



## Telecom Decision CRTC 2024-89

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Reference: Part 1 application posted on 11 March 2022

Ottawa, 1 May 2024

*Public record: 8640-K1-202201169*

### **KMTS, a division of Bell Canada – Application requesting forbearance from the regulation of wide area network services**

#### **Summary**

The Commission **approves** an application from KMTS, a division of Bell Canada, requesting forbearance from the regulation of wide area network services in its operating territory, which consists of the exchanges of Kenora and Keewatin, Ontario.

#### **Background**

1. When individuals or businesses connect to the Internet, they typically do so through a local area network (LAN). A LAN is a small network that connects computers and other devices within a limited geographic area, like a home, school, or office building. A home Wi-Fi network that connects to the Internet via a router is a common example of a LAN. Wide area network (WAN) services allow customers to connect two or more LANs over a large geographic area.
2. WAN services are generally used to facilitate the secure transmission of data between geographically dispersed locations. For example, businesses with data centres in multiple cities, provinces, or countries might use WAN services instead of the public Internet to transfer data between those locations. WAN services generally offer more consistent data transfer speeds, can provide wholesale transport connectivity, and are more secure.
3. Subsection 34(1) of the *Telecommunications Act* (the Act) provides that the Commission may refrain from regulating conditions of service, rates, working agreements, and liability limitations related to a service or class of services supplied by a Canadian carrier if it finds that such forbearance would be consistent with the policy objectives of the Act.
4. In addition, subsection 34(2) of the Act requires the Commission to forbear where there is sufficient competition to protect the interests of customers, while subsection 34(3) says that it shall not forbear if it finds that doing so would impair competition.
5. In Telecom Decision [94-19](#), the Commission established a framework for assessing forbearance under section 34 of the Act. Within this framework, the first step in

assessing the appropriateness of forbearance is to define the relevant market, which is the smallest group of products, within the smallest geographic area, for which a firm with market power can profitably impose a sustainable price increase. The Commission also established several other criteria that could be examined when determining whether a market is competitive. These include the market shares of the dominant and competing firms, demand and supply conditions, the likelihood of entry into the market, barriers to entry into the market, and evidence of rivalrous behaviour.

6. In Telecom Order [2000-553](#), the Commission defined WAN services<sup>1</sup> and forbore from the regulation of current and future WAN services provided by most large incumbent local exchange carriers (ILECs). In subsequent decisions, the Commission forbore from the regulation of WAN services offered by all the large ILECs and many of the small ILECs that were not included in Telecom Order 2000-553.<sup>2</sup>

## **Application**

7. On 8 March 2022, the Commission received an application from KMTS, a division of Bell Canada (KMTS) requesting forbearance from the regulation of WAN services in its operating territory, which consists of the exchanges of Kenora and Keewatin, Ontario. KMTS is the ILEC in its operating territory.
8. KMTS proposed using the definition of WAN services set out by the Commission in Telecom Order 2000-553. KMTS could not provide estimates of market share for WAN services in its operating territory because it is not currently offering those services.
9. KMTS submitted, however, that Shaw Telecom G.P. (Shaw) and TBayTel have the technology and networks required to provide WAN services within KMTS' operating territory. KMTS was therefore of the view that, should its application be approved, forbearance would benefit consumers, because it would allow for the provision of WAN services at market-based rates and would support competition, affordability, high-quality services, and innovation.
10. KMTS stated that the services offered would be subject to competition sufficient to protect the interests of users and that refraining from regulating WAN services would not cause harm to the establishment or continuation of a competitive market.
11. KMTS submitted that refraining from the regulation of WAN services in the exchanges of Kenora and Keewatin would therefore be consistent with the forbearance framework set out in Telecom Decision 94-19 and with the policy objectives of the Act.

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<sup>1</sup> See paragraphs 4 and 5 of Telecom Order 2000-553.

<sup>2</sup> See Telecom Order 2001-118, Telecom Decision 2004-7, Telecom Decision 2004-57, Telecom Decision 2004-58, and Telecom Decision 2012-143.

12. The Commission did not receive any interventions in response to the application.

### **Commission's analysis**

13. In Telecom Decision 94-19, the Commission established that any decision on its part to forbear from the regulation of a service would require an assessment of the existing competition relative to that service. To make that assessment, the relevant service and product market must be defined.

### **Service definition and product market**

14. The Commission notes that it has consistently applied the product market definition for WAN services set out in Telecom Order 2000-553. In the absence of any evidence to the contrary on the record of this proceeding, the Commission is of the view that it would be appropriate to apply that service and product market definition in respect of the application.

### **Evidence of a competitive market**

15. The Commission notes that KMTS is not currently offering WAN services in its operating territory. Therefore, 100% of the market share is held by competitors.

16. The Commission notes that, in response to requests for information, both TBayTel and Rogers Communications Canada Inc. (on behalf of Shaw) confirmed that they currently offer WAN services in both Kenora and Keewatin. The Commission therefore considers that, should KMTS offer WAN services, potential customers would have access to other providers of WAN services; this is one component of a competitive market.

17. As for potential barriers to entry, the Commission notes that WAN services use industry-standard interfaces that have made interoperability between customer-owned equipment and the network more straightforward. Moreover, the Commission notes that innovation and technical change in the market for WAN services, including software-defined solutions, are increasing choice for consumers and further lowering barriers to entry.

18. The Commission also notes that it is currently considering the larger question of competition in transport services, and that its findings in that regard may affect the analysis of similar applications in the future. However, with respect to the current application, the Commission is of the view that the market in question is sufficiently competitive and that the conditions for forbearance set out in Telecom Decision 94-19 are met in KMTS' operating territory with respect to WAN services.

## Compliance with policy objectives

19. The Commission considers that forbearance from the regulation of WAN services in KMTS' operating territory would advance the policy objectives set out in paragraphs 7(c) and (f) of the Act.<sup>3</sup>
20. The Commission also considers that forbearance would be consistent with paragraphs 2(a) and (c) of the 2023 Policy Direction,<sup>4</sup> which state that the Commission should encourage all forms of competition and investment, and should ensure that affordable access to high-quality, reliable, and resilient telecommunications services is available in all regions of Canada.

## Conclusion

21. Pursuant to subsection 34(2) of the Act, the Commission finds as a question of fact that the provision of WAN services in KMTS' operating territory is sufficiently competitive to protect the interests of users so as to warrant forbearance to the extent set out in this decision.
22. Pursuant to subsection 34(3) of the Act, the Commission finds as a question of fact that refraining from the regulation of WAN services in KMTS' operating territory is unlikely to unduly impair the continuance of a competitive market for that class of services.
23. Pursuant to subsection 34(1) of the Act, the Commission finds as a question of fact that refraining from exercising its powers and performing its duties with respect to WAN services in KMTS' operating territory, to the extent set out in this decision, is consistent with the Canadian telecommunications policy objectives set out in the Act, specifically those found in paragraphs 7(c) and (f).
24. The Commission therefore **approves** KMTS' application.
25. In light of the above, and pursuant to subsection 34(4) of the Act, the Commission declares that, effective the date of this decision, sections 24, 25, 27, 29, and 31 of the Act do not apply to KMTS' current and future WAN services, with the following exceptions:

- conditions pursuant to section 24 of the Act with respect to the confidentiality of customer information;

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<sup>3</sup> The cited policy objectives are: 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; and 7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective.

<sup>4</sup> *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, SOR/2023-23, 10 February 2023

- any future condition that the Commission may impose, pursuant to section 24 of the Act, with respect to WAN services;
- the Commission's powers under subsections 27(2) and (4) of the Act regarding unjust discrimination and undue preference with respect to the provision of WAN services; and
- the Commission's powers under subsection 27(3) of the Act with respect to compliance with powers and duties it has retained.

Secretary General

### **Related documents**

- *Dryden Municipal Telephone System – Application requesting forbearance from the regulation of wide area network services*, Telecom Decision CRTC 2012-143, 9 March 2012
- *Application by Société en commandite Télébec for forbearance from regulation of wide area networking services*, Telecom Decision CRTC 2004-58, 31 August 2004
- *NorthernTel, Limited Partnership and O.N.Telcom – Forbearance from regulation of wide area networking services*, Telecom Decision CRTC 2004-57, 31 August 2004
- *Application by TELUS Québec for forbearance from regulation of wide area networking services*, Telecom Decision CRTC 2004-7, 5 February 2004
- *Forbearance granted to wide area networking services provided by SaskTel*, Order CRTC 2001-118, 6 February 2001
- *Forbearance granted for telcos' wide area network services*, Telecom Order CRTC 2000-553, 16 June 2000
- *Review of Regulatory Framework*, Telecom Decision CRTC 94-19, 16 September 1994