Canadian Radio-television and Telecommunications Commission | Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2018-83

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Bell Canada – Application for forbearance from the regulation of billing and collection service

The Commission ***denies*** *Bell Canada's application to no longer mandate the provision of billing and collection service (BCS) in its operating territory. BCS is mainly used to support casual long distance services. The Commission considers that, based on the record of the proceeding, it is not possible to assess the impact that no longer mandating BCS would have more broadly on retail long distance competition. Moreover, policy considerations support the continued mandating of BCS, as it contributes to the welfare of vulnerable customers and facilitates efficient network deployment by long distance providers.*

In light of its finding that BCS should remain mandated, the Commission considers that it is not appropriate to address Bell Canada's forbearance request for this service.

Background

1. The Commission has established various policies, rules, and regulations to govern the provision of wholesale telecommunications services (wholesale services), which are the services that telecommunications companies provide to each other. The provision of wholesale services primarily supports competition in various retail service markets, including long distance.
2. When the Commission set out its long distance competitive framework in Telecom Decision 92-12, it established a regulatory policy referred to as equal access, which refers to the ability of a customer to directly access the competing long distance network of their choice. As part of this regulatory policy, incumbent local exchange carriers (ILECs) were required to bill and collect on behalf of certain long distance service providers (i.e. alternate service providers or ASPs). In order to implement this regulatory policy, several wholesale services were established, including billing and collection service (BCS).[1]
3. BCS is a mandated wholesale service that requires all local exchange carriers (LECs) to bill and collect on behalf of ASPs with respect to certain eligible services. These eligible services are casual long distance services (also known as 10-10 services), 900 services, collect call services, and bill-to-third call services

[1] In subsequent decisions, the Commission required other local exchange carriers to provide BCS (for example, see Telecom Decision 97-8 and Decision 2000-746).

(collectively referred to in this decision as eligible services).[2] BCS enables an ASP to provide services to a local exchange customer without having a pre-existing billing relationship (or establishing a new one) with that customer.

4. In Telecom Decision 2008-17, the Commission classified BCS as a mandated interconnection service. Further, the Commission indicated that it continued to consider that, in the absence of BCS, the ILECs would be conferring an undue preference on themselves and, therefore, they must make these services available to competitors.

5. In Telecom Decision 2008-119, the Commission denied Bell Canada et al.'s[3] application to review and vary Telecom Decision 2008-17 and confirmed that BCS should be mandated. The Commission noted, among other things, that the use of billing and collection alternatives to BCS, such as customer pre-subscription and credit cards, would materially alter the nature of 10-10 services, and that BCS was integral to, and needed for, the provision of 10-10 services.

6. In Telecom Regulatory Policy 2015-326, the Commission established its current framework for mandating wholesale services, which requires the application of an "essentiality test" and an assessment of policy considerations in order to determine whether the Commission should mandate the provision of a wholesale service. Having applied the Essentiality Test[4] to several wholesale services in that decision, the Commission indicated that parties did not provide sufficient evidence at that time to allow for a meaningful application of the Essentiality Test for certain wholesale services, including BCS; as such, a change in their existing regulatory status was not justified. Accordingly, the regulatory status of BCS remained unchanged, and therefore continued to be mandated.

Application

7. Bell Canada filed an application, dated 14 June 2016, in which it submitted that regulation of BCS provided in its operating territory[5] is no longer appropriate, arguing that BCS does not satisfy the Commission's test for being an essential

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[2] A casual long distance service is accessed by dialing a 10-10-XXX number before dialing the phone number. No registration is required to access this service. A 900 service enables customers to connect to phone numbers that start with 1-900 for pay-per-call services, including live and pre-recorded services such as adult chat lines, vote casting, psychic consultations, horoscopes, games, donation processing, sports scores, weather forecasts, translation, and medical/legal/government services. A collect call is a telephone call in which the calling party wants to place a call at the called party's expense (also known as a reverse charge call). A bill-to-third call is a call in which a third party bears the costs for a call between the calling party and the called party.

[3] Bell Canada et al., in the proceeding culminating in Telecom Decision 2008-119, consisted of Bell Canada; Bell Aliant Regional Communications, Limited Partnership (now Bell Aliant, a division of Bell Canada); Saskatchewan Telecommunications; and Télébec, Limited Partnership (Télébec).

[4] See Telecom Regulatory Policy 2015-326 for a more detailed description of the Essentiality Test.

[5] For the purposes of this application, Bell Canada defined its operating territory as its incumbent operating territory (including the former Bell Aliant's territory) in Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador, as well as the operating territories of DMTS; KMTS; Ontera; Télébec; NorthernTel, Limited Partnership; and Northwestel Inc.

wholesale service and that it satisfies the forbearance conditions set out in section 34 of the *Telecommunications Act* (the Act). Bell Canada also argued that BCS does not involve the actual transmission of any traffic, and thus is not, in itself, a telecommunications service. In the alternative, Bell Canada requested that the Commission forbear from regulating BCS provided by the company and all its affiliates throughout its operating territory, should the Commission consider BCS to be a telecommunications service.

8. The following parties participated in the proceeding: Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); the Canadian Network Operators Consortium Inc. (CNOC); Caztel Communications inc. (Caztel); Distributel Communications Limited (Distributel); Fastrack Global Billing Networks Inc. and Triton Global Business Services Inc. (Fastrack and Triton); the Public Interest Advocacy Centre (PIAC); Quebecor Media Inc., on behalf of Videotron Ltd.[6] (Videotron); Shaw Telecom G.P. (Shaw); Telehop Communications Inc. (Telehop); TELUS Communications Inc. (TCI);[7] and Yak Communications (Canada) Corp. (Yak).

9. The Commission's determinations in this proceeding take into account the policy objectives set out in section 7 of the Act, as well as the Policy Direction.[8]

Issues

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

- Is BCS considered a telecommunications service under the Act?
- If so, should BCS continue to be mandated by the Commission?
- Should the Commission forbear from regulating BCS?

Is BCS considered a telecommunications service under the Act?

Positions of parties

11. Bell Canada submitted that BCS is not a telecommunications service, as it does not involve the actual transmission of any traffic and the facilities used to perform billing and collections are not telecommunications facilities within the meaning of the Act. Bell Canada also submitted that the data used to generate billing (i.e. usage

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[6] In this proceeding, submissions were received from Videotron G.P. However, effective 29 December 2017, all of Videotron G.P.'s assets and operations were transferred to its affiliate, Videotron Ltd., and Videotron G.P. was subsequently dissolved. For ease of reference, "Videotron Ltd." is used in this decision.

[7] In this proceeding, submissions were received from TELUS Communications Company (TCC). However, effective 1 October 2017, TCC's assets were legally transferred to TCI and TCC ceased to exist. For ease of reference, "TCI" is used in this decision.

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

data and prices) do not originate in its systems but are provided by ASPs. Bell Canada argued that its role consists of merely processing, printing, and mailing bills to the users of the services of another service provider, and dealing with end-user queries and collection issues.

12. CNOC, Distributel, and TCI submitted that the issue of whether BCS is itself a telecommunications service has been previously determined by the Commission in Telecom Decision 2005-57, in which the Commission found that billing and collection is a telecommunications service so long as it is provided in respect of a telecommunications service as defined in either section 2 or section 23 of the Act. CNOC, TCI, and Telehop submitted that BCS, in the context of Bell Canada's application, is clearly a telecommunications service as it is provided in respect of telecommunications services as defined in section 2 of the Act.

13. In addition, Caztel, TCI, and Telehop submitted that BCS is a telecommunications service within the meaning of section 23 of the Act as it is incidental to the business of providing telecommunications services. Caztel argued that no telecommunications service providers would continue providing telecommunications services if they had no means to bill or collect.

Commission's analysis and determinations

14. A "telecommunications service" is defined in sections 2 and 23 of the Act.[9]

15. In Telecom Decision 2005-57, the Commission examined whether BCS is a telecommunications service in relation to directory advertising. In this regard, the Commission stated that BCS is a telecommunications service so long as it is provided in respect of a telecommunications service as defined in either section 2 or section 23 of the Act. Rather than looking at the functionality of BCS itself, the Commission considered whether the underlying services for which BCS is being provided constituted telecommunications services.

16. Eligible services are all services provided by means of telecommunications facilities as defined in section 2 the Act. As such, BCS being provided with respect to eligible services meets this definition of telecommunications service.

17. In addition, section 23 of the Act defines telecommunications service more broadly than section 2 of the Act, and includes any service that is incidental to the business of providing a telecommunications service. BCS being provided with respect to eligible services therefore falls under the definition of a telecommunications service pursuant to section 23 of the Act as well, as BCS provided for eligible services is incidental to the business of providing those telecommunications services, if not integral.

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[9] As set out in section 2 of the Act, a "telecommunications service" means a service provided by means of telecommunications facilities and includes the provision in whole or in part of telecommunications facilities and any related equipment, whether by sale, lease, or otherwise. Section 23 states that for the purposes of Parts III and IV of the Act, "telecommunications service" has the same meaning as in section 2 of the Act and includes any service that is incidental to the business of providing telecommunications services.

18. Given the above, the Commission finds that BCS, in relation to eligible services, is a telecommunications service under both section 2 and section 23 of the Act.

Should BCS continue to be mandated by the Commission?

Background – Essentiality Test and policy considerations

19. The first step in applying the Essentiality Test is to define the relevant markets for the wholesale service, which include product and geographic components. These markets are typically characterized as the smallest group of services and geographic area for which a firm could profitably impose a significant and sustainable price increase.

20. Once the product and geographic markets are defined, the Commission assesses the wholesale service in question against the three components of its Essentiality Test as described below.[10]

    - Input component: The Commission assesses whether the facility[11] associated with the wholesale service is required as an input by another firm to provide downstream retail service(s).
    - Competition component: The Commission examines two elements: (i) the upstream market conditions, specifically whether a firm or group of firms have market power; and (ii) the impact that any upstream market power might have on competition levels in the associated downstream market(s).
    - Duplicability component: The Commission assesses whether it is practical or feasible for competitors to duplicate the functionality of a facility, through either self-supply or third-party supply.

21. In addition to the Essentiality Test, the Commission applies specific policy considerations to inform, support, or possibly reverse a decision to mandate the provision of a wholesale service. These policy considerations are as follows:

    - Public Good: There is a need to mandate the service for reasons of social or consumer welfare, public safety, or public convenience.
    - 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 (i) affect the level of innovation/investment in advanced or emerging networks or services for incumbents, competitors, or both; and (ii) impact the associated level of adoption of advanced or emerging services by users of telecommunications services.

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[10] For a wholesale service to meet the Essentiality Test, all three components must be satisfied.

[11] In this decision, a reference to a facility or service may be taken as a reference to a facility, function, or service (or all three), as appropriate in the context.

Positions of parties

Relevant markets

22. Bell Canada submitted that there are two main downstream retail markets for which BCS is used as an input: casual long distance calling service and 900 service. With respect to the relevant upstream wholesale market, Bell Canada submitted that it consists of BCS and other methods of billing and collection, such as direct mail, credit and/or debit processing solutions, online payment processing platforms (e.g. PayPal), prepaid calling cards, and billing aggregators, which are available within Canada. Bell Canada argued that, in response to a price increase in the provision of BCS, long distance and 900 content providers have access to many viable alternatives that provide a service equivalent to BCS, and that these providers have developed alternative methods of billing and collecting for their services.

23. TCI submitted that the regulatory status of BCS must depend on the eligible service that each BCS transaction supports, arguing that BCS should no longer be mandated for casual long distance calling and 900 services given that competitive billing alternatives for these services are available in Canada. However, collect and bill-to-third calls are the last resort for people without credit cards, cellphones, or perhaps even a fixed address for billing purposes, and there is insufficient evidence on the record about billing alternatives for these services. As such, TCI submitted that BCS should remain mandated for collect and bill-to-third services in order to satisfy the policy objective set out in paragraph 7(h) of the Act.[12]

24. CNOC, Distributel, Telehop, and Yak generally submitted that BCS allows the non-subscribed consumption of telecommunications services in a casual or spontaneous manner (i.e. without having to subscribe, register, pre-pay, or take any action prior to using the service), and that alternative billing and collecting methods are not appropriate for eligible services as they do not provide comparable convenience for end-users. They also argued that very few customers are ready to accept other billing approaches.

25. While Distributel submitted that the relevant geographic market for BCS is national, Caztel, CNOC, and Yak submitted that the relevant upstream wholesale market consists of BCS from each LEC within its serving territory. The latter parties argued that casual long distance calling service providers have to rely on the LEC to bill and collect from customers, as LECs are the only party that holds the necessary information to identify and bill the appropriate end-user.

26. Distributel, PIAC, and Telehop generally submitted that each retail service supported by BCS (i.e. casual long distance calling, 900 services, and collect and bill-to-third calls) is a separate downstream retail market, and that the impact of changes to the regulatory status of BCS must be considered individually for each of these markets. Caztel and Telehop also submitted that the casual long distance market is distinct from the traditional long distance market.

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[12] The policy objective set out in paragraph 7(h) of the Act is “to respond to the economic and social requirements of users of telecommunications services.”

27. In reply, Bell Canada submitted that a very low number of its total BCS calls are related to collect and bill-to-third calls, which supports its proposal that forbearance from the regulation of BCS should be for all eligible services and not just casual long distance and 900 service calls.

Input component

28. Bell Canada submitted that BCS does not satisfy the input component of the Essentiality Test. Bell Canada argued that casual long distance and 900 service providers can bill their customers directly, as they have all the required information to provide their end-users with bills. Further, its overall BCS revenues significantly declined between 2010 and 2015, with this decline being a clear indicator that there are economically feasible and practical substitutes for BCS. Bell Canada further argued that the proportion of the residential retail long distance market represented by casual long distance calling service providers is relatively low, and that the revenues in the traditional wireline long distance market declined by 34% between 2010 and 2014, showing that people are finding alternatives for their long distance service.

29. TCI and Videotron indicated that their BCS revenues have declined over the past few years. Videotron argued that this decline confirms Bell Canada’s argument that there are several alternatives to BCS and that casual long distance calling and 900 service providers increasingly use them. Eastlink submitted that the availability of alternative methods of billing are evidence that BCS is not a necessary input to consumers’ access to alternative long distance service providers. Shaw submitted that there are numerous cost-effective ways in which an ASP could bill for the service rather than rely on the LEC to place a charge on its customers’ monthly bills.

30. Caztel, CNOC, and Distributel submitted that BCS satisfies the input component of the Essentiality Test. Caztel argued that customers cannot be easily converted to other payment options, as the only information that casual long distance calling service providers have for these customers is their phone number. Distributel, Telehop, and Yak generally submitted that the declining revenues from wholesale BCS may reflect fewer consumers using the downstream retail services, using them less often, or paying lower prices for those services, but this does not prove that substitutes are available.

Competition component

31. Bell Canada submitted that BCS does not satisfy the competition component of the Essentiality Test. With respect to the upstream wholesale market conditions, Bell Canada argued that the extensive decline in its revenues from BCS is a strong indicator that firms do not have market power with respect to BCS. Bell Canada also argued that ASPs are shifting to alternative methods of either providing the service (e.g. prepaid cards) or charging their customers (e.g. self-supply, credit, or debit).

32. With respect to the relevant downstream retail market, Bell Canada submitted that there would be no impact on the state of competition in the downstream long distance and 900 service markets even if BCS were no longer mandated and became unaffordable or unobtainable. Bell Canada argued that the market for long distance calling is extremely competitive, and that options available for long distance calling and for 900 content service providers continue to increase. Bell Canada also argued that these alternatives to casual long distance calling and 900 services do not require the use of BCS.

33. TCI and Videotron submitted that, given the numerous alternatives to BCS that are available to providers of retail casual long distance calling and 900 services, withdrawal of BCS would not have a significant impact on the related markets, as it is unlikely that any retail customers would have to change providers or cease using the retail services.

34. Caztel, CNOC, Distributel, Telehop, and Yak submitted that LECs have market power in the upstream market for BCS, as each LEC is the only party that maintains a billing relationship with its respective end-users and holds the necessary information to identify and bill the appropriate end-user. CNOC, Fastrack and Triton, and Yak generally submitted that without regulated access to BCS, LECs would have a strong incentive not to make the service available or to offer it on unreasonable terms.

35. Caztel and Telehop submitted that customers with small volumes of calls cannot justify having a long distance calling plan, and that without BCS, these customers would have less competitive choice for their long distance requirements.

36. Caztel also submitted that although there is a trend for some portion of the marketplace to move toward free services for audio and video calling, there is still a strong demand for traditional long distance services. PIAC and Telehop agreed that eligible services continue to be important for those who make only a small volume of long distance calls and those unable to afford or to access other communications technologies (e.g. online and wireless services). Telehop added that casual long distance calling customers are generally older, or are first-generation Canadians who use the service to make phone calls to their native countries, and many tend to be lower-income Canadians who do not have access to payment alternatives such as credit cards.

37. In reply, Bell Canada submitted that customers without credit cards have other alternatives to pay for long distance charges, such as using prepaid cards, using a subscription service paid through their bank account, or receiving a paper bill to pay by cheque.

Duplicability component

38. Bell Canada submitted that BCS does not satisfy the duplicability component of the Essentiality Test. It argued that the functionality of BCS can be reasonably duplicated through either self-supply or third-party supply, as ASPs can replicate

this functionality by either directly billing their customers using their existing billing systems or implementing new billing and collection solutions.

39. Caztel, CNOC, Distributel, Telehop, and Yak submitted that it is neither practical nor feasible for ASPs to duplicate the functionality of LECs' BCS, as they cannot obtain the billing information of each LEC's telephone customers. Distributel, supported by Telehop, submitted that due to the casual nature of the usage of eligible services, it would be costly and impractical for the service provider to set up an account, perform a credit check, and complete all the other steps required to establish a billing relationship with infrequent users. Caztel submitted that its attempts to convert casual long distance calling end-users to alternative billing systems have been entirely unsuccessful.

40. In reply, Bell Canada submitted that to meet the duplicability component, a service does not need to be exactly duplicated, and that service providers can replicate the functionality of BCS by either directly billing their customers using their existing billing systems or implementing new billing and collection solutions.

Policy considerations

41. Bell Canada, Eastlink, Shaw, and TCI submitted that BCS does not satisfy any of the policy considerations cited earlier in this decision. They generally argued that BCS does not pertain to networks or to interconnection, so its absence cannot affect the efficient deployment of networks or impair network interconnections.

42. TCI also argued that continued reliance on mandated BCS will not encourage innovation and investment, nor can billing for casual long distance calling or 900 services be deemed a requirement for the public good, as neither social nor consumer welfare would be harmed in the absence of mandatory BCS for these services.

43. Yak submitted that BCS facilitates network interconnection arrangements, as it is part of the equal access regulatory framework and facilitates the delivery of long distance calls from ASPs to LECs. Yak also submitted that casual long distance calling responds to the economic and social requirements of telecommunications users, as low-income customers with local telephone service can use this service without a credit card or credit check, and it constitutes a low-cost alternative for new Canadians and recent immigrants who need to call other countries.

Commission's analysis and determinations

Relevant product markets

44. Identifying the relevant product markets for BCS involves an assessment of the group of products that consumers would consider to be substitutes for the service if ASPs were to face a significant and sustainable price increase for BCS.

45. With respect to the relevant upstream product market, the substitutes proposed by Bell Canada as alternatives to BCS are not suitable for services used in a spontaneous, casual manner. Under these alternative billing and collection methods, customers would be required to take additional steps (e.g. purchase, registration, providing credit card information) before they could use an eligible service provided by an ASP, which would likely have an impact on usage of these services. In addition, based on the record of this proceeding, these alternatives are not generally used for eligible services, contrary to Bell Canada's assertion and despite a certain level of availability.

46. Given that the proposed alternatives are not appropriate substitutes for BCS, and that there is little evidence that end-users would generally be ready and willing to use the proposed alternative billing and collection methods for eligible services, the Commission finds that BCS represents a distinct relevant upstream product market.

47. With respect to the relevant downstream product market, BCS was introduced in order to support competition in the wireline long distance services market and is primarily used by ASPs to provide wireline long distance services. While it could be argued that each eligible service represents a distinct downstream retail market, providing a separate assessment for each of these distinct markets would not be efficient from a regulatory perspective, considering the fact that the vast majority of BCS eligible calls are related to casual long distance calling services. As such, the regulatory status of BCS should be determined by the assessment of its primary relevant downstream market. Consequently, for the purpose of this assessment, the Commission finds that the primary relevant downstream product market is the wireline voice long distance services market.

Relevant geographic markets

48. Identifying the relevant geographic market for a product or service generally involves the assessment of whether a customer would be willing to switch from a supplier in one area to a supplier in another area.

49. Given that the billing information of an end-user using eligible services is only available from its serving LEC, a price increase from a LEC for its BCS may not be constrained by the availability of BCS from another LEC. As such, the Commission finds that the relevant geographic market for BCS is each LEC's territory, and, in this case, Bell Canada's territory as defined in this application.

50. In addition, as indicated above, ASPs use BCS primarily in order to provide wireline long distance services to LEC customers. Given that long distance service providers can offer their services from anywhere in Canada to any LEC customer in Canada, the Commission considers that it would be appropriate to take into account the wireline long distance services market on a national basis when assessing the impact of BCS on the downstream retail market.

Application of the Essentiality Test – Input component

51. While there is a decline in competitor demand for BCS in Bell Canada's operating territory, and that decline is expected to continue, ASPs still use BCS in this territory. In addition, based on the data gathered from ASPs that participated in this proceeding, there are still a significant number of casual long distance calling end-users that used the service over the last years.

52. Bell Canada argued that ASPs have all the required information to provide their end-users with bills. However, casual long distance calling end-users do not need to sign up and provide their billing information to an ASP prior to using its services, and ASPs do not receive the billing information of end-users who use their casual long distance calling services. As such, ASPs do not have the billing information they require to directly bill their end-users. Moreover, as noted above, the casual dialing aspect associated with BCS renders this service distinct, and therefore the availability of alternative billing services does not materially impact the assessment of the input component of the Essentiality Test.

53. BCS is a required input for competitors to provide casual long distance calling services. Therefore, the Commission finds that BCS meets the input component of the Essentiality Test.

Application of the Essentiality Test – Competition component

54. With respect to the upstream market, LECs maintain the billing relationship with their respective end-users and hold the necessary information to identify and bill the appropriate end-user. While Bell Canada proposed alternative billing and collection methods, as indicated above, these methods are not appropriate substitutes, given that they are not suitable for services used in a spontaneous or casual manner. As ASPs have to rely on the LEC serving the customer in order to be able to bill for their services, the Commission considers that LECs, and in this case Bell Canada, possess upstream market power with respect to the provision of BCS.

55. However, the presence of upstream market power alone is not sufficient to meet the competition component of the Essentiality Test. There must also be the potential for a substantial lessening or prevention of competition in the corresponding downstream retail market(s), should access to the upstream input be denied.

56. While the telecommunications industry, and in particular the long distance services market, has significantly evolved since BCS was first mandated, there is insufficient evidence on the record of this proceeding to adequately assess whether competition in the wireline long distance market would be substantially lessened without BCS, or whether the availability of other retail alternatives (e.g. long distance plans, wireless services, and online tools) is sufficient to mitigate such an impact.

57. Moreover, BCS is an integral and important component of a broader regulatory policy (i.e. equal access) that was established to enable long distance competition and that still applies today. Any changes to the regulatory status of BCS would have an impact on the equal access regulatory policy and on the long distance competitive framework.

58. As such, assessing the competition component for BCS involves not only an assessment of the competitiveness of the entire long distance market, but also, by extension, an assessment of the continuing appropriateness of the equal access regulatory policy and of the current long distance regulatory framework. The narrow scope of this proceeding does not lend itself to such a broad review and is not the appropriate venue to address all the changes that have occurred in the long distance market since competition was first introduced.

59. In light of the above, while LECs, and in this case Bell Canada, have upstream market power for BCS, the Commission finds that it is not possible to adequately assess the impact of BCS on the downstream retail wireline long distance market as part of this proceeding.

Application of the Essentiality Test – Duplicability component

60. While it may be technically feasible for ASPs to duplicate the functionality of BCS and to implement alternative billing arrangements, this fact does not automatically mean that it would be practical for ASPs to do so. In order to duplicate the functionality of BCS, ASPs would have to develop their own billing and collection systems, which may not be an efficient solution to collect from customers with infrequent usage and/or to collect low charges, given the costs associated with the production of bills and management of payments. Such a solution would also probably require significant investments from ASPs to modify their current billing systems – or to develop one – to enable them to directly bill their customers, which would likely be an inefficient use of resources.

61. As indicated in Telecom Regulatory Policy 2015-326 with respect to the duplicability component, isolated or limited duplicability does not necessarily indicate that competitors would be able to deploy facilities on a widespread basis sufficiently to discipline the exercise of incumbent carriers’ upstream market power in relation to relevant downstream markets. While certain ASPs have made attempts to duplicate the functionality of BCS, the record of this proceeding does not demonstrate that they were able to do so on a sufficient scale to have a material effect on the provision of eligible services.

62. As such, the Commission finds that BCS meets the duplicability component of the Essentiality Test, as it would not be practical for ASPs to duplicate the functionality of BCS.

Policy considerations

63. Equal access technology enables customers served by switches providing equal access functionality to directly access the competing long distance network of their choice, including the long distance services of casual long distance service providers such as ASPs. In Telecom Decision 92-12, the Commission mandated equal access services in order to foster long distance competition and found that equal access includes ancillary services such as BCS. In Telecom Decision 2008-119, the Commission restated its view that BCS was part of equal access. There is little

evidence on the record of this proceeding that would suggest that this is no longer the case. The Commission considers that BCS supports efficient network interconnection since it is an integral part of equal access, which itself is a policy designed in part to facilitate efficient network deployment by long distance providers.

64. Also, as indicated above, ASPs do not have the billing information they require to directly bill their end-users, and there are no appropriate substitutes for BCS. If BCS is no longer available or is provided under unreasonable terms, a significant portion of the market would likely be obliged to change long distance providers or to cease using casual long distance calling services.

65. While there are other types of long distance services available in the wireline long distance market, such as long distance plans, and other options available online and through wireless services, the record of this proceeding does not permit the Commission to adequately assess the impact of BCS on the downstream retail wireline long distance market. However, the record of this proceeding suggests that a significant portion of casual long distance end-users are customers who make small volumes of long distance calls and customers that may be unable to afford or access other communications technologies (e.g. online and wireless services). These customers would likely be more impacted if BCS were no longer mandated. Casual long distance calling offered through BCS may, in many cases, be a very effective and affordable way for certain vulnerable customer segments to fulfill their telecommunications needs, and continuing to mandate BCS would contribute to the welfare of these customers.

66. In light of the above, the Commission finds that the policy considerations considered above support the continued mandating of BCS.

Conclusion on whether BCS should remain mandated

67. While the Commission considers that BCS meets the input and duplicability components of the Essentiality Test, it is not possible to determine that BCS is an essential service as part of this proceeding, given that the assessment of the competition component is inconclusive (i.e. it is not possible to adequately assess the impact of BCS on the downstream retail wireline long distance market).

68. However, the policy considerations addressed earlier in this decision support the continued mandating of BCS, as it contributes to the welfare of vulnerable customers and facilitates efficient network deployment by long distance providers. The Commission therefore finds that BCS should remain mandated.

Should the Commission forbear from regulating BCS?

69. In light of its findings that BCS remains mandated, the Commission considers that it is not appropriate to address Bell Canada’s forbearance request.

Conclusion

70. In light of all the above, the Commission **denies** Bell Canada's application.

Policy Direction

71. The determinations made in this decision are consistent with the Policy Direction for the reasons set out below.

72. The Policy Direction states that the Commission, in exercising its powers and performing its duties under the Act, shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(a), (b), and (c) of the Policy Direction.

73. The issues under consideration in this proceeding relate to the provision of BCS and its associated impact on competition in the downstream retail market of wireline long distance services, including whether BCS should no longer be mandated. The determination made in this decision that BCS should remain mandated promotes competition in the retail wireline long distance market by ensuring wholesale access to BCS by long distance service providers. Therefore, subparagraph 1(a)(ii)[13] and subparagraphs 1(b)(i), (ii), and (iv)[14] of the Policy Direction apply to the Commission's determinations in this proceeding.

74. 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), (f), and (h) of the Act[15] are advanced by the determinations set out in this decision.

75. 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

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[13] Paragraph 1(a) states that "the Commission should … (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."

[14] 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."

[15] 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; (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and (h) to respond to the economic and social requirements of users of telecommunications services.

forces, and (ii) neither deter economically efficient competitive entry into the market nor promote economically inefficient entry. Specifically, the determination that BCS should remain mandated is efficient and proportionate to the purpose, given the objective of supporting retail long distance competition.

76. Consistent with subparagraph 1(b)(iv) of the Policy Direction, the Commission considers that the determinations in this decision, as they relate to network interconnection arrangements or regimes for access to networks, are technologically and competitively neutral and 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
- *Bell Canada et al.'s application to review and vary Telecom Decision 2008-17 with respect to wholesale billing and collection service*, Telecom Decision CRTC 2008-119, 11 December 2008
- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008
- *Part VII application by YP Corp. against Bell Canada*, Telecom Decision CRTC 2005-57, 5 October 2005
- *Long-distance competition and improved service for Northwestel customers*, Decision CRTC 2000-746, 30 November 2000
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997
- *Competition in the provision of public long distance voice telephone services and related resale and sharing issues*, Telecom Decision CRTC 92-12, 12 June 1992, as amended by Erratum 92-12-1, 28 August 1992