Telecom Decision CRTC 2017-171

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Bell Canada – Application for forbearance from the regulation of extended area service transport and local transit services

The Commission ***denies*** *Bell Canada's request for forbearance from the regulation of extended area service (EAS) transport and local transit services within its operating territory. EAS transport service enables competitive local exchange carriers (CLECs) that have established local interconnection with the incumbent local exchange carrier (ILEC) to terminate voice calls to the ILEC's customers, without incurring long distance charges. Local transit service enables CLECs to terminate local voice calls to the customers of other CLECs with which they are not interconnected, by using the ILEC as an intermediary. Bell Canada based its forbearance request primarily on its view that both of the services are no longer essential due to the existence of substitutes.*

After applying its standard Essentiality Test and related policy considerations, the Commission has determined that modifying the regulatory status of the services as requested would likely increase barriers to entry and expansion in the market and lead to substantial lessening and/or prevention of competition in the downstream market of retail local exchange services. As a result, the provision of EAS transport service and local transit service will remain mandated and tariffed, which will help ensure that consumers continue to have access to competitive retail local exchange services.

Background

1. Extended area service (EAS) transport service enables competitive local exchange carriers (CLECs) that have established local interconnection with the incumbent local exchange carrier (ILEC) to terminate local voice calls (i) to the ILEC's customers in exchanges that have an EAS connection with the originating exchange, or (ii) to the ILEC's customers located outside the local interconnection region (LIR),[1] in exchanges that have an EAS connection with at least one exchange inside the LIR, without incurring long distance charges.

2. Local transit service enables CLECs to terminate local voice calls to the customers of other CLECs with which they are not interconnected, by using the ILEC as an intermediary. The calls may originate and terminate within an LIR or in different LIRs between exchanges with EAS.

[1] An LIR is a grouping of ILEC exchanges, established by the Commission to reduce competitors' interconnection costs and to facilitate competitive entry.

3. In Telecom Decision 97-8, the Commission mandated the provision of both of the services by ILECs, and this requirement was maintained in Order 2001-184. In Telecom Decision 2008-17, the Commission classified the services as mandated interconnection services, based on its determination that they were required to permit the interchange of traffic with public switched telephone network (PSTN) customers.

4. Most recently, in the proceeding leading to Telecom Regulatory Policy 2015-326, Bell Canada and other interveners requested that the Commission change the regulatory status of the services to non-essential. In the resulting decision, the Commission determined that parties had not provided sufficient evidence to allow for a meaningful application of the Essentiality Test.

Application

5. Bell Canada filed a Part 1 application, dated 4 March 2016 and re-filed on 6 April 2016, in which it requested that the Commission no longer mandate the provision of EAS transport service and local transit service (collectively, the services), and forbear from regulating them, within its operating territory. It defined this territory as the incumbent operating territory of Bell Canada (including Bell Aliant Regional Communications, Limited Partnership) in Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador, as well as the operating territories of Télébec, Limited Partnership and NorthernTel, Limited Partnership (all these companies are referred to collectively in this decision as “Bell Canada”).

6. EAS transport service and local transit service are two separate services; however, Bell Canada asked that they be considered together. Each of the services includes the following components:

   - set-up and monthly charges for each transit or transport trunk (as applicable),[2] and
   - a per-order charge.

7. In support of its application, Bell Canada addressed the Essentiality Test and policy considerations specified in Telecom Regulatory Policy 2015-326, as well as the forbearance test set out in Telecom Decision 94-19.

8. Bell Canada based its forbearance request primarily on its view that the services are no longer essential due to the existence of substitutes, including (i) the option for CLECs to establish direct interconnection with ILECs and other CLECs, and (ii) the use of an integrated mesh of CLEC network interconnections throughout Bell Canada’s operating territory that provides alternatives to the services. In addition, in

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[2] The monthly local transit charge per trunk provides for the transport of traffic from the point of interconnection (POI) between the sending CLEC and the ILEC to the POI between the receiving CLEC and the ILEC. The monthly EAS transport charge per trunk provides for the transport of traffic from the POI between the CLEC and the ILEC to the ILEC’s switch that serves its end-customers where the traffic is to be terminated.

the case of EAS transport service, Bell Canada proposed that CLECs have the option to use the ILEC's switching and aggregation services at the access tandem level to terminate small volumes of traffic in an adjacent LIR.

9. The Commission received interventions from Allstream Inc., hereafter referred to as Zayo Canada Inc. (Zayo);[3] Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); the Canadian Network Operators Consortium Inc. (CNOC); the Public Interest Advocacy Centre (PIAC); Rogers Communications Canada Inc. (RCCI); TELUS Communications Company (TCC); and WIND Mobile Corp. (now Freedom Mobile Inc. [Freedom Mobile]).[4] The public record of this proceeding, which closed on 13 October 2016, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Issues

10. The Commission has identified the following issues to be addressed in this decision:

- Should the services be considered together?
- Should Bell Canada's provision of the services continue to be mandated?
- If not, should the Commission forbear from regulating the services?

Should the services be considered together?

11. Bell Canada submitted that the competitive conditions and available substitutes for the services are sufficiently similar that it would be reasonable for the Commission to consider forbearance for both services simultaneously.

12. RCCI submitted that the fact that CLECs may have potential alternatives to terminate their traffic within the EAS of the interconnecting exchanges has nothing to do with whether or not they have alternatives to exchange traffic between them. It submitted that the Commission's decisions regarding each of the services should therefore be separate.

13. Given the related functions of the services and the similarity of the substitutes available for each of them, the Commission finds that it is reasonable to consider the services together.

Should Bell Canada's provision of the services continue to be mandated?

14. In Telecom Regulatory Policy 2015-326, the Commission stated that for regulated wholesale services, it would base its decision to mandate the provision of a wholesale service on two elements: (i) the Essentiality Test, and (ii) a set of policy considerations that could modify or support its decision resulting from the application of the Essentiality Test.

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[3] During the course of this proceeding, Allstream Inc. became Zayo Canada Inc.

[4] WIND Mobile Corp. now operates as Freedom Mobile, following its purchase by Shaw Communications Inc.

According to the Essentiality Test, are the services essential?

15. The Essentiality Test includes three elements: an input component, a competition component, and a duplicability component. Before these three elements can be assessed, the relevant market must be defined. The relevant market consists of product and geographic markets, which are typically characterized as the smallest group of services and geographic area over which a hypothetical monopolist could profitably impose a significant and non-transitory (i.e. sustainable) price increase.

Relevant market: product market

16. Bell Canada submitted that the relevant product market consists of local network interconnection arrangements for CLECs.

17. In the case of local transit service, Bell Canada argued that, in response to an increase in the price of the service, a CLEC could either directly interconnect with another CLEC (i.e. self-supply) or indirectly interconnect, via a negotiated agreement, with a local exchange carrier (LEC) that has already established, or could establish, local network interconnection arrangements with another CLEC. The company submitted that these alternatives have become easier to implement given the development and increased use of carrier hotels[5] and Internet Protocol (IP)-based technologies.

18. With respect to the option of direct interconnection with another CLEC, Bell Canada argued that all LECs are assured of mandated interconnection with all other LECs in an LIR through shared-cost interconnecting trunks on a bill-and-keep basis. It submitted that for CLECs that choose not to self-supply via direct interconnection, there is an integrated mesh of CLEC network interconnections that provides a wealth of alternatives to the services.

19. For EAS transport service, Bell Canada submitted that, in response to a service price increase, a CLEC could either directly interconnect with the ILEC (i.e. self-supply) in the relevant adjacent LIR or indirectly interconnect, via a negotiated agreement, with another CLEC that has already established, or could establish, interconnection arrangements with the required ILEC in the relevant LIR.

20. Bell Canada proposed that a CLEC that does not wish to interconnect with the ILEC (or CLEC) in the adjacent LIR would have the option of terminating its traffic to the ILEC's (or the CLEC's) end-customers in the required exchange by using the ILEC's switching and aggregation service at the access tandem level.

21. CNOC submitted that using separate product markets for each service would better reflect the purposes of the services and the impact of deregulating them. CNOC argued that the services are distinct from one another and that they serve different purposes in relation to CLEC interconnection.

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[5] A carrier hotel, also called a co-location centre, is a physical centre or building where data communications media converge and are interconnected. It is common for multiple service providers to share the facilities of a single carrier hotel.

22. RCCI agreed with Bell Canada that the relevant product market consists of local interconnection arrangements for CLECs. However, as noted above, it submitted that the existence of potential alternatives to terminating traffic within the EAS of the interconnecting exchanges has nothing to do with whether or not CLECs have alternatives to exchanging traffic between them.

23. TCC also agreed that the relevant product market for both of the services is local network interconnection arrangements for CLECs, including both negotiated and tariffed services. It submitted that no single alternative must be a complete replacement for either of the ILEC's services in order for the service to be declared non-essential or for forbearance to be granted. According to TCC, the decline in demand during a period of retail growth for CLECs is evidence that CLECs are actively using the existing alternatives to avoid using the services.

Commission's analysis and determinations

24. In order to define the relevant product market, it is necessary to identify existing or potential substitutes for the services and evaluate the extent to which each of them would be a viable substitute if customers were to face a significant and sustainable price increase for the services.

25. As discussed below in the duplicability component section of the Essentiality Test, the Commission recognizes that there is a certain level of substitutability between the services and Bell Canada's proposed alternatives, although the alternatives may not be feasible or practical in all circumstances. However, for the purpose of determining the relevant product market, it is not necessary for the alternatives to be substitutable in all circumstances; the fact that they can be substitutes in certain circumstances is sufficient to classify them as substitutable for the purposes of the Essentiality Test. Accordingly, the Commission concludes that the relevant product market consists of local network interconnection arrangements for CLECs.

Relevant market: geographic market

26. Bell Canada submitted that the relevant geographic market for the proposed substitutes for the services is the LIR. It argued that by establishing local network interconnection in an LIR, a CLEC gains access to all the ILEC's end-customers in the LIR under bill-and-keep arrangements. Submitting that this capability is the same for all the LIRs in its operating territory, Bell Canada proposed that it would be appropriate to aggregate all LIRs to minimize the administrative burden associated with gathering and processing large amounts of data. As a result, Bell Canada submitted that the relevant geographic market is its operating territory.

27. CNOC agreed with Bell Canada's proposal to define the geographic market as its entire operating territory, arguing that the objective of an efficient interconnection regime would not be served if the provision of the services were mandated in certain LIRs and deregulated in others.

28. RCCI disagreed with Bell Canada’s proposal that its entire territory be treated as a single market, given the wide variations in the collective footprint of the companies operating in the territory, which includes both urban and rural areas, with different sets of challenges and operators. RCCI submitted that even the LIRs within the territory in question are too large and do not reflect the differences that can occur within LIRs. Consequently, it submitted that the relevant geographic market should be the ILEC local exchange.

Commission’s analysis and determinations

29. CLECs use the services to serve end-customers in a given geographic area – that is, the LIR. As a result, a price increase for the services in a specific LIR may not be constrained by the availability of substitutes in another LIR within Bell Canada’s operating territory. Therefore, aggregating all Bell Canada’s LIRs into a single relevant geographic market consisting of Bell Canada’s entire operating territory would not be appropriate or meaningful.

30. On the other hand, defining the local exchange as the relevant geographic market, as proposed by RCCI, would require a granular assessment of each exchange, which would increase the administrative burden associated with data gathering and processing.

31. The Commission considers that assessing information at the LIR level would represent a reasonable degree of aggregation and would be consistent with its approach in Telecom Regulatory Policy 2015-326. Accordingly, and because the geographic scope of CLEC interconnection is the LIR, the Commission concludes that the relevant geographic market for the services is the LIR.

Input component

32. In order to determine whether a specific wholesale service is required as an input by competitors to provide downstream retail services, the Commission must consider the following factors: (i) the downstream market(s) for which the wholesale service is an input; (ii) the technical aspects of the wholesale service; (iii) the past, current, and anticipated demand for the wholesale service; and (iv) trends in demand – that is, whether there is sustained growth or decline. If the Commission finds that the wholesale service in question is a required input for competitors to provide downstream retail services, and there is and will continue to be sufficient demand for the wholesale service, the input component would be satisfied.

Positions of parties

33. Bell Canada submitted that the relevant downstream market for which the services are used as an input is the retail local exchange service market.

34. Arguing the difficulty of obtaining industry-wide demand information, Bell Canada proposed that its declining revenues, subscriptions, and customer base in recent years be used as an indicator of demand for the services. The company submitted that

between 2009 and 2015, its revenues from both of the services declined significantly in much of its operating territory, while the CLEC local revenues and market shares increased. In addition, it submitted that demand for the services is unlikely to increase in the future given the availability of attractive substitutes. Bell Canada submitted further that between 1 January 2011 and 30 June 2016, many subscriptions for both of the services were terminated and the number of trunks used for the remaining subscriptions declined.

35. Bell Canada submitted that there is sufficient evidence of a steady decrease in demand across its operating territory to indicate clearly that CLECs have access to acceptable substitutes for the services, and therefore that the input component of the Essentiality Test is not satisfied. TCC supported this position, arguing that the small remaining demand for the services indicates that, in some instances, CLECs find it more convenient to use the services than the alternatives, which is not a reflection of essentiality.

36. CNOC submitted that its members that operate as CLECs continue to use the services and that they consider local transit service in particular to be critical to their ongoing ability to provide retail telecommunications services.

37. RCCI submitted that the advent of the LIR-based interconnection regime, as established in Telecom Decision 2004-46, could explain the decrease in EAS transport revenues – that is, the aggregation of several exchanges into an LIR has reduced the total number of subscriptions and the associated revenues.

Commission's analysis and determinations

38. As stated by Bell Canada, the relevant downstream market for which the services are used as an input is the retail local exchange service market.

39. The Commission considers it reasonable to conclude, as RCCI submitted, that the migration to an LIR-based interconnection regime might have significantly affected revenues from the services because of the aggregation of exchanges into LIRs.

40. Despite the decline in demand for the services, an analysis of LIR-based data indicates that there continues to be demand for both of the services in the majority of LIRs, and the demand is still high in many LIRs. Accordingly, the Commission finds that in those LIRs, the services satisfy the input component of the Essentiality Test.

41. However, there are some LIRs in Bell Canada's operating territory where there are no CLECs operating or where there is CLEC presence but currently no demand for the services. In these circumstances, CLECs face different operational environments, including, for example, the size of the market and the availability of affiliated CLECs. As such, the lack of current demand does not demonstrate that the services are no longer required, particularly for future entrants and existing CLECs wishing to expand into those markets. In such situations, the services would still qualify as a required input, and no longer mandating their provision could lead to a substantial prevention of competition.

42. Accordingly, the Commission finds that the services satisfy the input component of the Essentiality Test in all LIRs contained within Bell Canada's operating territory.

Competition component

43. To evaluate the competition component, the Commission must examine two elements: (i) the upstream market conditions – specifically, whether a firm or a group of firms has market power; and (ii) the impact that any upstream market power might have on competition levels in the associated downstream retail market(s). If, on balance, the Commission finds that there is upstream market power and the associated downstream retail market(s) could be negatively affected to a substantial degree if the provision of the wholesale service is not mandated, the competition component would be satisfied.

Positions of parties

44. Bell Canada submitted that although evidence of competitive rivalry in wholesale telecommunications markets is difficult to obtain, the declining demand for the services in terms of both revenue and customers, and the presence of various substitutes, constitute strong indicators that firms, either individually or jointly, do not have market power with respect to the services. TCC agreed with Bell Canada, adding that the ILECs' declining revenue for the services indicates that competitors are using alternatives in order to avoid using the services or to competitively supply them.

45. With regard to competition levels, Bell Canada submitted that if the provision of the services were no longer mandated and the services became unaffordable or unobtainable, there would be no effect on the state of competition in the downstream retail local exchange service market because CLECs could still obtain interconnection through other practical and cost-effective means. It submitted that the competition component of the Essentiality Test is therefore not satisfied.

46. CNOC submitted that Bell Canada had not provided sufficient evidence that it has no market power with respect to the services or that the market for the proposed alternatives is sufficiently competitive. CNOC also submitted that its CLEC members continue to use the services on an unchanged or increasing basis as their customer base grows.

47. RCCI submitted that it still uses the services because it has not been able to find practical and affordable alternatives. It also submitted that it might have to pay considerably more to access the PSTN in the future if Bell Canada is granted the requested forbearance. According to RCCI, approval of Bell Canada's application would limit competition and make it more difficult for CLECs to operate within Bell Canada's operating territory.

Commission's analysis and determinations

48. As discussed further in the duplicability component section below, the Commission considers that the proposed substitutes could be inefficient and costly to implement. In the absence of economically reasonable and technically efficient substitutes to the services, a price increase or a refusal to provide the services by ILECs would have an anti-competitive effect on a CLEC's ability to provide services in the downstream market.

49. If the provision of the services were no longer mandated, existing CLECs would be under no obligation to provide the services to other CLECs, which are also generally their competitors in the downstream market. In addition, existing CLECs would have an incentive not to provide the services to their competitors or could choose to provide them at a higher price, thereby increasing their competitors' costs and possibly preventing competition by deterring entry and expansion in the market.

50. One of the Commission's original reasons for mandating the provision of the services in Telecom Decision 97-8 was to facilitate local competition. The services enable CLECs to quickly and efficiently enter and establish interconnection in new LIRs, and their absence would create a significant barrier for CLECs either entering the market or expanding into a new LIR. Further, given that Bell Canada also competes in the downstream retail local exchange service market in its operating territory, a decision to no longer mandate the provision of the services would mean that customers' costs for a key input would be set by their competitor.

51. Based on its analysis of the input component of the Essentiality Test, the Commission considers that an exercise of market power (e.g. service denial or price increase) in the provision of the services could substantially lessen or prevent competition in the downstream retail market.

52. Accordingly, the Commission finds that the services satisfy the competition component of the Essentiality Test in all LIRs contained within Bell Canada's operating territory.

Duplicability component

53. In considering the duplicability component, the Commission must assess whether it is practical or feasible for competitors to duplicate the functionality of a service, through either self-supply or third-party supply. If the Commission finds that the functionality of a particular wholesale service cannot feasibly be duplicated by a reasonably efficient competitor on a sufficiently large scale, the duplicability component would be satisfied.

Positions of parties

54. Bell Canada submitted that the functionality of the services can be reasonably duplicated, since CLECs can interconnect with other LECs within the same or other exchanges by either constructing their own facilities for this purpose (self-supply) or leasing facilities from any other carrier or facility provider, including the ILEC (third-party supply).

55. In addition, for CLECs without EAS transport service that expect low call volumes to a certain LIR, Bell Canada suggested that an alternative to the service would be to use the ILEC's switching and aggregation service at the access tandem level. While this alternative would trigger long distance fees, which are assessed by the minute, Bell Canada submitted that given the low call volume, it may be more cost-efficient than using EAS transport service.

56. CNOC submitted that duplicating the services is not feasible for a reasonably efficient CLEC because it would require an unreasonable number of direct interconnections. CNOC also submitted that incumbent cable carriers have substantial resources to establish substitutes to the services, which is not the case for small CLECs.

57. Eastlink submitted that the self-supply alternative is not practical, as there is no integrated mesh of CLEC network interconnections in most LIRs in Canada, and that as far as it is aware, it is the only facilities-based CLEC currently providing services in most of its serving area within Bell Canada's ILEC territory.

58. PIAC submitted that without mandated local transit services, it would be difficult for CLECs to be competitive with ILECs, and entry into the market would be difficult, if not impossible. It added that a CLEC would not be able to terminate calls to an ILEC unless it established a direct connection to the ILEC or negotiated an agreement with another CLEC that could terminate calls to the ILEC.

59. RCCI submitted that there would be no full duplicability where it operates. Further, it submitted that there are too many areas where a CLEC cannot rely on Bell Canada's proposed alternatives to transit or terminate calls.

60. Freedom Mobile submitted that relying on other CLECs to offer local transit services is an incomplete solution. It also submitted that a CLEC seeking to launch service in a rural or suburban area might find it very difficult to directly interconnect with an established CLEC in the associated LIR and that there may not be a willing intermediary CLEC. Freedom Mobile acknowledged that carrier hotels in major cities like Toronto or Vancouver, and IP interconnection, can be used to reduce local transit service demand, but that carrier hotels are not common in smaller communities, making it difficult for CLECs to directly interconnect with small regional CLECs.

61. CNOC, Eastlink, and RCCI indicated that switching and aggregation service at the access tandem level is not a viable alternative to EAS transport service, mainly for reasons of cost. In addition, CNOC submitted that a requirement to use switching and aggregation service as a substitute for either of the services would require the CLEC to establish a separate connection arrangement with the access tandem that serves exchanges in the LIR and external exchanges that have EAS transport interconnection with the exchanges in the LIR.

62. Freedom Mobile submitted that the ILEC's switching and aggregation service could be a substitute for local transit service but that network inefficiencies would need to be addressed. It also submitted that it does not consider EAS transport to be a

necessary service for CLEC interconnection and that, for low traffic volumes to an EAS exchange, the ILEC's switching and aggregation service, and wholesale long distance termination services, are valid substitutes for EAS termination.

Commission's analysis and determinations

63. With regard to Bell Canada's proposal that a CLEC may establish a presence in an ILEC exchange in a given LIR to replicate the function of EAS transport service (self-supply), the Commission considers, consistent with its conclusions in Telecom Decision 2008-17, that it is not reasonable to expect CLECs to take this approach if they do not intend to offer local exchange services, or if they do not have a sufficient existing customer base in the target LIR. Therefore, modifying the regulatory status of EAS transport service as requested by Bell Canada would likely result in costly or inefficient solutions for customers of the mandated service.

64. Regarding Bell Canada's submission that CLEC-to-CLEC direct interconnection (self-supply) is an alternative to local transit service, the Commission considers that if a CLEC has a sufficient volume of traffic with another CLEC, this option may be justified from a cost perspective. However, it is likely not a viable option for new or smaller CLECs; mandated ILEC local transit service is a much more efficient option. As such, reliance on CLEC-to-CLEC direct interconnection would likely increase barriers to entry for new and smaller CLECs.

65. With respect to indirect interconnection (third-party supply), Bell Canada submitted that CLECs could indirectly interconnect via a negotiated agreement with a LEC that has already established, or could establish, local network interconnection arrangements with the relevant CLEC. However, even in urban markets where there are generally many CLECs operating, a significant number of them are still using the services, which indicates that indirect interconnection via another LEC may not be as readily available, or as attractive, as Bell Canada has suggested.

66. The fact that CLECs compete with each other in the provision of downstream retail services implies that they may not have sufficient incentive to provide the services to other LECs. In addition, the price for alternative arrangements is disciplined by the existence of the services at tariffed rates. Therefore, in the absence of mandated and regulated EAS transport and local transit services, CLECs will face additional barriers to establishing indirect interconnection via other LECs.

67. Finally, with respect to Bell Canada's proposal that CLECs use the ILEC's switching and aggregation service at the access tandem level as an alternative to the services, the Commission notes that Bell Canada's toll access tandems are located in large and densely populated markets. As such, it is impossible for CLECs that do not operate in such markets to use this option, and it is not available in smaller and less densely populated markets. In addition, EAS transport service is rated on a per-trunk basis, while rates for switching and aggregation service at the access tandem level are determined on a per-minute basis, which could make the latter option more expensive for large volumes of traffic. While carrier hotels could be used for interconnection

between CLECs, they are not common and are also located in large and densely populated markets, which again means that they are not feasible for CLECs that do not operate in those markets.

68. In the Commission’s view, the options discussed above are inefficient and would increase competitors’ costs. As such, the Commission finds that the functionality of the services cannot reasonably be duplicated by a reasonably efficient competitor on a sufficient scale, and therefore the duplicability component of the Essentiality Test is satisfied in all LIRs contained within Bell Canada’s operating territory.

Conclusion regarding Essentiality Test

69. The Commission’s analysis of the record indicates that there is a high level of demand for the services in many LIRs in Bell Canada’s operating territory. In those LIRs where there is demand, the Commission concludes that the Essentiality Test is satisfied.

70. As stated above, there are some LIRs where there are no CLECs operating or where there is CLEC presence but currently no demand for the services. In those circumstances, the Commission considers that the lack of current demand does not indicate that there will not be any future demand – that is, there may be future entrants and existing CLECs wishing to expand into those markets – and that no longer mandating the provision of the services could lead to a substantial prevention of competition. Consequently, even in LIRs where there is no current demand for the services, the Commission concludes that the services are essential for market entry and expansion.

71. In addition, in light of the difficulties associated with duplicating the functionality of the services, the Commission considers that no longer mandating the provision of the services would likely lead to the substantial lessening or prevention of competition.

72. In light of the above, the Commission concludes that the services satisfy all three components of the Essentiality Test in all LIRs contained within Bell Canada’s operating territory.

Policy considerations

73. Bell Canada submitted that in the case of the services, the relevant policy considerations set out in Telecom Regulatory Policy 2015-326 are the following:

- *Interconnection* – the service would promote the efficient deployment of networks and facilitate network interconnection arrangements.

- *Innovation and investment* – mandating or not mandating the facility or wholesale service could affect the level of innovation/investment in advanced or emerging networks or services for incumbents, competitors, or both, or impact the associated level of adoption of advanced or emerging services by users of telecommunications services.

74. According to Bell Canada, the rationale for mandating the provision of the services no longer applies because local competition in retail markets is well developed and there are practical and affordable substitutes for the services.

75. In addition, Bell Canada submitted in its application that local transit services are not interconnection services because interconnection services enable two carriers to exchange traffic destined to and from their end-customers, whereas local transit services enable carriers to use the network facilities of another carrier even though the traffic being transmitted is not destined to or from the end-customers of the transiting network. Bell Canada argued that if local transit services were truly interconnection services, all LECs should be mandated to provide them.

76. Zayo submitted that both of the services are interconnection services that facilitate the exchange of local traffic, and that changes to such services affect a wide range of participants in the local voice services market, sometimes in ways that are difficult to anticipate. It submitted that any change to the regulatory status of the services would require a more in-depth proceeding.

77. CNOC submitted that efficient interconnection between LECs is of critical importance and constitutes the basic foundation of a competitive telecommunications market. It also submitted that the services allow CLECs to avoid inefficient and unnecessary interconnection arrangements. CNOC argued that, regardless of the outcome of the Essentiality Test, the Commission should continue to mandate the provision of the services based on interconnection policy considerations because the services still promote the efficient deployment of networks and facilitate network interconnection arrangements.

Commission's analysis and determinations

78. In Telecom Regulatory Policy 2015-326, the Commission stated that it may use a policy consideration to

- justify a decision to mandate the provision of a wholesale service that does not meet the Essentiality Test,
- justify a decision not to mandate the provision of a wholesale service that meets the Essentiality Test, or
- support its decision to mandate the provision of a wholesale service following its application of the Essentiality Test.

79. The Commission also determined in that decision that wholesale services that serve the public good and those related to network interconnection should be given special treatment for policy reasons not captured by the Essentiality Test.

80. Both of the services allow for the transfer of traffic from one provider to another, and both have been consistently characterized as interconnection services by the Commission. Accordingly, the Commission considers that the relevant policy consideration is whether the services promote the efficient deployment of networks and facilitate network interconnection arrangements.

81. EAS transport service allows CLECs to efficiently terminate calls in adjacent LIRs and to avoid the significant effort and expense involved in establishing inefficient and unnecessary interconnection arrangements. In the current environment of LIR-based interconnection, not mandating the provision of EAS transport service would force CLECs to use options that are costly to implement and inefficient from a network perspective.

82. All interveners except TCC submitted that local transit service should continue to be mandated due to the absence of efficient alternatives. The Commission considers that mandated local transit service continues to enable CLECs to efficiently enter new LIRs.

83. Although Bell Canada submitted that the relatively large number of CLECs operating in some exchanges and LIRs demonstrates the competitiveness and viability of substitutes for the services, the Commission considers that this could actually increase the complexity and cost of CLEC-to-CLEC direct interconnection. Further, the services are uniquely important, as they support efficient interconnection by LECs, and Bell Canada's proposed alternatives are less efficient from a network and/or cost perspective.

84. Based on the above, and consistent with the interconnection policy consideration set out in Telecom Regulatory Policy 2015-326, the Commission considers that the services promote the efficient deployment of networks and facilitate network interconnection arrangements. Accordingly, the Commission finds that the policy consideration of interconnection efficiency supports its conclusions regarding the Essentiality Test. The Commission therefore determines that the provision of the services will remain mandated in all LIRs contained within Bell Canada's operating territory.

Should the Commission forbear from regulating the services?

85. Given that the Commission has determined that the provision of the services will remain mandated throughout Bell Canada's entire operating territory, it is not necessary to consider forbearance from the regulation of the services. The Commission therefore **denies** Bell Canada's application.

Policy Direction

86. The Commission is required, in exercising its powers and performing its duties under the *Telecommunications Act* (the Act), to implement the policy objectives set out in section 7 of the Act, in accordance with the Policy Direction.[6] The determinations set out in this decision are in accordance with the Policy Direction for the reasons set out below.

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[6] *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

87. The issues under consideration in this decision relate to the provision of the services and the associated impact on competition in the downstream market of retail local exchange services, including whether the provision of the services should no longer be mandated. Therefore, subparagraphs 1(a)(i) and (ii)[7] and subparagraphs 1(b)(i), (ii), and (iv)[8] of the Policy Direction apply to the Commission's determinations in this decision.

88. In compliance with subparagraph 1(b)(i) of the Policy Direction, the Commission considers that the policy objectives set out in paragraphs 7(a), (b), (c), and (f) of the Act[9] are advanced by the regulatory measures established in this decision.

89. Consistent with subparagraphs 1(a)(ii) and 1(b)(ii) of the Policy Direction, the Commission considers that the regulatory measures approved in this decision are (i) efficient and proportionate to their purpose, and minimally interfere with market forces; and (ii) neither deter economically efficient competitive entry into the market nor promote economically inefficient entry. In this regard, the Commission notes that continuing to mandate the provision of the services promotes the efficient deployment of networks and facilitates network interconnection arrangements.

90. Consistent with subparagraph 1(b)(iv) of the Policy Direction, the Commission's determinations, as they relate to network interconnection arrangements or regimes for access to networks, are, to the greatest extent feasible, technologically and competitively neutral in that they do not artificially favour either Canadian carriers or resellers.

Secretary General

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[7] Paragraph 1(a) states that "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."

[8] Paragraph 1(b) states, among other things, that "the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that (i) specify the telecommunications policy objective that is advanced by those measures and demonstrate their compliance with [the Policy Direction], (ii) if they are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry, ... and (iv) if they relate to network interconnection arrangements or regimes for access to networks, buildings, in-building wiring or support structures, ensure the technological and competitive neutrality of those arrangements or regimes, to the greatest extent possible, to enable competition from new technologies and not to artificially favour either Canadian carriers or resellers."

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

- *Review of wholesale wireline services and associated policies*, Telecom Regulatory Policy CRTC 2015-326, 22 July 2015, as amended by Telecom Regulatory Policy CRTC 2015-326-1, 9 October 2015
- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008
- *Trunking arrangements for the interchange of traffic and the point of interconnection between local exchange carriers*, Telecom Decision CRTC 2004-46, 14 July 2004
- *Local competition: Sunset clause for near-essential facilities*, Order CRTC 2001-184, 1 March 2001
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997
- *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994