Telecom Decision CRTC 2017-172

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Bell Canada – Application for forbearance from the regulation of wholesale wireless access service

The Commission ***denies*** *Bell Canada's request for forbearance from the regulation of wholesale wireless access service (WAS) within its operating territory. WAS enables a mobile wireless carrier's end-customers to make calls to, and receive calls from, a local exchange carrier's (LEC) end-customers and all other entities connected to the LEC's network. Bell Canada based its forbearance request primarily on its view that there are substitutes to WAS available to wireless carriers.*

After applying its standard Essentiality Test and related policy considerations, the Commission has determined that modifying the regulatory status of WAS 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 mobile wireless services. As a result, the provision of WAS will remain mandated and tariffed, which will help ensure that consumers continue to have access to competitive retail mobile wireless services.

Background

1. Wireless access service (WAS) enables a mobile wireless carrier to interconnect its network with that of a local exchange carrier (LEC) so that the wireless carrier's end-customers can make calls to, and receive calls from, the LEC's end-customers and all other entities connected to the LEC's network. The wireless carrier identifies the local calling areas (LCAs)[1] to which it requires access, and a mutually agreed upon point of interconnection (POI) is established for the interchange of traffic in each of those LCAs. It also specifies the number of trunks it needs per LCA.

2. In Telecom Decision 2008-17, the Commission classified WAS as a mandated interconnection service, based on its determination that the service was required to permit the interchange of traffic with public switched telephone network (PSTN) customers.

3. In the proceeding leading to Telecom Regulatory Policy 2012-24, Bell Canada requested that the Commission forbear from regulating WAS in all local interconnection regions (LIRs)[2]

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[1] An LCA is a geographic area, made up of incumbent local exchange carrier (ILEC) exchanges, within which residential and business customers can make telephone calls without incurring long distance charges.

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

where a competitive local exchange carrier (CLEC) is present. The Commission denied the request due to the absence of sufficient evidence to support Bell Canada's proposed criterion for forbearance.

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 WAS 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 29 January 2016 and re-filed on 6 April 2016, in which it requested that the Commission forbear from regulating wholesale WAS 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. The two main components of Bell Canada's WAS are

   - set-up and monthly charges for the transport service between the mutually agreed upon POI and the Bell Canada wire centre[3] serving the LCA; and

   - set-up and monthly charges for each trunk[4] within the LCA (the monthly rate per trunk provides for the use of Bell Canada's network in the LCA).

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 WAS is not an essential service and that there are substitutes for WAS available to wireless carriers.

9. The Commission received interventions from 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]).[5] The public record of this proceeding, which

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[3] A wire centre is a building that houses switching equipment to serve a designated geographical area (e.g. an exchange, an LCA). A wire centre may include one or more central offices.

[4] Monthly charges are for each DS-0 circuit with PSTN connectivity.

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

closed on 29 September 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 Bell Canada's provision of WAS continue to be mandated?
- If not, should the Commission forbear from regulating Bell Canada's WAS?

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

11. 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.

According to the Essentiality Test, is WAS an essential service?

12. The Essentiality Test consists of 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

13. Bell Canada submitted that the relevant product market should consist of local network interconnection arrangements for wireless carriers. It proposed that wireless carriers have the following alternative options, which it considered to be viable substitutes for WAS: (i) becoming a wireless CLEC,[6] which would allow them to benefit from direct, shared-cost interconnection with a bill-and-keep compensation model; (ii) indirect interconnection with a LEC via an affiliated CLEC; and (iii) indirect interconnection with a LEC via a negotiated agreement with an unaffiliated CLEC that has already established, or could establish, local network interconnection arrangements with a LEC. It also proposed that the wireless carrier could negotiate an agreement for WAS with Bell Canada.

14. Bell Canada asserted that all LECs are assured of mandated interconnection to all other LECs in an LIR through shared-cost interconnecting trunks on a bill-and-keep basis and that, based on the Commission's determinations in Telecom Decision 2004-46, all LECs have regulated interconnection services wherever desired in Canada.

[6] A wireless CLEC, also known as a Type II CLEC, is a wireless Canadian carrier that offers local exchange services using wireless mobile technology, chooses to use the CLEC interconnection regime, and commits to fulfilling all CLEC obligations associated with that regime.

15. Bell Canada submitted that it would not be burdensome for wireless carriers to register as wireless CLECs and bear the associated responsibilities, and that the time required to become a wireless CLEC is not onerous. The company also submitted that any wireless carrier retains the ability to become a CLEC if it believes that this would bring it net benefits relative to remaining a wireless carrier using WAS interconnection.

16. No party disagreed with Bell Canada’s proposed product market definition.

Commission’s analysis and determinations

17. In order to define the relevant product market, it is necessary to evaluate the extent to which each of Bell Canada’s three proposed substitutes is a viable substitute to WAS, if wireless carriers were to face a significant and sustainable price increase for the service.

18. As discussed below in the duplicability component section of the Essentiality Test, the Commission recognizes that there is a certain level of substitutability between WAS 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 wireless carriers, including WAS.

Relevant market: geographic market

19. Bell Canada submitted that although WAS provides local interconnection and transit in an LCA, the relevant geographic market for its proposed WAS substitutes is the LIR. It submitted that by establishing local network interconnection in a given LIR, a CLEC gains access to all incumbent local exchange carrier (ILEC) end-customers in the LIR.

20. However, citing the approach taken in Telecom Regulatory Policy 2015-326, Bell Canada proposed that all LIRs within its operating territory be aggregated into a single relevant geographic market on the grounds that market conditions are similar in each LIR, and because dealing with granular geographic markets may be burdensome and impractical. If the Commission should disagree with this level of aggregation, Bell Canada proposed that the Essentiality Test and forbearance analysis be conducted on an LIR basis.

21. PIAC and RCCI submitted that Bell Canada’s proposed relevant geographic market is unduly large. PIAC suggested a relevant geographic market smaller than an LIR, reflecting local or regional market differences within LIRs.

22. RCCI submitted that individual exchanges are the relevant geographic market because (i) a small CLEC might serve only portions of an LIR and not the entire LCA desired by the

wireless carrier, and (ii) central office codes (or NXXs)[7] are assigned by exchange, and number portability can happen only within the exchange.

23. In reply, Bell Canada submitted that when CLECs obtain interconnection services in one exchange in an LIR, they obtain access to all exchanges in the LIR, making the relevant geographic market larger than the exchange – that is, at least as large as the LIR.

Commission's analysis and determinations

24. Wireless carriers use WAS to serve end-customers in a given geographic area (i.e. the LCA or exchange). As a result, a price increase on WAS in a specific exchange may not be constrained by the availability of substitutes in another exchange elsewhere within Bell Canada's operating territory. Similarly, interconnection in one LIR is not a substitute for interconnection in another LIR. 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.

25. With respect to considering the LIR as the relevant geographic market, WAS provides local interconnection and transit in an LCA, while CLEC-based interconnection alternatives provide access to an LIR. Given that the proposed CLEC-based interconnection alternatives do not constitute perfect substitutes for WAS, it is unlikely that wireless carriers – particularly new carriers and those serving small geographic areas – would always be able to constrain such a price increase by switching to CLEC-based interconnection.

26. Further, given that the boundaries of LCAs do not necessarily align with those of LIRs, and in many cases may be larger, CLEC-based interconnection giving access to an LIR might not be equivalent to a WAS providing access to the entire LCA. In other words, additional interconnection in a new LIR could be required.

27. However, to the extent that LIR-based interconnection is readily available as a substitute, and given that the geographic scope of the CLEC-based alternative proposed by Bell Canada is the LIR, the relevant geographic market could be as broad as the LIR. In the Commission's view, this approach would strike a reasonable balance between applying meaningful and practical definitions for the geographic market, and avoiding the administrative burden associated with gathering and processing large amounts of exchange data. As a result, the Commission concludes that the LIR is the appropriate geographic market.

Input component

28. 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

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[7] A central office code, or NXX, is unique to an exchange within a given Numbering Plan Area (NPA). Central office codes identify the exchanges in which a call originates and terminates, and are thus used to rate and route calls.

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

29. Bell Canada submitted that the relevant downstream market for which WAS is used as an input is retail mobile wireless service and that wireless carriers must be able to interconnect with other networks to provide that service. As discussed above, Bell Canada argued that wireless carriers have several economically feasible and practical substitutes for WAS. The company noted that in Telecom Regulatory Policy 2012-24, the Commission acknowledged that few wireless carriers rely on mandated WAS to any great extent to interconnect directly with a LEC.

30. Bell Canada submitted that industry-wide demand information is difficult to obtain. It argued that the decline in its WAS revenues in Ontario and Quebec and the increase in wireless subscribers in Canada over the past eight years are indicators that alternatives to WAS have been increasingly used and that it is highly unlikely that demand for WAS will increase in the future.

31. Bell Canada submitted that from January 2011 to June 2016, customers had purchased WAS in approximately 60% of the LIRs in its operating territory in Ontario and Quebec, which, in its view, suggests that there is no need for a regulated service in the remaining LIRs.

32. It also submitted that recent ownership changes in Canada's wireless industry have resulted in several wireless carriers being acquired by companies with well-established CLEC operations and that if the new parent companies do not already have CLEC operations where needed, they could quickly establish them or acquire the necessary interconnection services from the ILEC or another CLEC in any LIR.

33. RCCI submitted that mandated WAS is a key input that cannot be readily replaced, as it is not technically and/or economically feasible to become a wireless CLEC in every exchange in Canada.

34. Freedom Mobile submitted that since the publication of Telecom Regulatory Policy 2012-24, which reduced the regulatory obligations associated with a wireless carrier becoming a CLEC, it no longer requires WAS to enter new markets and it prefers to interconnect as a wireless CLEC on a co-carrier basis. It also submitted that prior to Telecom Regulatory Policy 2012-24, indirect interconnections via another CLEC were problematic for a number of non-cost reasons, which was why it had used WAS interconnection to expand into new areas at that time.

35. Freedom Mobile expressed the view that the processes for CLEC interconnection have become more efficient. With regard to its remaining WAS interconnections, the company stated that they have not yet been transitioned to wireless CLEC interconnections due to busy

workloads and that the minimal number of interconnection circuits means that the cost savings that would result from completing the transition would be fairly small.

36. Bell Canada replied that it is clear that RCCI is capable of becoming a wireless CLEC. It pointed out that RCCI acknowledged that its Fido division (formerly Microcell) is already a wireless CLEC, and that RCCI is also a Type I CLEC[8] in numerous exchanges throughout the country. Further, Bell Canada submitted that Freedom Mobile, which is a smaller wireless carrier than RCCI, has successfully become a wireless CLEC in many areas.

Commission's analysis and determinations

37. As stated by Bell Canada, the relevant downstream market for which WAS is used as an input is the retail mobile wireless service market.

38. With respect to the technical aspects of WAS, there is some degree of substitutability between WAS and the substitutes proposed by Bell Canada. However, the Commission considers that the proposed substitutes are not economically reasonable or technically efficient for (i) new unaffiliated/independent entrants in the downstream market of retail mobile wireless services, and (ii) entry/expansion into small geographic markets with low population and traffic, where the advantage of switching to the proposed substitutes does not justify the cost. For wireless carriers either entering the market or wishing to expand into markets with low volumes of traffic, using mandated WAS would lower barriers to entry or expansion.

39. Regarding the demand for Bell Canada's WAS, the company has provided data indicating that there have been significant declines in its WAS revenues and subscriptions in recent years. The decline in subscriptions might have been due in part to wireless carriers switching to substitute services because, in some cases, those carriers have become wireless CLECs. However, the Commission considers that this data is inconclusive and does not provide sufficient evidence to support Bell Canada's claim that the declines in revenue are due to the existence of viable substitutes.

40. For example, while the data shows that there has been a decline in demand for WAS within Bell Canada's operating territory in Ontario and Quebec, this decline could be due, to a great extent, to the significant consolidation of wireless carriers in the downstream market. The timing of this consolidation corresponds to the period during which the most significant decline in demand for Bell Canada's WAS occurred. During that period, several wireless carriers were acquired by established players with existing interconnection arrangements in many areas of the country, which might have led to a reduction in the number of WAS subscriptions.

41. Despite a decline in WAS subscriptions, between January 2011 and June 2016 there was significant demand for the service in Bell Canada's operating territory in Ontario and

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[8] A Type I CLEC, otherwise known as a full CLEC, is a Canadian carrier that provides local exchange services and fulfills all the relevant CLEC obligations.

Quebec. Although the use of the service was somewhat less as of June 2016, the Commission considers that the level of demand is still significant.

42. In LIRs where there is currently demand, the Commission finds that mandated WAS is an essential input in the downstream market of retail mobile wireless services and therefore satisfies the input component of the Essentiality Test.

43. 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 WAS. In these circumstances, wireless carriers 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 WAS is no longer required, particularly for future entrants and existing wireless carriers wishing to expand into those markets. In such situations, the service would still qualify as a required input, and no longer mandating its provision could lead to a substantial prevention of competition.

44. Accordingly, the Commission finds that WAS satisfies the input component of the Essentiality Test in all LIRs contained within Bell Canada's operating territory.

Competition component

45. 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

46. Bell Canada submitted that its declining WAS revenue and the Commission's finding in Telecom Regulatory Policy 2012-24 that few wireless carriers rely on mandated WAS to any great extent are strong indicators that the firms that supply WAS do not have market power with respect to the service. It also submitted that if the provision of WAS were no longer mandated, wireless carriers could either negotiate an agreement with a CLEC that has established or could establish interconnection arrangements with a LEC, or negotiate with an ILEC to purchase WAS on a commercial basis. According to Bell Canada, if the provision of WAS were not mandated and the service became unaffordable or unobtainable, there would be no effect on the state of competition in the downstream retail mobile wireless service market because wireless carriers could still obtain interconnection through other practical and cost-effective means.

47. PIAC submitted that if the provision of WAS were not mandated, there would be implications for the viability of new entrants and future competition in Canada's wireless market as a whole.

48. RCCI submitted that wireless carriers must be able to use WAS as an interconnection service, and that mandated access to WAS must therefore remain uninterrupted and not be subject to the discretion of a competitor.

Commission's analysis and determinations

49. While Bell Canada's proposed substitutes may be available in many LIRs in its operating territory, as indicated above, they may not be economically reasonable or technically efficient for the purposes of (i) unaffiliated or independent entrants, or (ii) entry or expansion in small geographic markets.

50. Wireless CLECs and wireless carriers affiliated with LECs compete in the downstream retail mobile wireless service market, which creates a strong incentive for ILECs to exercise market power against wireless carriers. Consequently, if the provision of WAS were no longer mandated, Bell Canada and other competing CLECs would be able to exercise market power, and would have greater incentive to do so, with respect to a key input (i.e. WAS) in the downstream market.

51. Bell Canada indicated that it would continue to provide WAS if forbearance for the service were granted. However, an increase in the price of WAS would likely trigger a price increase for indirect interconnection provided through unaffiliated CLECs, due to (i) insufficient incentives for LECs to compete for the interconnection business of the wireless carrier, and/or (ii) an incentive to prevent competition in the retail mobile wireless service market.

52. Bell Canada is not currently exercising market power in the supply of WAS in its operating territory due to the mandated status of the service and its provision pursuant to Commission-approved tariffs. However, the Commission considers that removing the obligation for Bell Canada to provide WAS pursuant to Commission-approved rates, terms, and conditions would increase barriers to entry and expansion for all wireless carriers, particularly for new unaffiliated or independent entrants and carriers who wish to enter or expand in small geographic markets where it is not economical or practical to switch to alternatives to WAS, which would substantially prevent competition.

53. Accordingly, the Commission finds that WAS satisfies the competition component of the Essentiality Test in all LIRs contained within Bell Canada's operating territory.

Duplicability component

54. 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

55. Bell Canada submitted that WAS functionality can be reasonably duplicated through either self-supply (i.e. a wireless carrier becomes a wireless CLEC or negotiates interconnection

with an affiliated CLEC) or third-party supply (i.e. a wireless carrier negotiates an agreement with an unaffiliated CLEC that has established or is prepared to establish local network interconnection arrangements with a LEC).

56. PIAC submitted that Bell Canada had overstated the feasibility of the alternatives to WAS. It argued that several of Bell Canada's proposed options rely on local transit and extended area service (EAS) transport services, which are the subject of a separate forbearance application by Bell Canada.

57. RCCI submitted that if the provision of EAS transport and local transit services, as well as WAS, were not mandated, a CLEC would need to deploy many new trunk groups in order to interconnect with all other CLECs and wireless carriers. Both PIAC and RCCI submitted that a decision not to mandate the provision of all three services would have a significant negative effect on CLECs. RCCI submitted that interconnection options are non-existent or very limited in exchanges with either no CLECs or only one CLEC.

58. RCCI also submitted that WAS and bill-and-keep arrangements do not serve the same purpose. It argued that it makes sense for a wireless carrier to become a wireless CLEC only in exchanges where the traffic volume justifies the segregation of traffic and the deployment of many different trunks, which is not the case in small exchanges.

59. RCCI submitted further that affiliated CLECs do not necessarily operate within the same footprint as the wireless carriers with which they are affiliated, which makes interconnection via affiliated CLECs impossible in many parts of the country.

60. Freedom Mobile submitted that CLEC interconnection costs are approximately 50% less than those for the equivalent WAS connections for several reasons, including lower transport costs. However, RCCI contested this submission based on its view that Freedom Mobile did not consider all the relevant cost factors.

61. Bell Canada replied that a wireless carrier's footprint need not match the footprint of its affiliated CLEC. It submitted that because a CLEC is not tied to an ILEC's traditional regulated territorial definition (e.g. exchanges, LCAs, LIRs, and ILEC operating territories), it can offer wireless carriers more creative connectivity solutions over wider and more desirable geographic areas.

62. In addition, Bell Canada replied that the tests for essentiality and forbearance do not require substitutes to be superior to the regulated service in every geographic market, as RCCI seemed to suggest. Bell Canada submitted that, given its declining WAS revenues and the widespread use of WAS alternatives, WAS is clearly the most desirable alternative in very few locations, and it would be inappropriate to require WAS substitutes to be more attractive than WAS in every location. According to Bell Canada, what is important is that the substitutes are economically feasible and practical.

Commission's analysis and determinations

63. Although there is some substitutability between WAS and the proposed alternatives, none of the alternatives are perfect, nor are they always viable, at least for new wireless carriers and those wishing to expand into small or remote markets.

64. The Commission has assessed the following three proposed substitutes for WAS: self-supply, which involves a wireless carrier becoming a wireless CLEC; indirect interconnection via an affiliated CLEC; and indirect interconnection via an unaffiliated CLEC.

65. First, regarding self-supply, the Commission considers that for small wireless carriers and those entering the market or expanding into small or remote markets, becoming a wireless CLEC is not an economically reasonable option, as the advantages associated with wireless CLEC status may not justify the requirement for a wireless carrier to fulfill CLEC obligations. In addition, in lieu of requiring a limited number of wireless trunks to operate, the wireless carrier would first have to become a wireless CLEC, then undertake arrangements (joint-build bill-and-keep facilities) with the LECs and potentially deploy additional interconnection trunks for non-capacity-related reasons.

66. For existing wireless carriers, the self-supply option may not be justified by the volume of traffic in remote areas, which is illustrated by the fact that some established wireless carriers continue to use WAS in some of their serving markets. Even in urban areas, where a wireless carrier might be more inclined to consider becoming a wireless CLEC, it may take time for new wireless carriers to reach a sufficient traffic volume and customer base to justify switching from mandated WAS to the self-supply option.

67. The Commission considers that the self-supply option is not economically reasonable for new wireless carriers or those wishing to enter small or remote markets, as those markets would not generally have the critical mass of customers and the associated traffic volume necessary to justify a wireless carrier becoming a CLEC.

68. Second, with respect to indirect interconnection via an affiliated CLEC, historical evidence regarding the retail mobile wireless service market indicates that many entrants have not been affiliated with a CLEC through which they could interconnect, and many new wireless carriers first entered the market by using the ILEC’s WAS. In addition, even for existing carriers willing to expand into new geographic markets, the option of indirect interconnection through an affiliated CLEC may not be feasible if the expanding carrier has no affiliate operating in the target market.

69. Most wireless carriers are now affiliated with LECs, which include large and established companies such as Bell Canada, RCCI, Shaw Communications Inc., and TCC. However, the option of indirect interconnection via an affiliated LEC does not take into account circumstances where new independent entrants may not have an affiliate. Therefore, although this may be an option for wireless carriers with existing affiliated CLECs, provided that the footprints of the CLEC and the wireless carrier are similar, it is not a readily available option for entrants with no current CLEC affiliations.

70. Third, regarding indirect interconnection via an unaffiliated CLEC, an unaffiliated CLEC would be under no obligation to provide indirect interconnection services to a competing

wireless carrier. In fact, it might have an incentive not to offer such services in order to prevent the entry of a competitor into the market. Even if an unaffiliated CLEC were to provide interconnection to a wireless carrier, it would have an incentive to seek higher prices for the interconnection service to exert upward pressure on its rival's costs and, ultimately, retail prices. Consequently, the Commission considers that this proposed substitute is not competitively neutral because the wireless carrier would likely be at a disadvantage in the process of negotiating a commercial agreement with the CLEC.

71. In light of its assessment of Bell Canada's three proposed substitutes for WAS, the Commission considers that none of the substitutes are readily available to all wireless carriers or customers in all circumstances. Specifically, the proposed substitutes would not be readily available to new wireless carriers and those entering small or remote markets.

72. Mandated provisioning of WAS at tariffed rates lowers barriers to entry and expansion, which remain high for wireless carriers, particularly new carriers and those entering remote areas with low traffic volumes. For those carriers and in those areas, it is not reasonable or feasible to duplicate the functionality of WAS.

73. Accordingly, the Commission finds that WAS satisfies the duplicability component of the Essentiality Test in all LIRs contained within Bell Canada's operating territory.

Conclusion regarding Essentiality Test

74. The Commission's analysis of the record indicates that there is demand for WAS 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.

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

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

77. In light of the above, the Commission concludes that WAS satisfies all three components of the Essentiality Test in all LIRs contained within Bell Canada's operating territory.

Policy considerations

78. Bell Canada submitted that in the case of WAS, the relevant policy consideration set out in Telecom Regulatory Policy 2015-326 is the following: "*Interconnection* – the service would promote the efficient deployment of networks and facilitate network interconnection

arrangements." It submitted that the provision of WAS should not be mandated because it is more cost-effective for wireless carriers to interconnect with LECs via bill-and-keep arrangements than to use WAS. Bell Canada added that although WAS is currently a mandated service, wireless carriers have implemented more efficient means of interconnection on a widespread basis. It argued that, therefore, the interconnection policy consideration is not satisfied as a condition to mandate the provision of WAS.

79. CNOC submitted that the application of the policy considerations established in Telecom Regulatory Policy 2015-326 is critical for interconnection services, given their fundamental importance to a competitive telecommunications market. It argued that, to the extent that there is evidence that WAS is required to promote efficient interconnection between wireless carriers and LECs, the provision of WAS should remain mandated.

Commission's analysis and determinations

80. 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.

81. 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.

82. WAS remains an interconnection service, consistent with the Commission's determinations in Telecom Decision 2008-17, as it is used to interchange traffic with PSTN customers. Accordingly, the Commission agrees that the relevant policy consideration is whether WAS promotes the efficient deployment of networks and facilitates network interconnection arrangements.

83. As discussed above and based on the record of this proceeding, the Commission considers that because there are no economically feasible and technically efficient alternatives to WAS for new unaffiliated or independent entrants and for entry or expansion in small geographic markets, WAS serves to promote the efficient deployment of networks and to facilitate network interconnection arrangements. Furthermore, the Commission considers that regulated WAS lowers barriers to entry and expansion for wireless carriers in all markets.

84. 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 WAS will remain mandated in all LIRs contained within Bell Canada's operating territory.

Should the Commission forbear from regulating Bell Canada's WAS?

85. Given that the Commission has determined that the provision of WAS will remain mandated throughout Bell Canada's entire operating territory, it is not necessary to consider forbearance from the regulation of the service. 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.[9] The determinations set out in this decision are in accordance with the Policy Direction for the reasons set out below.

87. The issues under consideration in this decision relate to the provision of WAS and the associated impact on competition in the downstream market of retail mobile wireless services, including whether the provision of WAS should no longer be mandated. Therefore, subparagraphs 1(a)(i) and (ii)[10] and subparagraphs 1(b)(i), (ii), and (iv)[11] 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[12] 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

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

[10] 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."

[11] 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."

[12] 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.

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 WAS lowers barriers to entry and expansion for wireless carriers in all markets, but particularly for small carriers and those wishing to enter small geographic markets.

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

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

- *Network interconnection for voice services*, Telecom Regulatory Policy CRTC 2012-24, 19 January 2012

- *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

- *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994