



## Telecom Decision CRTC 2007-91

Ottawa, 27 September 2007

### **Télébec, Limited Partnership – Application for forbearance from the regulation of residential local exchange services**

Reference: 8640-T78-200708290 and 8640-C12-200706351

*In this Decision, the Commission approves Télébec, Limited Partnership's (Télébec) request for forbearance from the regulation of residential local exchange services in five exchanges in Quebec. The Commission denies Télébec's request for forbearance in one exchange in Quebec.*

1. The Commission received an application by Télébec, Limited Partnership (Télébec), dated 25 May 2007, in which the company requested forbearance from the regulation of residential local exchange services<sup>1</sup> in six exchanges in Quebec.
2. The Commission received submissions and/or data regarding Télébec's application and/or local forbearance applications in general from Access Communications Co-operative Limited; Amtelecom Cable Limited Partnership; Bell Aliant Regional Communications, Limited Partnership; Bell Canada; Bell Mobility Inc.; Bragg Communications Inc., carrying on business as EastLink; Bruce Telecom; Canadian Cable Systems Alliance Inc.; Cogeco Cable Inc.; CoopTel; Distributel Communications Limited; Execulink Telecom Inc.; Globility Communications Corporation; Robert Macaulay; Maskatel inc. (Maskatel); Mountain Cablevision Ltd.; MTS Allstream Inc.; Nexicom Telecommunications Inc.; Primus Telecommunications Canada Inc.; the Public Interest Advocacy Centre, on behalf of the Consumers' Association of Canada and the National Anti-Poverty Organization (the Consumer Groups); Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Inc.; Saskatchewan Telecommunications; Shaw Communications Inc.; 9164-3122 Québec inc., doing business as Sogetel Numérique; Télébec; Téléphone Drummond inc.; TELUS Communications Company; Wightman Communications Ltd.; and WTC Communications.
3. The record of this proceeding closed with a letter by Télébec, dated 15 August 2007, in which the company revised the list of services for which it is seeking forbearance.
4. The Commission has assessed Télébec's application based on the local forbearance test set out in Telecom Decision 2006-15, as amended by the Governor in Council's *Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007-532, 4 April 2007 (modified Telecom Decision 2006-15), by examining the following:

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<sup>1</sup> In this Decision, "residential local exchange services" refers to local exchange services used by residential customers to access the public switched telephone network, and any associated service charges, features, and ancillary services.

- a) Product market
  - b) Competitor presence test
  - c) Competitor quality of service (Q of S) results
  - d) Communications plan
5. The Commission will consider an additional issue – limitation of liabilities – raised by Télébec in its application, under the heading of "Other issues."

### **Commission's analysis and determinations**

#### **a) Product market**

- 6. The Commission received no comments with respect to Télébec's proposed list of residential local exchange services.
- 7. The Commission notes that Télébec is seeking forbearance for 24 tariffed residential local exchange services. The Commission notes that 20 of those services were included in the list of services set out in Telecom Decision 2005-35.
- 8. The Commission also notes that one of the services listed in Télébec's application, namely RAFA Plan – Expanded Local Calling Area for the "Lac-à-Foin" region (item 1.4), is offered in a single exchange that is not covered by the application and is consequently excluded from the relevant product market considered in this Decision.
- 9. The Commission notes that four of the services listed in Télébec's application were not included in the list of services set out in Telecom Decision 2005-35. The Commission also notes that one of these services, Enhanced Telephone Service (item 2.19), falls within the definition of local exchange services set out in Telecom Public Notice 2005-2 and is therefore eligible for forbearance. The remaining three services, namely Residential Bundle (item 2.17), Enhanced Telephone Service and Internet Service Bundle (item 2.20), and Enhanced Telephone Service, Internet Service and Computer Bundle (item 2.21), were excluded from the scope of eligible local exchange services in Telecom Decision 2005-35 because they were bundles. In that Decision, the Commission noted that "tariff approval is not required for a bundle that does not include any tariffed service." The Commission determines that it need not make forbearance findings regarding service bundles that do not include a tariffed service.
- 10. The list of approved services is set out in the Appendix to this Decision.

#### **b) Competitor presence test**

- 11. The Commission notes that Télébec requested forbearance from the regulation of residential local exchange services in six exchanges in Quebec.

12. The Commission also notes that information provided by parties confirms that there are, in addition to Télébec, at least two independent facilities-based telecommunications service providers, including providers of mobile wireless services, that offer local exchange services in the market and are capable of serving at least 75 percent of the number of residential local exchange service lines that Télébec is capable of serving in the Château-Richer, Contrecoeur, Mont-Laurier, and Saint-Ours exchanges. Accordingly, the Commission determines that these four exchanges meet the competitor presence test.
13. The Commission notes that Maskatel submitted that it was not capable of serving at least 75 percent of the number of residential local exchange service lines that Télébec is capable of serving in the Saint-Thomas-d'Aquin exchange. The Commission notes, however, that Maskatel did not provide information on its network's capability in that exchange.
14. The Commission considers that it would be unreasonable to deny forbearance for this exchange strictly on the basis that the competitor did not provide the required information relative to its presence in the exchange. In the Commission's experience, a competitor does not win every customer it is capable of serving. The Commission considers that it is reasonable to infer that a competitor is capable of serving a much larger percentage of the market than it currently serves. In the Commission's view, a competitor can be reasonably expected to be capable of serving at least three times the number of customers that it currently serves. In this case, the Commission notes that Maskatel has a significant market share in the Saint-Thomas-d'Aquin exchange.
15. The Commission considers, based on the evidence filed in this proceeding, that it is reasonable to conclude Maskatel is capable of serving at least 75 percent of the number of residential local exchange service lines that Télébec is capable of serving in the Saint-Thomas-d'Aquin exchange. The Commission notes that information provided by parties confirms that there is, in addition to Télébec and Maskatel, at least one other independent facilities-based telecommunications service provider, including providers of mobile wireless services, that offers local exchange services in the market and is capable of serving at least 75 percent of the number of residential local exchange service lines that Télébec is capable of serving in the Saint-Thomas-d'Aquin exchange. Accordingly, the Commission determines that this exchange meets the competitor presence test.
16. The Commission determines that the remaining exchange, Sainte-Victoire, does not meet the competitor presence test as the other fixed-line telecommunications service providers are not capable of serving at least 75 percent of the number of residential local exchange service lines that Télébec is capable of serving.

**c) Competitor Q of S results**

17. The Commission notes that Télébec submitted competitor Q of S results for the period of October 2006 to March 2007.
18. The Commission has reviewed Télébec's competitor Q of S results and finds that the company has demonstrated that during this six-month period it

i) met, on average, the Q of S standard for each indicator set out in Appendix B of modified Telecom Decision 2006-15, as defined in Telecom Decision 2005-20, with respect to the services provided to competitors in its territory; and

ii) did not consistently provide any of those competitors with services that were below those Q of S standards.

19. Accordingly, the Commission determines that Télébec's competitor Q of S results meet the competitor Q of S criterion.

**d) Communications plan**

20. The Consumer Groups submitted that the incumbent local exchange carriers' (ILECs) communications plans were inadequate and proposed specific and detailed elements to be addressed by the companies in their plans. In reply, the ILECs submitted that the Consumer Groups' request would be more appropriately addressed through an application to review and vary modified Telecom Decision 2006-15.

21. The Commission notes that modified Telecom Decision 2006-15 states that the communications plan should describe how the ILEC intends to explain local forbearance to customers in the relevant market, provide information concerning the ongoing availability of stand-alone primary exchange service in the market, and provide contact information for customers who have questions or concerns.

22. The Commission has reviewed Télébec's draft communications plan and is satisfied that it generally meets the information requirements set out in modified Telecom Decision 2006-15. However, the Commission considers that the company should make the following changes to the plan (*italics represent revisions to be made*):

- i) Revise the second item of the section entitled Objectives as follows:

Advise residential customers that *the CRTC has directed Télébec to maintain certain requirements, such as continuing to provide stand-alone residential primary exchange service in forborne areas at no more than the most recently CRTC-approved rates.*

- ii) Revise the third item of the section entitled Objectives as follows:

Advise customers that *as of (date), the price and most terms for local telephone services in their area are no longer regulated by the CRTC, but rather by Télébec's unregulated terms of service which set out the basic rights, obligations and limitations of the Company and its customers.*

- iii) Provide mailing addresses for each organization listed in the communications plan.

- iv) Add the following information to the contact list, after Télébec's contact information and before the Commission's contact information:

Commissioner for Complaints for Telecommunications Services (CCTS)

**Website**

www.ccts-cprst.ca

**Email**

General inquiries: info@ccts-cprst.ca

Complaints: complaints@ccts-cprst.ca

**Telephone**

Toll-free: 1-888-221-1687

Ottawa area: 613-244-9585

Toll-free fax: 1-877-782-2924

**Postal address**

P.O. Box 81088, Ottawa, ON K1P 1B1

- v) Add the following information to the contact list, after the Commission's contact information:

Canadian Consumer Information Gateway – Office of Consumer Affairs

Industry Canada

235 Queen Street

6<sup>th</sup> Floor West

Ottawa, ON

K1A 0H5

Tel: 613-946-2576

Email: [consumer.information@ic.gc.ca](mailto:consumer.information@ic.gc.ca)

23. The Commission **approves** the proposed communications plan with the revisions outlined above. The Commission directs Télébec to provide the resulting communications materials to its customers in both official languages, where appropriate.

**Other issues**

***Limitation of liability***

24. Télébec noted that previous forbearance orders, for example, Telecom Decision 97-19, had included a "limitation of liability" provision to address the transitional period from full regulation to regulatory forbearance. Télébec requested that the Commission include a limitation of liability clause in its decision and, as an example, proposed the following words:

Any provision limiting liability in existing contracts or other arrangements with customers will continue to remain in force for the greater of (i) 90 days after the effective date of this Forbearance Order, and (ii) until the end of the term of such contracts or other arrangements, in accordance with the terms of such contracts or other arrangements.

25. The Commission notes that this issue was expressly dealt with in modified Telecom Decision 2006-15, where the Commission stated the following:

The Commission notes that any provision limiting liability in any existing contracts or arrangements, as of the date of the Commission decision granting forbearance in a relevant market, will remain in force until its expiry. Such existing contracts or arrangements will be deemed to terminate on the date or in the manner provided therein, notwithstanding any contractual provisions governing extensions.

26. The Commission considers that Télébec's concerns have been addressed by this statement and that no further ruling regarding limitation of liability provisions is required in this Decision.

## **Conclusion**

27. The Commission determines that Télébec's application meets all the local forbearance criteria set out in modified Telecom Decision 2006-15 for the Château-Richer, Contrecoeur, Mont-Laurier, Saint-Ours, and Saint-Thomas-d'Aquin exchanges.
28. Pursuant to subsection 34(1) of the *Telecommunications Act* (the Act), the Commission finds as a question of fact that a determination to forbear, to the extent specified in modified Telecom Decision 2006-15, from the regulation of residential local exchange services listed in the Appendix and future services that fall within the definition of local exchange services set out in Telecom Public Notice 2005-2 as they pertain to residential customers only, in the Château-Richer, Contrecoeur, Mont-Laurier, Saint-Ours and Saint-Thomas-d'Aquin exchanges, would be consistent with the Canadian telecommunications policy objectives set out in section 7 of the Act.
29. Pursuant to subsection 34(2) of the Act, the Commission finds as a question of fact that the residential local exchange services are subject to a level of competition in these exchanges sufficient to protect the interests of users of these services.
30. Pursuant to subsection 34(3) the Act, the Commission finds as a question of fact that to forbear, to the extent specified in modified Telecom Decision 2006-15, from regulating these residential local exchange services in these exchanges would be unlikely to impair unduly the continuance of a competitive market for these services.
31. In light of the above, the Commission **approves** Télébec's application for forbearance from the regulation of the local exchange services set out in the Appendix and future services that fall within the definition of local exchange services set out in Telecom Public Notice 2005-2, as they pertain to residential customers only, in the Château-Richer, Contrecoeur, Mont-Laurier,

Saint-Ours and Saint-Thomas-d'Aquin exchanges, subject to the powers and duties that the Commission has retained as set out in modified Telecom Decision 2006-15. This determination takes effect as of the date of this Decision. The Commission directs Télébec to file for Commission approval revised tariff pages within 30 days.

32. The Commission determines that Télébec's application does not meet all the local forbearance criteria set out in modified Telecom Decision 2006-15 for the Sainte-Victoire exchange. Accordingly, the Commission **denies** Télébec's application for forbearance from the regulation of the residential local exchange services in this exchange.

Secretary General

### **Related documents**

- *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006, as amended by the Governor in Council's *Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007-532, 4 April 2007
- *List of services within the scope of the proceeding on forbearance from the regulation of local exchange services*, Telecom Decision CRTC 2005-35, 15 June 2005, as amended by Telecom Decision CRTC 2005-35-1, 14 July 2005
- *Forbearance from regulation of local exchange services*, Telecom Public Notice CRTC 2005-2, 28 April 2005
- *Forbearance – Regulation of toll services provided by incumbent telephone companies*, Telecom Decision CRTC 97-19, 18 December 1997, as amended by Telecom Decision CRTC 97-19-1, 9 March 1998

*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>*

**Local exchange services eligible for forbearance from regulation in this Decision (for residential customers only)**

<b>Tariff</b>	<b>Item</b>	<b>List of services</b>
25140	1.7	Telephone Set Loss Charge (Residence)
25140	2.15	Service to Immobilized Ships, Trailers and Trains
25140	2.5	Telephones available only for two-party line or multi-party access service
25140	3.1	Intra-Exchange Distance Charges
25140	8.4	Internet Call Display
25140	11.1	Services for Handicapped Persons
25140	2.1.2.2	Basic Service for Students
25140	2.1.7.1	Basic Service and Regional Service – Monthly rates for basic services and other fees
25140	2.1.7.4	Basic Service and Regional Service – Rate Adjustment for Multi-Party Access Line Customers
25140	2.1.8	Basic services provided outside the Company's serving area
25140	2.23.2	Telephone Number Reservation Service
25140	2.27.6	Extra Listings
25140	2.3.4	Individual Line and Two-Party Access Line Provided Outside the Base Rate Area – Distance Charges
25140	3.3.17	Toll Restriction Service
25140	3.3.18	Smart Touch Services
25140	3.3.19	Call Display Blocking – Per Line
25140	3.3.19	Call Display Blocking – Per Call
25140	5.2.6.5	Call Blocking Service – 900 Service
25140	8.7.3	Integrated Services Digital Network (ISDN) 2B + D Télébec
25140	2.19	Enhanced Telephone Service