



## Telecom Decision CRTC 2018-200

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Ottawa, 5 June 2018

*Public record: 8640-B2-201706368*

### **Bell Canada – Application for forbearance from the regulation of unbundled local loops**

*The Commission **approves** Bell Canada’s application for forbearance from the regulation of unbundled local loops in the 88 exchanges for which it does not already have forbearance (i.e. in exchanges where demand for the service still exists). The Commission’s determinations in this decision will ensure that Canadians will continue to benefit from a competitive telecommunications system that relies on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives. Additionally, the determinations set out in this decision will contribute to a world class communications system in Canada.*

#### **Application**

1. The Commission received an application from Bell Canada, dated 26 July 2017, in which the company requested that the Commission forbear from regulating the provision of unbundled local loops (ULLs)<sup>1</sup> in 88 exchanges in its operating territory. Bell Canada submitted that, pursuant to Telecom Regulatory Policy 2015-326, ULLs are forborne from regulation in all of its other exchanges due to a lack of demand.
2. Specifically, Bell Canada requested that the Commission grant forbearance in accordance with section 34 of the *Telecommunications Act* (the Act), and refrain from exercising its powers and duties under sections 24, 25, 27, 29, and 31 of the Act with respect to ULLs in the exchanges where the provision of ULLs is still mandated. Bell Canada submitted that it intended to continue to offer ULLs if its application were approved.
3. Bell Canada proposed an analytical framework for the Commission to assess its forbearance request in, what it deemed, an administratively efficient manner. Bell Canada indicated that this framework demonstrated that forbearance from the regulation of ULLs would not undermine the Commission’s previous decisions to

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<sup>1</sup> ULLs provide, on a wholesale basis, a transmission path via copper facilities between an end-user’s premises and an incumbent local exchange carrier’s (ILEC) central office. This path can be used by the wholesale users to provide local telephony and lower-speed Internet access services to residential and business customers.

forbear from the regulation of retail voice services within Bell Canada's operating territory.<sup>2</sup>

4. The Commission received interventions from Allstream Business Inc. (Allstream), the Canadian Network Operators Consortium Inc. (CNOOC), and TELUS Communications Inc. (TCI),<sup>3</sup> as well as a joint intervention from the Independent Telecommunications Providers Association (ITPA) and the Canadian Cable Systems Alliance Inc. (CCSA) [collectively, the ITPA/CCSA].<sup>4</sup>

## Background

5. In Telecom Decision 97-8, the Commission determined that, to support retail competition, incumbent local exchange carriers (ILECs) would be required to unbundle their local access facilities to make ULLs available on a wholesale basis to competitive local exchange carriers.
6. However, the regulatory status of ULLs changed with the issuance of Telecom Regulatory Policy 2015-326. In that decision, the Commission applied an essential services test (hereafter referred to as the Essentiality Test) to various wholesale services, including ULLs, to determine whether the provision of these services should continue to be mandated.<sup>5</sup> In addition, the Essentiality Test was supplemented by three policy considerations to inform, support, or reverse a decision to mandate the provision of a wholesale service: (i) public good, (ii) interconnection, and (iii) innovation and investment.
7. The Commission concluded that ULLs did not meet all three components of the Essentiality Test across the country and, given that there was no valid policy reason to

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<sup>2</sup> In Telecom Decision 2006-15, the Commission established the forbearance framework for local exchange services for the large ILECs. To determine whether to forbear from the regulation of local exchange services, the Commission developed a competitor presence test. At the time of that decision, ULLs were significantly more prevalent as a means for competitors to provide voice and Internet services to end-users than they are currently. Consequently, decisions by the Commission to forbear from regulating local exchange services in at least some Bell Canada exchanges were made based on the presence of one or more competitors that provided local exchange service via ULLs.

<sup>3</sup> In the 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.

<sup>4</sup> In a press release dated 1 May 2018, the CCSA announced that it had changed its name to the Canadian Communication Systems Alliance Inc.

<sup>5</sup> To be essential, a facility, function, or service must satisfy all of the following conditions: (i) it is required as an input by competitors to provide telecommunications services in a relevant downstream market (the input component); (ii) it is controlled by a firm that possesses upstream market power such that withdrawing mandated access, or denying access to the facility, would likely result in a substantial lessening or prevention of competition in the downstream retail market (the competition component); and (iii) it is not practical or feasible for a reasonably efficient competitor to reasonably duplicate the functionality of the facility on a sufficient scale (the duplicability component). For a wholesale service to meet the Essentiality Test, all three components must be satisfied.

continue mandating the provision of these facilities, determined that ULLs were not essential, and would no longer be mandated, subject to a three-year phase-out period. In exchanges where there was no demand for ULLs, the Commission determined that it would forbear from the regulation of the facilities effective the date of its decision. The phase-out period would not apply in these exchanges, and the ILECs could either continue making ULLs available or stop offering them immediately.

8. In exchanges where there was demand for ULLs, an ILEC could file a forbearance application regarding the provision of its ULLs if it intended to continue to make ULLs available following the end of the phase-out period. The ILECs were encouraged to put forth an analytical framework that the Commission could use to assess forbearance in an administratively efficient manner, and were required to justify why their request for forbearance would not impact local forbearance decisions that the Commission had previously made on the basis of ULLs being available.<sup>6</sup>
9. If an ILEC intended to cease offering ULLs, it would be required to provide written notice to existing customers and the Commission. Among other things, the ILEC would have to justify why ceasing the offering of ULLs would not impact local forbearance decisions that the Commission had previously made on the basis of ULLs being available.

### **Should the Commission grant Bell Canada's request for forbearance from the regulation of ULLs in the 88 exchanges in question?**

#### **Bell Canada's justification for forbearance**

10. Bell Canada submitted that its application should be approved for the following reasons:
  - ULLs meet all the practical elements of forbearance;
  - ULL forbearance continues to be appropriate in the current retail voice services market;
  - ULL forbearance is consistent with the policy objectives set out in section 7 of the Act and the Policy Direction;<sup>7</sup> and
  - the three-year phase-out period has provided competitors adequate time to rearrange their business models.

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<sup>6</sup> See footnote 2.

<sup>7</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, Order in Council P.C. 2006-1534, 14 December 2006

## **I ULLs meet all the practical elements of forbearance**

11. Citing the Commission’s conclusions regarding ULLs set out in Telecom Regulatory Policy 2015-326 and in two decisions regarding applications to review and vary that decision,<sup>8</sup> Bell Canada submitted that the Commission has already concluded that (i) in all exchanges, the withdrawal of mandated access to ULLs will not substantially affect retail competition; (ii) there is no public good or innovation policy consideration that justifies continued mandating access to ULLs; and (iii) by the end of the three-year phase-out period, competitors will have had adequate time to migrate away from ULLs and mitigate any negative impacts that forbearance could have on their operations. Bell Canada submitted that, accordingly, all the practical conditions for ULL forbearance have already been met.

## **II ULL forbearance continues to be appropriate in the current retail voice services market**

12. Bell Canada submitted that the Commission’s past determinations with respect to ULLs continue to be relevant in the current retail voice services market. For instance, Bell Canada submitted that, in Telecom Regulatory Policy 2015-326, the Commission noted a downward trend in demand for ULLs from 2009 to 2013; Bell Canada indicated that this downward trend continues, rendering ULLs increasingly irrelevant in the local retail voice services market.

13. Bell Canada submitted that the decrease in demand for ULLs has not increased the retail market share held by incumbent telecommunications service providers (TSPs), citing statistics from the 2015 and 2016 versions of the Commission’s *Communications Monitoring Report* (CMR).<sup>9</sup> Bell Canada submitted that this data confirms that, as concluded by the Commission in Telecom Regulatory Policy 2015-326, “the withdrawal of mandated access to ULLs would not likely result in a substantial lessening or prevention of competition in the local retail wireline residential and business services markets, regardless of the exchange.”

14. Bell Canada submitted that the continued availability of mandated wholesale high-speed access (HSA) services (often from both Bell Canada and a cable company) in all the exchanges where ULLs are still tariffed today provides competitors with a tariffed wholesale input with which to offer voice and Internet access services, despite the withdrawal of mandated access to ULLs. Bell Canada provided, in confidence, an example of a service provider that has migrated its voice services from ULLs to Internet Protocol (IP)-based solutions (specifically, Gateway Access Service [GAS]) to provide service in one of the 88 exchanges for which Bell Canada has applied for forbearance.

15. Bell Canada submitted that the Commission’s conclusions in Telecom Regulatory Policy 2015-326, as well as in Telecom Decisions 2016-246 and 2016-247, remain

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<sup>8</sup> See Telecom Decisions 2016-246 and 2016-247.

<sup>9</sup> See Table 5.1.3 in both reports.

applicable to the current local retail voice services market as the end of the three-year phase-out period approaches. Bell Canada submitted that ULLs continue to have a minimal impact on competition and on the retail voice services market as a whole, given their minimal use and the availability of alternatives. Bell Canada submitted that, as such, forbearing from the regulation of ULLs in the exchanges where they remain regulated is appropriate under subsection 34(2) of the Act.

### **III ULL forbearance is consistent with the policy objectives set out in section 7 of the Act and the Policy Direction**

16. Bell Canada submitted that forbearance from the regulation of ULLs in the remaining regulated exchanges would be consistent with the policy objectives set out in paragraphs 7(f) and (g)<sup>10</sup> of the Act, as well as with paragraph 1(a) of the Policy Direction.<sup>11</sup>
17. With regard to paragraph 7(f) of the Act, Bell Canada submitted that, given that the Commission has already concluded that ULLs have little impact on competition, regardless of the exchange, the continued regulation of ULLs would be an inefficient and ineffective means of promoting competition. Bell Canada submitted that forbearing from the regulation of ULLs would eliminate unnecessary and inefficient regulation and increase the reliance on market forces.
18. With regard to paragraph 7(g) of the Act, Bell Canada cited the Commission's recognition in Telecom Regulatory Policy 2015-326 that "a decision to no longer mandate the provision of ULLs could lead to a greater adoption of advanced or emerging services by consumers." Bell Canada submitted that a customer who receives local exchange service over ULLs would have access to a number of innovative voice services by switching to IP-based or wireless alternatives. The company argued that this is especially relevant since, in the current technological environment, TSPs can use high-speed Internet connections to provide voice services instead of relying on outdated technology.
19. Bell Canada also submitted that migrating away from ULLs, which rely on traditional technology, could encourage TSPs to develop new and innovative IP-based voice solutions.
20. With regard to the Policy Direction, Bell Canada submitted that, with the Commission already having determined that ULLs in all exchanges meet the practical

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<sup>10</sup> The cited policy objectives of the Act are 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; and (g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services.

<sup>11</sup> Paragraph 1(a) of the Policy Direction 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.

elements of forbearance and that ULLs have a minimal impact on competition in the retail voice services market, continuing to regulate ULLs would be an ineffective and inefficient means of achieving the policy objectives set out in paragraphs 7(f) and (g) of the Act.

**IV The three-year phase-out period has provided competitors adequate time to rearrange their business models**

21. Bell Canada argued that the three-year phase-out period has provided competitors the opportunity to migrate away from ULLs and mitigate any negative impacts that ULL forbearance could have on their operations.

**Bell Canada's proposed analytical framework**

22. Bell Canada proposed to classify each of the 88 exchanges under one of three parts of its analytical framework. In part (a) of its proposed analytical framework, ULLs would be automatically forborne in all exchanges where neither residential nor business forbearance has been granted (seven exchanges in total). In part (b) of its proposed analytical framework, ULLs would automatically be forborne in all exchanges (16 in total) where, to the extent that local forbearance has been granted, it was apparently solely granted on the basis of sufficient competition provided by a wireline competitor that does not lease facilities (e.g. ULLs). In part (c) of the proposed analytical framework, ULLs would be forborne in any exchange (65 in total) where local retail (residential and/or business) forbearance was apparently granted on the basis of a provider leasing ULLs, unless the Commission has reasonable doubt that end-users in that exchange will continue to benefit from sufficient competition to protect their interests, per section 34 of the Act. A detailed explanation of Bell Canada's proposed analytical framework is provided in Appendix 1 of this decision, while a list of the 88 exchanges is set out in Appendix 2.

**TCI**

23. TCI supported Bell Canada's application, including the proposed analytical framework. However, TCI did not support complete forbearance with respect to sections 24<sup>12</sup> and 27 of the Act. Specifically, TCI submitted that, in accordance with its usual practices, the Commission should retain its powers with respect to section 24 and subsections 27(2)<sup>13</sup> and 27(4)<sup>14</sup> of the Act.

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<sup>12</sup> Section 24 of the Act states the following: The offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission.

<sup>13</sup> Subsection 27(2) of the Act states the following: No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

**Allstream**

24. Allstream submitted that with regard to the exchanges categorized under parts (a) and (c) of the proposed analytical framework, Bell Canada is seeking ULL forbearance despite a lack of evidence of retail competition (other than over ULLs) sufficient to protect the interests of consumers. Allstream submitted that these exchanges suffer from a lack of competition and consumer choice, and immediate forbearance of ULLs would be contrary to the interests of consumers.
25. Allstream submitted that in exchanges in part (a) that are not forborne, retail competition remains insufficiently developed, and ULL forbearance will potentially remove or impair an existing means of providing choice for consumers. Allstream submitted that, for exchanges in part (c), the proper way to assess Bell Canada's claim that reliance on ULLs would no longer be necessary to meet the retail forbearance tests would be for Bell Canada to submit updated forbearance applications for the 65 exchanges.
26. Allstream submitted that of the potential wholesale services that could be used to replace regulated ULLs, disaggregated wholesale HSA service is the most viable choice in the majority of situations. Allstream submitted, however, that tariffs for this service remain under review and service rollout is in the early stages. Allstream submitted that the Commission likely did not anticipate this situation when it set a three-year transition period for ULL phase-out in Telecom Regulatory Policy 2015-326. In light of this, ULL forbearance in an exchange should not be granted until at least two years after the finalization of tariffed rates, terms, and conditions for disaggregated wholesale HSA services in the exchange.
27. Allstream further submitted that it is critically important that the Commission retain its powers to impose conditions on a service and to protect against undue preference and unjust discrimination.
28. Allstream suggested that if the Commission determines that forbearance should be granted, and is determined to adhere to the three-year phase-out period, it could attenuate the adverse impacts on competitors and their retail service customers by setting a price ceiling for ULLs at existing rates.

**CNOC**

29. CNOC submitted that rather than selecting to prospectively forbear from the regulation of ULLs, the Commission should continue to be sensitive to the presence of ULL demand and the adverse effects of premature forbearance as it considers the appropriateness of granting forbearance in exchanges where demand for ULLs still exists.

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<sup>14</sup> Subsection 27(4) of the Act states the following: The burden of establishing before the Commission that any discrimination is not unjust or that any preference or disadvantage is not undue or unreasonable is on the Canadian carrier that discriminates, gives the preferences or subjects the person to the disadvantage.

30. CNOC submitted that the absence of local voice service forbearance in the seven exchanges listed under part (a) of the proposed analytical framework does not mean that competitive supply does not exist in these exchanges. CNOC submitted that instead, the lack of retail forbearance in these exchanges reveals only that a single TSP cannot serve at least 75% of the residential or business voice service lines that Bell Canada is capable of serving in these exchanges.
31. CNOC also submitted that forbearance of ULLs in the exchanges listed under part (b) and part (c), section 1 will, contrary to subsection 34(3) of the Act, impair the continuance of the competitive market for business local voice services in these exchanges.
32. Regarding part (c), section 2, CNOC submitted that the Commission had rejected (in Telecom Decision 2007-87) Bell Canada's argument that if a cable company is capable of serving at least 75% of residential service lines in an exchange and the company has indicated that it provides business local service in that exchange, then that company must be capable of serving at least 75% of business service lines in the same exchange.
33. CNOC submitted that the continued demand for ULLs in these exchanges indicates that a competitive supply of business local voice services is available in each of these exchanges from TSPs that use ULLs. CNOC submitted that to the extent that this is the case, concerns are raised that ULL forbearance will, contrary to subsection 34(3) of the Act, impair the continuance of the existing competitive market for these services in these exchanges.
34. Regarding part (c), section 3, CNOC submitted that there continues to be no evidence that the Telecom Decision 2006-15 forbearance criteria have been satisfied for business local voice services in the 11 identified exchanges. CNOC submitted that forbearance from the regulation of ULLs in these exchanges raises concerns regarding the likelihood that forbearing will, contrary to subsection 34(3) of the Act, impair the continuance of the existing competitive market for business local voice services.

#### **ITPA/CCSA**

35. The ITPA/CCSA requested that the Commission deny Bell Canada's application and continue to regulate the rates for ULLs until Bell Canada's disaggregated wholesale HSA service is fully operational throughout Ontario and Quebec, at which time the Commission can grant forbearance. Alternatively, at the very least the Commission should not forbear from regulating ULLs until the rates, terms, and conditions for Bell Canada's new disaggregated wholesale HSA service have been approved by the Commission, have been tariffed by Bell Canada, and are in operation.
36. The ITPA/CCSA submitted that there are currently no viable wholesale alternatives to ULLs in the exchanges in question. They submitted that while Bell Canada may argue that its existing HSA services are credible alternatives to ULLs, these classes of



service have inherent limitations that preclude them as practical alternatives from both a service provider perspective and an end-user perspective.

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

### **Forbearance evaluation options**

37. The Act provides two ways for the Commission to forbear from regulating all or part of a telecommunications service. One approach is to conduct a policy analysis under subsection 34(1) of the Act, and the other is to assess, pursuant to subsection 34(2) of the Act, whether there is sufficient competition to protect the interests of users.<sup>15</sup> The Commission typically uses a market power test to determine whether the requirements under subsection 34(2) of the Act are met.<sup>16</sup> Since the Commission already applied a similar test of market power to ULLs as part of the Essentiality Test in Telecom Regulatory Policy 2015-326 and determined that withdrawal of the service would not result in a substantial lessening or prevention of competition, the Commission considers that it is not necessary to reapply a full market power test under subsection 34(2) of the Act. As such, the Commission will examine the forbearance request pursuant to subsection 34(1) of the Act.

### **Subsection 34(1) of the Act**

38. Subsection 34(1) of the Act states that the Commission may make a determination to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29, and 31 in relation to a telecommunications service or class of services provided by a Canadian carrier, where the Commission finds as a question of fact that to refrain would be consistent with the Canadian telecommunications policy objectives. The policy objectives most relevant to Bell Canada's application are those set out in paragraphs 7(c),<sup>17</sup> (f), and (g) of the Act.

39. ULLs enable competitors to offer wireline voice service and low-speed Internet service to end-users. The Commission is of the view that ULL forbearance would be consistent with paragraph 7(c) of the Act. Specifically, ILECs and wholesale customers may increasingly migrate from ULLs towards more advanced technologies

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<sup>15</sup> Subsection 34(2) of the Act states the following: Where the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users, the Commission shall make a decision to refrain, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to the service or class of services.

<sup>16</sup> The market power test (set out in Telecom Decision 94-19) consists of several evaluation criteria, including market share, supply and demand, barriers to entry, availability of substitutes, and technological factors.

<sup>17</sup> The cited policy objective of the Act is to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications.

for delivering voice and Internet services to end-users. This migration would have the effect of providing Canada with a world class communications system.

40. The Commission considers that forbearing from the regulation of ULLs would be consistent with the policy objective set out in paragraph 7(f) of the Act. In Telecom Regulatory Policy 2015-326, the Commission determined that the withdrawal of mandated access to ULLs would not likely result in a substantial lessening or prevention of competition in the markets for local retail wireline residential and business voice services, regardless of the exchange or the ILEC operating territory. The Commission therefore considers that forbearance would foster increased reliance on market forces for the provision of upstream (wholesale) and downstream (retail) telecommunications services.
41. Conversely, continuing to regulate a service that has little impact on competition would be an inefficient and ineffective application of regulation. For example, continuing to regulate the price of ULLs could result in a distortion in demand for ULLs and other wholesale services.
42. In addition, ULL forbearance could result in wholesale customers migrating from ULLs to more technologically advanced substitutes to provide retail voice service (e.g. voice over Internet Protocol [VoIP]) and/or retail Internet service (e.g. wholesale HSA service) to end-users. Conversely, continuing to regulate ULLs may result in wholesale customers continuing to rely on traditional technology to provide voice and/or Internet services to end-users, which, in the Commission's view, would be an inefficient and ineffective application of regulation.
43. The Commission considers that forbearing from the regulation of ULLs would be consistent with the policy objective set out in paragraph 7(g) of the Act. Specifically, the Commission considers that migrating away from ULLs could encourage competitors to develop alternative provisioning arrangements, thus stimulating research and development within the Canadian telecommunications industry and encouraging innovation in the provision of telecommunications services, such as the development of innovative IP-based voice services. As noted in Telecom Regulatory Policy 2015-326, a decision to no longer mandate the provision of ULLs could lead to a greater adoption of advanced or emerging services by consumers; for example, competitors that migrate their end-users from ULLs to their own access facilities or to services provisioned over wholesale HSA service would enable their end-users to access new content and applications that were previously inaccessible.

#### **Subsection 34(3) of the Act**

44. The Commission is also required to evaluate Bell Canada's application pursuant to subsection 34(3) of the Act, which states that the Commission shall not make a determination to refrain under this section in relation to a telecommunications service or class of services if the Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.

45. The Commission is of the view that forbearing from the regulation of ULLs in Bell Canada exchanges where local voice residential and/or business forbearance decisions were made on the basis of ULL availability (i.e. exchanges listed in part (c) of Bell Canada's proposed analytical framework) does not pose a risk of impairing unduly the continuance of a competitive market for retail voice services.
46. Market conditions have changed since the forbearance framework for local exchange services was established in Telecom Decision 2006-15; specifically, ULLs have declined in importance as a means of providing retail voice and Internet services. According to the 2017 CMR, industry-wide revenues derived from the provision of ULLs declined by 17.5% from 2014 to 2016, and by 29.8% from 2012 to 2016. Based on the confidential record of this proceeding, it appears that on the whole ULLs are being used by competitors to serve a very small percentage of the total addressable market in Bell Canada's operating territory. Demand for ULLs is low and has been in decline over the past several years as customers and competitors migrate more and more to wireless and broadband.
47. Additionally, the presence of a fixed-line, facilities-based competitor, particularly one relying on ULLs to offer retail services, is not as important as it was in 2006 in terms of providing pricing discipline to retail wireline services, due to the advancement of mobile wireless service. Retail wireless service is increasingly a substitute for wireline voice service. According to the 2017 CMR, wireless services accounted for the largest share of industry retail telecommunications revenues in 2016 (52%), whereas wireline voice services accounted for approximately 18%. In 2016, there were nearly 31,000,000 wireless subscriptions in Canada, wireless networks covered 99.4% of Canada, and wireless penetration was at 84.3%.
48. The Commission is also of the view that forbearing from the regulation of ULLs in exchanges for which local voice residential and/or business service forbearance decisions were made on the basis of ULL availability does not pose a risk for impairing unduly the continuance of a competitive market for retail Internet services.
49. Wholesale HSA service is a key substitute for ULLs for the provision of Internet service. The 2017 CMR states that industry-wide wholesale wireline telecommunications service revenues increased by 54.2% from 2013 to 2016, while subscriptions to wholesale HSA-enabled service increased by 43% during the same period. In particular, subscriptions to services with download speeds of 50 megabits per second (Mbps) and higher increased by 1,525% from 2013 to 2016.
50. The Commission considers that forbearing from regulating ULLs in the exchanges where residential and/or business local voice exchange services have not been forborne from regulation (i.e. the seven exchanges categorized under part (a) of Bell Canada's proposed analytical framework) cannot have an impact on local voice forbearance decisions since in these exchanges residential and/or business local voice services continue to be regulated at the retail level, and the main competitive alternative is likely to be wireless services rather than ULL-based competition. Therefore, the Commission is of the view that forbearing from the regulation of ULLs

in these exchanges is not likely to pose a risk of impairing unduly the establishment or continuance of a competitive market for local voice services in these exchanges.

51. The Commission also considers that ULL forbearance should not affect local retail voice service forbearance decisions in exchanges where local retail voice service forbearance was granted on the basis of sufficient competition by a wireline competitor that does not lease facilities (e.g. a cable company), i.e., in the exchanges listed in part (b) of Bell Canada's proposed analytical framework. The competitor presence test was previously met for residential local exchange service in all 16 exchanges, and for business local exchange service in one exchange. In the 15 exchanges in which forbearance has not been granted for business local exchange service, forbearance of ULLs cannot have an impact on local forbearance decisions for business local exchange service since these exchanges continue to be regulated at the retail level.
52. The Commission further considers that ULL forbearance should also not affect local retail voice service forbearance decisions in exchanges where local residential and business forbearance were, to varying degrees, predicated on the basis of ULL availability, i.e., in the exchanges listed in part (c) of Bell Canada's proposed analytical framework. The Commission considers that the expansion of competitive wireline networks since those forbearance decisions were made, combined with the increased availability of competitive alternatives at both the wholesale and retail levels, will be sufficient to mitigate against any negative local forbearance conditions resulting from potential changes to the availability of ULLs in those exchanges.
53. The Commission notes that aggregated HSA service is available and is being used in 86 of the 88 exchanges (the two exchanges where it is not in use – Lucknow, Ontario, and Stoke, Quebec – are classified under part (a) of Bell Canada's proposed analytical framework; in other words, retail voice services remain subject to rate regulation in these exchanges). Therefore, there is a competitive alternative available for wholesale customers to migrate to if ULLs were to be withdrawn from service, or if Bell Canada were to significantly increase the price for its ULL service. However, the Commission is of the view that it is important that wholesale customers are given sufficient notice by Bell Canada in the event that, post-forbearance, the company decides to withdraw ULLs from service from one or more of its exchanges. The notification would give time for competitors to make alternative arrangements.

#### **Interventions from parties to the proceeding**

54. With regard to

- Allstream's request that forbearance from the regulation of ULLs in an exchange not be granted until at least two years after the finalization of tariffed rates, terms, and conditions for disaggregated wholesale HSA service within the exchange, and

- the ITPA/CCSA's request that forbearance be delayed until Bell Canada's disaggregated wholesale HSA service is fully operational throughout Ontario and Quebec,

the Commission notes that aggregated wholesale HSA service is still available in these exchanges (from both Bell Canada and from cable companies).

55. Regarding Allstream's proposal to set a price ceiling for ULLs, the Commission considers that this would run counter to the policy objective set out in paragraph 7(f) of the Act, which is to foster increased reliance on market forces, and to subparagraph 1(a)(i) of the Policy Direction, which directs the Commission to rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives.
56. Regarding CNOC's concern that forbearance of ULLs in the 88 exchanges would impair the continuance of the existing competitive market for local voice services, contrary to subsection 34(3) of the Act, the Commission notes that ULLs were subject to a three-year phase-out period in Telecom Regulatory Policy 2015-326. In the Commission's view, this was a sufficient amount of time for wholesale customers that provide retail service via ULLs to make alternative provisioning arrangements.
57. Regarding the ITPA/CCSA's concerns regarding the limitations of existing HSA services versus ULLs, the Commission is of the view that alternatives do not necessarily have to be perfect substitutes for one another in each and every situation in order to provide pricing discipline. With respect to the voice functionality of ULLs, as discussed above the combination of retail (e.g. wireless services) and wholesale (e.g. wholesale HSA) alternatives available across Bell Canada's operating territory will have a sufficient disciplining effect on its pricing behaviour for wireline voice services.
58. The Commission reiterates that it has determined, and reaffirmed in several decisions,<sup>18</sup> that ULLs are a non-essential service that the ILECs should no longer be required to provision on a mandated basis. These determinations were made based on a substantial amount of evidence and arguments concerning, among other things, the availability of substitutes for ULLs, including wholesale HSA services. ULL customers were given three years to make alternate arrangements, knowing that ULLs would no longer be mandated and could be either withdrawn as an offering or forborne from regulation at the end of the three-year period.

## **Conclusion**

59. In light of the above, the Commission concludes that Bell Canada's ULL service meets the criteria for forbearance under subsection 34(1) of the Act such that to forbear from regulating ULLs in the 88 Bell Canada exchanges where demand for the

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<sup>18</sup> See Telecom Decisions 2016-246 and 2016-247.

service exists would be consistent with the policy objectives set out in paragraphs 7(c), (f), and (g) of the Act.

60. The Commission also concludes that Bell Canada's ULL service meets the criteria for forbearance under subsection 34(3) of the Act. Specifically, the Commission does not find as a question of fact that to refrain from regulating ULLs in the 88 exchanges in question would be likely to impair unduly the continuance of a competitive market for retail voice or Internet services in these exchanges.
61. Accordingly, the Commission **approves** Bell Canada's forbearance application. Specifically, the Commission declares that, effective at the end of the three-year phase-out period for ULLs (i.e. 22 July 2018), sections 25, 29, and 31, and subsections 27(1), 27(5), and 27(6) of the Act do not apply with respect to the 88 exchanges for which Bell Canada has not already obtained forbearance of its ULLs.
62. The Commission retains its powers to impose conditions on a service pursuant to section 24 of the Act, as well as its powers to protect against undue preference and unjust discrimination pursuant to subsections 27(2) and 27(4) of the Act. These provisions will give the Commission the flexibility to address any future complaints.
63. Pursuant to section 24 of the Act, the Commission requires Bell Canada to provide at least six months' written notice to wholesale customers in the event that, post-forbearance, the company decides to withdraw ULLs from service in any of its exchanges.

### **Policy Direction**

64. The Commission is required, in exercising its powers and performing its duties under the Act, to implement the policy objectives set out in section 7 of the Act, in accordance with the Policy Direction. The Commission considers that the determinations set out in this decision are in accordance with the Policy Direction for the reasons set out below.
65. The issues under consideration in this proceeding relate to the provision of a service and the associated impact on competition in the downstream market of retail local exchange services and retail Internet services, including whether the Commission should forbear from the regulation of the service. Therefore, subparagraphs 1(a)(i) and (ii) and subparagraphs 1(b)(i), (ii), and (iv) of the Policy Direction apply to the Commission's determinations in this proceeding.
66. In compliance with subparagraph 1(b)(i) of the Policy Direction, the Commission considers that the policy objectives set out in paragraphs 7(c), (f), and (g) of the Act are advanced by the determinations set out in this decision.
67. In compliance with subparagraphs 1(a)(i), 1(a)(ii), and 1(b)(ii) of the Policy Direction, the Commission considers that the regulatory measures being taken are efficient and proportionate to their purpose, minimally interfere with market forces,

and neither deter economically efficient competitive entry into the market nor promote economically inefficient entry. The Commission considers that forbearing from the regulation of ULLs promotes reliance on market forces for the provision of retail voice and Internet services by Bell Canada and its wholesale customers to end-users.

68. In compliance with subparagraph 1(b)(iv) of the Policy Direction, the Commission considers that the regulatory measures being taken ensure the technological and competitive neutrality of network interconnection arrangements or regimes for access to networks, to the greatest extent possible, to enable competition from new technologies and to not artificially favour either Canadian carriers or resellers.

Secretary General

### **Related documents**

- *Managed Network Systems, Inc. – Application to review and vary certain determinations set out in Telecom Regulatory Policy 2015-326 concerning the phase-out of mandated access to unbundled local loops*, Telecom Decision CRTC 2016-247, 29 June 2016
- *Allstream Inc. – Application to review and vary certain determinations set out in Telecom Regulatory Policy 2015-326 concerning the phase-out of mandated access to unbundled local loops*, Telecom Decision CRTC 2016-246, 29 June 2016
- *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 – Applications for forbearance from the regulation of business local exchange services*, Telecom Decision CRTC 2007-87, 13 September 2007; as amended by Telecom Decision CRTC 2007-87-1, 29 November 2007
- *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006; as amended by Order in Council P.C. 2007-532, 4 April 2007
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997
- *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994

## **Appendix 1 to Telecom Decision CRTC 2018-200**

### **Detailed description of Bell Canada's proposed analytical framework**

#### **Part (a)**

Bell Canada proposed to classify seven exchanges under part (a) of its analytical framework. Pursuant to part (a), ULLs would be automatically forborne from regulation in all exchanges where no local voice service forbearance (i.e. neither residential nor business) has been granted. Bell Canada submitted that since these exchanges have not been granted any form of local forbearance, ULL forbearance cannot possibly impact past local forbearance decisions. Bell Canada submitted that, accordingly, there is no reason to continue to regulate ULLs on the basis of their potential impact on past local forbearance decisions.

#### **Part (b)**

Bell Canada proposed to classify 16 exchanges under part (b) of its analytical framework. Pursuant to part (b), ULLs would be automatically forborne from regulation in all exchanges where, to the extent that local forbearance has been granted, it was apparently granted on the basis of sufficient competition provided by a wireline competitor that does not lease facilities (e.g. ULLs). Bell Canada submitted that residential forbearance was granted in 15 of the 16 exchanges, and in one exchange (Winnipeg, Manitoba), both residential and business forbearance was granted. Bell Canada submitted that, consequently, forbearing from regulating the provision of ULLs would not impact the local forbearance status of these exchanges.

Bell Canada submitted that in the proceeding leading to Telecom Decision 2006-15, it provided evidence that in these 16 exchanges, a competitor could provide local exchange service to at least 75% of service lines using its own facilities. Bell Canada submitted that given the absence of any indication that ULL forbearance will impact the local forbearance status of any of these 16 exchanges, the Commission can forbear from regulating the provision of ULLs in these exchanges without revisiting past local forbearance decisions.

#### **Part (c)**

Bell Canada proposed to classify the remaining 65 exchanges under part (c) of its analytical framework. The company submitted that ULL competition apparently played a role in the Commission's decision to grant residential and/or business local retail voice service forbearance in these exchanges. Bell Canada submitted that in these exchanges, although the availability of ULLs may have originally affected the Commission's decision to grant local forbearance, the competitive landscape has evolved to the extent that ULLs no longer have an impact on competition with respect to local voice services. Bell Canada divided the 65 exchanges into three sections based on each exchange's local forbearance status.



The company also referred to the competitor presence test, set out in Telecom Decision 2006-15, which states that forbearance may be granted in the following cases:

if the ILEC offers residential local exchange services, there are, in addition to the ILEC, at least two independent facilities-based TSPs, including providers of mobile wireless services, each of which offers local exchange services in the market and is capable of serving at least 75% of the number of residential local exchange service lines that the ILEC is capable of serving, and at least one of which, in addition to the ILEC, is a facilities-based, fixed-line TSP; or

if the ILEC offers business local exchange services, there is, in addition to the ILEC, at least one other independent facilities-based, fixed-line TSP that offers local exchange services in the market and is capable of serving at least 75% of the number of business local exchange service lines that the ILEC is capable of serving.

### **Section 1**

Bell Canada submitted that section 1 consists of four exchanges for which local residential forbearance was apparently granted based on the availability of ULLs, but where local business forbearance has not been granted.

Bell Canada submitted that it had determined that there is currently a wireline competitor able to meet the competitor presence test in all four exchanges for which residential forbearance was likely originally granted on the basis of ULL availability. Bell Canada submitted that the Commission can be assured that forbearing from the regulation of ULLs in these exchanges will not require past local forbearance decisions to be revisited.

### **Section 2**

Bell Canada submitted that section 2 consists of 50 exchanges for which local business forbearance was granted on the basis of ULL availability, but local residential forbearance was granted on the basis of a competitor using its own facilities to provide local exchange service. Bell Canada submitted that in these exchanges, a cable company's ability to serve at least 75% of service lines with its own facilities has already been established for the residential retail voice services market. Bell Canada submitted that since the cable company's presence has been established in these exchanges, it can reasonably be deduced that there is a wireline provider able to serve 75% of business service lines with its own facilities once the cable company has confirmed that it offers local exchange service to business customers. Bell Canada submitted that in light of the Commission's conclusions in Telecom Regulatory Policy 2015-326 that competition in the local business voice services market does not rely upon the availability of ULLs, there is no doubt that business service customers in these exchanges would continue to benefit from sufficient competition if ULLs are forborne from regulation.

### **Section 3**

Bell Canada submitted that under section 3, there are 11 exchanges for which both local residential and business forbearance were apparently granted on the basis of ULL

availability. Employing the same methodology used to determine competitor presence in part (c), section 1, Bell Canada submitted that a competitor is able to provide at least 75% of residential service lines. Bell Canada submitted that it confirmed that a cable company is able to meet the competitor presence test in 10 of the 11 exchanges.

For the remaining exchange (Inverary, Ontario), Bell Canada submitted, in confidence, evidence showing that residential and business service end-users in this exchange will continue to benefit from a competitive local voice services market regardless of the availability of ULLs. Bell Canada submitted that ULL forbearance will therefore have no bearing on the forbearance status of this exchange.

Bell Canada submitted that ULL forbearance will not impact the local forbearance status of these 11 exchanges. Bell Canada submitted that, accordingly, ULLs should be forborne from regulation in all of these exchanges.

## **Appendix 2 to Telecom Decision CRTC 2018-200**

### **List of exchanges based on Bell Canada's proposed analytical framework**

#### **Part (a)**

Cameron, ON  
Fergus, ON  
Gananoque, ON  
Lucknow, ON  
Oakwood, ON  
Renfrew, ON  
Stoke, QC

#### **Part (b)**

Blind River, ON  
Cooksville, ON  
Cornwall, ON  
Gloucester, ON  
Ingersoll, ON  
Kingston, ON  
La Salle, ON  
Lévis, QC  
Lindsay, ON  
Midland, ON  
North Bay, ON  
Orangeville, ON  
Sault Ste. Marie, ON  
Thornhill, ON  
Winnipeg, MB  
Woodstock, ON

#### **Part (c), section 1**

Elora, ON  
Napanee, ON  
Petawawa, ON  
Sudbury, ON

#### **Part (c), section 2**

Ajax-Pickering, ON  
Barrie, ON

Boucherville, QC  
Brampton, ON  
Brantford, ON  
Burlington, ON  
Castlemore, ON  
Chatham, ON  
Chicoutimi, QC  
Chomedey, QC  
Clarkson, ON  
Clinton, ON  
Drummondville, QC  
Galt, ON  
Guelph, ON  
Halifax, NS  
Hamilton, ON  
Kanata-Stittsville, ON  
Kitchener-Waterloo, ON  
Lachine, QC  
London, ON  
Longueuil, QC  
Malton, ON  
Maple, ON  
Markham, ON  
Montréal, QC  
Newmarket, ON  
Oakville, ON  
Oshawa, ON  
Ottawa-Hull, ON/QC  
Owen Sound, ON  
Peterborough, ON  
Pointe-Claire, QC  
Pont-Viau, QC  
Québec, QC  
Richmond Hill, ON  
Sarnia, ON  
Sherbrooke, QC  
Southampton, ON  
St. Catharines-Thorold, ON

St-Hyacinthe, QC  
St-Lambert, QC  
Stoney Creek, ON  
Stratford, ON  
Streetsville, ON  
Toronto, ON  
Trois-Rivières, QC  
Unionville, ON  
Windsor, ON  
Woodbridge, ON

**Part (c), section 3**

Aurora, ON  
Goderich, ON  
Hanover, ON  
Harriston, ON  
Inverary, ON  
Listowel, ON  
Mount Forest, ON  
Palmerston, ON  
Pembroke, ON  
Tecumseh, ON  
Walkerton, ON