



## Telecom Regulatory Policy CRTC 2020-66

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### **Forbearance from the regulation of Canadian telecommunications common carriers' international telecommunications service agreements and arrangements for the carriage of traffic into or out of Canada**

*The Commission forbears from the regulation of international telecommunications service agreements and arrangements for the carriage of traffic into or out of Canada for all Canadian telecommunications common carriers, in the same way it did for seven affiliates of Bell Canada in Telecom Decision 2019-325.*

#### **Background**

1. In Telecom Decision 2019-325, in response to an application from Bell Canada, the Commission forbore from regulating
  - agreements and arrangements between foreign telecommunications common carriers and seven entities affiliated with Bell Canada (the Bell affiliates);<sup>1</sup> and
  - agreements and arrangements that the Bell affiliates enter into with another Canadian carrier that provide exclusively for the carriage of traffic into or out of Canada by one of the parties to the agreement or arrangement.
2. In its application, Bell Canada submitted that if the Commission granted the company's request, it should also consider initiating a show cause proceeding to determine whether forbearance should also apply to international agreements and arrangements for all other small incumbent local exchange carriers (ILECs). Although some interveners submitted that the Commission could expand the application of its forbearance determinations to all small ILECs at the same time as the Bell affiliates without additional process, the Commission stated that it would not be appropriate to make such a determination without providing all small ILECs with an opportunity to be heard. It also considered that if there were other Canadian telecommunications

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<sup>1</sup> The Bell affiliates include seven companies or entities affiliated with Bell Canada, which are DMTS, a division of Bell Canada; Groupe Maskatel L.P.; KMTS, a division of Bell Canada; NorthernTel Limited Partnership; Northwestel Inc.; Ontera; and Télébec, Société en commandite.

common carriers not covered by previous forbearance determinations, those carriers should also have the opportunity to comment on whether the same determinations should also apply to them.

3. Accordingly, at the same time as it issued Telecom Decision 2019-325, the Commission issued Telecom Notice of Consultation 2019-326, in which it invited interested parties to show cause why its determinations in Telecom Decision 2019-325 should not also apply to all other Canadian telecommunications common carriers that enter into such agreements and arrangements that are not currently subject to forbearance from regulation.
4. The Commission received interventions from Bell Canada, the Independent Telecommunication Providers Association (ITPA), Shaw Communications Inc. (Shaw), TBayTel, and TELUS Communications Inc. (TCI).

**Should the Commission forbear from regulating international agreements and arrangements for all Canadian telecommunications common carriers that are not currently subject to such forbearance, in the same way it did for the Bell affiliates in Telecom Decision 2019-325?**

**Positions of parties**

5. All interveners supported the application of the Commission's forbearance determinations in Telecom Decision 2019-325 to all Canadian telecommunications common carriers for which the agreements and arrangements in question are not currently subject to forbearance. The interveners generally agreed that forbearance was appropriate given the competitiveness of the market for international telecommunications services.
6. The ITPA submitted that Bell Canada's arguments in its application for forbearance for the Bell affiliates apply equally to the ITPA member companies, which, like many of the Bell affiliates, are also small ILECs. It also submitted that while the Bell affiliates benefit from Bell Canada's scope, scale, and market power in various ways, the other small ILECs do not have the same advantages. The ITPA argued that, as a result, the other small ILECs have less leverage and power in the market; therefore, granting them forbearance presents even less concern in relation to the interests of users.
7. TBayTel submitted that if the Commission believes that the market for international telecommunications services remains sufficiently competitive for the Bell affiliates, then it is only reasonable to believe that other small ILECs and carriers not under the Bell Canada umbrella are in markets that are no less competitive.
8. Bell Canada, the ITPA, and TCI submitted that forbearance is necessary if regulatory measures are to be implemented in a symmetrical and competitively neutral manner across carriers. Shaw and TCI submitted that the regulatory requirement to file agreements or arrangements is burdensome and, therefore, a competitive disadvantage to the remaining small ILECs and other carriers that do not currently have a

forbearance determination with respect to the agreements and arrangements at issue. For these reasons, several parties also submitted that forbearance would be consistent with both the 2006 Policy Direction<sup>2</sup> and the 2019 Policy Direction<sup>3</sup> (collectively, the Policy Directions).

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

9. Pursuant to subsections 34(1) and (2) of the *Telecommunications Act* (the Act), the Commission has the authority to forbear from the exercise of certain powers or the performance of certain duties under the Act in relation to a telecommunications service or class of services. It may also do so where it finds that to do so would be consistent with the policy objectives set out in section 7 of the Act. The Commission shall do so to the extent that it considers appropriate, where it finds that a service or class of services is or will be subject to competition sufficient to protect the interests of users.
10. In Telecom Decision 2019-325, the Commission considered that the market for international telecommunications services remained sufficiently competitive such that it was not necessary for the Bell affiliates to file for the Commission's approval any associated agreements and arrangements.
11. In this regard, consistent with its findings in Telecom Decision 2019-325, the Commission considers that the market for international telecommunications services is sufficiently competitive, and that the regulatory requirement to file any associated agreements and arrangements is an unnecessary burden on and a disadvantage to small ILECs and other Canadian telecommunications common carriers, to the extent that they are competing with the large ILECs and other carriers that are currently subject to forbearance.
12. Further, the Commission notes that it received no interventions that opposed extending the Commission's forbearance determinations in Telecom Decision 2019-325 to all Canadian telecommunications common carriers that enter into international telecommunications service agreements and arrangements for the carriage of traffic into or out of Canada that are not currently subject to forbearance from regulation.
13. In light of the above, the Commission forbears, pursuant to subsection 34(1) of the Act, from regulating (i) agreements and arrangements between foreign telecommunications common carriers and all other Canadian telecommunications common carriers not currently subject to forbearance, and (ii) agreements and arrangements that all other Canadian telecommunications common carriers not

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<sup>2</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

<sup>3</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

currently subject to forbearance enter into with another Canadian carrier that provide exclusively for the carriage of traffic into or out of Canada by one of the parties to the agreement or arrangement.

14. Pursuant to subsection 34(3) of the Act, the Commission shall not forbear from the regulation of a service or class of service if it finds that to do so would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of service. The Commission considers that its forbearance determinations in this proceeding will not impair unduly the establishment or continuance of a competitive market for the services associated with such agreements or arrangements.

### **Policy Directions**

15. The Commission considers that the determinations set out above are compliant with the policy objectives set out in paragraphs 7(c), (d), and (f) of the Act.<sup>4</sup> The Commission also considers that the implementation of these policy objectives is compliant with the Policy Directions.
16. By ensuring consistent treatment among all ILECs and removing a competitive burden, the Commission considers that its determinations are consistent with subparagraphs 1(a)(i), (iii), and (v) of the 2019 Policy Direction, which state that the Commission should consider the extent to which its decisions
- (i) encourage all forms of competition and investment;
  - (iii) ensure that affordable access to high-quality telecommunications services is available in all regions of Canada, including rural areas; and
  - (v) reduce barriers to entry into the market and to competition for telecommunications service providers that are new, regional, or smaller than the incumbent national service providers.
17. Therefore, the Commission considers that its forbearance determinations
- (i) will promote competition, affordability, and consumer interests by relying on market forces; and (ii) are consistent with subparagraphs 1(a)(i), (iii), and (v) of the 2019 Policy Direction.
18. Furthermore, the Commission considers that its forbearance determinations will enable market forces to operate to a greater extent, to the benefit of consumers, consistent with subparagraph 1(a)(i) of the 2006 Policy Direction.

### **Secretary General**

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<sup>4</sup> The cited policy objectives are 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; (d) to promote the ownership and control of Canadian carriers by Canadians; and (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.

## Related documents

- *Show cause proceeding and call for comments – Forbearance from the regulation of Canadian telecommunications common carriers' international telecommunications service agreements or arrangements for the carriage of traffic into or out of Canada*, Telecom Notice of Consultation CRTC 2019-326, 20 September 2019
- *Bell Canada – Application for forbearance from the regulation of agreements and arrangements related to international telecommunications services*, Telecom Decision CRTC 2019-325, 20 September 2019