



## Telecom Decision CRTC 2013-290

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Ottawa, 14 June 2013

### **TELUS Communications Company – Application to review and vary Telecom Decision 2012-507 regarding forbearance from the regulation of business local exchange services**

File number: 8662-T66-201216250

*In this decision, the Commission denies an application from TCC to review and vary the Commission's determinations in Telecom Decision 2012-507 regarding forbearance from the regulation of business local exchange services in 25 exchanges in Alberta and British Columbia.*

#### **Background**

1. Telecom Decision 2006-15 set out the framework for forbearance<sup>1</sup> from the regulation of retail local exchange services for the large incumbent local exchange carriers (ILECs). According to this decision, the key criterion the Commission uses to assess forbearance applications is the competitor presence test. In the context of business local exchange services, this test requires that at least one other independent, facilities-based, fixed-line telecommunications service provider (TSP) offer local exchange services in the market, in addition to the ILEC, and be capable of serving at least 75 percent of the number of business local exchange service lines that the ILEC is capable of serving.
2. That decision also stated that a facilities-based TSP is a TSP that provides services in the relevant market using either its own facilities and services, or a combination of its own facilities and services together with those leased from other TSPs.
3. In Telecom Decision 2012-507, the Commission denied TELUS Communications Company (TCC)'s request for forbearance from the regulation of business local exchange services in 54 of 89 exchanges. The Commission noted that for 25 of the exchanges that were denied forbearance, the competitive TSPs identified by TCC, namely Distributel Communications Limited (Distributel) and Iristel Inc. (Iristel), indicated that they were providing local access-independent voice over Internet Protocol (VoIP) services in these exchanges. The Commission also noted that in

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<sup>1</sup> Subsection 34(2) of the *Telecommunications Act* (the Act) states that where the Commission finds that a telecommunications service or class of services is or will be subject to competition sufficient to protect the interests of users, the Commission shall refrain, or forbear, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under certain sections of the Act in relation to the service or class of services.

*Order Varying Telecom Decision CRTC 2005-28, P.C. 2006-1314, 9 November 2006* (the Order in Council), the Governor in Council considered that local access-independent VoIP services are a distinct class of local telephone services for regulatory purposes. Accordingly, the Commission determined that since Distributel and Iristel are local access-independent VoIP service providers, these TSPs do not constitute independent, facilities-based, fixed-line TSPs that offer local exchange services for the purpose of the local forbearance test.

## **Application**

4. The Commission received an application from TCC, dated 21 December 2012 and amended on 4 January 2013, in which the company requested that the Commission review and vary certain determinations in Telecom Decision 2012-507. In that decision, the Commission, among other things, denied TCC's request for forbearance from the regulation of business local exchange services<sup>2</sup> in 25 exchanges in Alberta and British Columbia on the basis that the competitor presence test had not been met.
5. Specifically, TCC submitted that the Commission had erred in law and in fact when it determined that Distributel and Iristel, as local access-independent VoIP service providers,<sup>3</sup> did not meet the competitor presence test since they are not independent, facilities-based, fixed-line TSPs.
6. TCC therefore requested that the Commission forbear from regulating business local exchange services in the 25 exchanges in question.<sup>4</sup>
7. The Commission received comments regarding TCC's application from Distributel. The public record of this proceeding, which closed on 18 February 2013, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings" or by using the file number provided above.

## **Is there substantial doubt as to the correctness of the Commission's determinations in Telecom Decision 2012-507?**

8. TCC submitted that the Commission erred in law and in fact in its application of the competitor presence test when it incorrectly concluded that Distributel and Iristel are not independent, facilities-based, fixed-line TSPs because they provide local access-independent VoIP services.

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<sup>2</sup> In this decision, "business local exchange services" refers to local exchange services used by business customers to access the public switched telephone network and any associated service charges, features, and ancillary services.

<sup>3</sup> Local access-independent VoIP services are services in which the access and service components may be provided by distinct TSPs. Local access-independent VoIP service providers are not required to (i) provide the underlying network on which their service rides, and (ii) obtain permission from the network provider to offer their services to their customers on that network.

<sup>4</sup> These exchanges are Acme, Bonnyville, Caroline, Chauvin, Eckville, Etzicom, Grand Centre, Hanna, Irma, Irricana, Langdon, Leslieville, Lloydminster, Milk River, Nisku, Provost, Rimbey, Spruce View, Stettler, Sundre, Trochu and Vauxhall, Alberta; and Gulf Islands, Pender Island, and Port Alice, British Columbia.

9. TCC submitted that, given the two companies' status as competitive local exchange carriers (CLECs), the Commission must be satisfied that they are facilities-based TSPs. TCC added that the "fixed-line" portion of the competitor presence test refers to local services provided over fixed facilities, as opposed to wireless local services. TCC submitted that local VoIP services are provided over fixed lines, and that the main TSPs that provide these lines are ILECs and cable carriers.
10. TCC submitted that the Order in Council does not preclude the Commission from considering local access-independent VoIP service as a competitive option for local service and that local access-independent VoIP service should be considered equivalent to fixed local exchange service for the purpose of forbearance.
11. TCC argued that the Commission's determinations in Telecom Decision 2012-507 add a new requirement to the competitor presence test since under these determinations, ILECs would be required to verify whether CLECs provide local access-dependent or access-independent VoIP services for the purpose of forbearance.
12. Distributel submitted that the Commission requires that, in forbearance applications, the CLEC(s) listed must be the direct provider(s) of the local exchange services as well as the underlying fixed line to end-customers, and that the underlying fixed line must be physically located in the exchange(s) subject to the application. Distributel argued that this is not always the case with access-independent VoIP services due to the nomadic nature of these services.
13. Distributel confirmed that it does not provide telephone service and fixed lines to end-customers in the exchanges subject to TCC's forbearance application.

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

14. The Commission notes that, as mentioned above, the competitor presence test set out in Telecom Decision 2006-15 requires that, in the case of business local exchange services, at least one other independent, facilities-based, fixed-line TSP offer local exchange services in the market using either its own facilities and services, or a combination of its own facilities and services together with those leased from other TSPs.
15. The Commission also notes that local access-independent VoIP services are services in which the access and service components may be provided by distinct TSPs. Such TSPs are not required to (i) provide the underlying network on which their local access-independent VoIP services ride, and (ii) obtain permission from the network provider to offer their services to their customers on that network.
16. The Commission considers that if a CLEC is a facilities-based TSP in certain exchanges, it does not mean that the company is automatically a facilities-based, fixed-line TSP in other exchanges for the purpose of the local forbearance test set out in Telecom Decision 2006-15.

17. The Commission notes that local access-independent VoIP service providers can fulfill the obligations to become CLECs. However, the Commission considers that in the context of this proceeding, Distributel and Iristel do not meet the competitor presence test set out in Telecom Decision 2006-15 since they do not use fixed-line access facilities, whether owned or leased, in whole or in part, to provide business local exchange services in the exchanges in question.
18. In light of the above, the Commission finds that it did not err in law or in fact when it determined that Distributel and Iristel are not facilities-based, fixed-line TSPs for the purpose of the competitor presence test in the exchanges referred to in paragraph 6 above. Accordingly, the Commission finds that TCC has failed to demonstrate substantial doubt as to the correctness of the Commission's determinations in Telecom Decision 2012-507. The Commission therefore **denies** TCC's application.

### Policy Direction

19. The Policy Direction<sup>5</sup> states that the Commission, in exercising its powers and performing its duties under the *Telecommunications Act* (the Act), shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(a), (b), and (c) of the Policy Direction.
20. The Commission considers that its findings in this decision are consistent with the Policy Direction and advance the policy objectives set out in paragraphs 7(a), (b), (f), and (h) of the Act.<sup>6</sup>
21. Further, by continuing to regulate TCC's business local exchange service rates in the exchanges in question while refraining from regulation in other exchanges where competition is sufficient to protect the interest of users, the Commission has relied on regulatory measures that (i) are efficient and proportionate to their purpose, (ii) interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives, and (iii) neither deter economically efficient competitive entry into the market nor promote economically inefficient entry, consistent with subparagraphs 1(a)(ii) and 1(b)(ii) of the Policy Direction.

### Secretary General

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<sup>5</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

<sup>6</sup> The cited policy objectives of the Act are

7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;

7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

7(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; and

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

## **Related documents**

- *TELUS Communications Company – Application for forbearance from the regulation of business local exchange services*, Telecom Decision CRTC 2012-507, 24 September 2012
- *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006, as amended by Order in Council P.C. 2007-532, 4 April 2007