to Centrex and EEWD services. However, the market share data relied on by MTS Allstream to support its application pertained to a significantly wider range of local services than Centrex and EEWD, including local wireline telephone service and local access-independent voice over Internet Protocol service. In this respect, the Commission notes that no revenue data pertaining only to Centrex and EEWD services was filed on the record of this proceeding.

30. In light of the above, the Commission is not persuaded that (1) there is a lack of competition in the market for local exchange services for large and very large business customers, and (2) the state of competition with respect to those customers justifies the relief sought by MTS Allstream.

Application of the Policy Direction

31. As noted above, subparagraph 1(a)(i) of the Policy Direction requires that the Commission rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives. In this respect, the Commission considers that the relief sought by MTS Allstream is intended to address the following objectives of the *Telecommunications Act*:

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

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

32. In light of the above findings, the Commission considers that market forces can be relied upon to achieve the policy objectives set out in paragraph 31.

Conclusion

33. Accordingly, the Commission **denies** MTS Allstream's application.

Secretary General

Related documents

- *Bell Canada and Bell Aliant Regional Communications, Limited Partnership – Centrex III and Enhanced Exchange-Wide Dial services*, Telecom Order CRTC 2006-281, 20 October 2006
- *Bell Canada – Managed Internet Protocol Telephony service*, Telecom Order CRTC 2004-256, 30 July 2004
- *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998

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