



Telecom Regulatory Policy CRTC 2010-777

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Forbearance from the regulation of retail voice mail services provided by the incumbent local exchange carriers

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The Commission forbears conditionally, to the extent set out in this decision, from regulating the retail voice mail services provided by the incumbent local exchange carriers (ILECs). The Commission approves SaskTel's application and directs all ILECs to revise their retail voice mail service tariffs to reflect the determinations in this decision.

Introduction

1. In Telecom Decision 2006-15, the Commission established a framework for forbearance from the regulation of local exchange services for large ILECs on an exchange by exchange basis principally based on the presence of independent facilities-based telecommunications service providers. The Commission included optional services, such as retail voice mail, in the same relevant product market as local exchange services.
2. In Telecom Regulatory Policy 2009-379, the Commission set out a similar framework for forbearance for the serving territories of the small ILECs.
3. The Commission has forborne from regulating the ILECs' voice mail services in those local exchanges where ILECs were granted forbearance for local exchange services according to the above-mentioned frameworks.

SaskTel's application

4. On 26 January 2010, the Commission received an application from Saskatchewan Telecommunications (SaskTel) requesting that the Commission forbear from the regulation of its retail residential and business voice mail services on a province-wide basis. SaskTel submitted that these services meet the forbearance criteria set out in Telecom Decision 94-19.¹

¹ In Telecom Decision 94-19, a forbearance framework was established based on an assessment of a firm's market power.

5. The Commission received submissions in support of SaskTel's application from Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, and Télébec, Limited Partnership (Télébec) [collectively, Bell Canada et al.]; and from TELUS Communications Company (TCC). Bell Canada et al. and TCC requested that if the Commission forbears from regulating retail voice mail services for SaskTel, it should also forbear on the same basis and subject to the same conditions from regulating retail voice mail services provided by all ILECs.
6. On 14 May 2010, the Commission issued Telecom Notice of Consultation 2010-277, in which it stated that SaskTel's application raised policy issues common to all ILECs. In the Notice of Consultation, the Commission requested comments on SaskTel's application and on the appropriate framework within which to consider a general forbearance from the regulation of voice mail services.² The Commission noted that any forbearance framework and criteria that resulted from this proceeding, or a determination to forbear from the regulation of retail voice mail services, could apply to all ILECs.
7. The Commission received comments on the issues raised in this proceeding from Bell Canada et al., MTS Allstream Inc. (MTS Allstream), the Ontario Telecommunications Association (OTA), SaskTel, and TCC (collectively, the ILECs); and from the Public Interest Advocacy Centre (PIAC). The public record of this proceeding, which closed on 25 June 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Forbearance framework and criteria

8. In Telecom Decision 2006-15 and Telecom Regulatory Policy 2009-379, the Commission established forbearance frameworks for local exchange services, which included voice mail services, in order to enable it to reach more expeditious determinations on ILEC forbearance applications.
9. The Commission notes that all parties commenting on the framework and forbearance criteria agreed that the Commission should adopt the framework and use the criteria set out in Telecom Decision 94-19 to assess retail voice mail service forbearance applications, rather than relying exclusively on the framework and criteria set out in Telecom Decision 2006-15 and Telecom Regulatory Policy 2009-379.
10. The Commission notes that in issuing Telecom Decision 2006-15 and Telecom Regulatory Policy 2009-379, it did not intend to prevent the ILECs from filing forbearance applications for optional services such as voice mail, separately from applications for forbearance in the local exchange service market, if those services were available independently of the local exchange service provider.

² In Notice of Consultation 2010-277, "voice mail services" referred to Voice Mail and TalkMail services provided by SaskTel and all other voice mail services provided by the ILECs.

11. The Commission considers that the ILECs have provided sufficient evidence to demonstrate that voice mail services and products can be purchased separately from local exchange service providers. Consequently, the Commission finds it appropriate to evaluate voice mail forbearance applications in light of the Telecom Decision 94-19 framework.
12. The Commission notes that TCC also requested that the Commission use the Telecom Decision 94-19 framework to determine any local exchange forbearance applications currently before it and any future applications. The Commission finds that this request is outside the scope of this proceeding.

Issues

13. The Commission will examine the following issues raised by SaskTel and the other ILECs in this proceeding:³
 - I. How should voice mail services be defined?
 - II. What is the relevant market for voice mail services?
 - III. Should the Commission forbear from regulating the ILECs' retail voice mail services?
 - IV. If so, what should be the scope of forbearance?
 - V. Would forbearance be consistent with the Policy Direction?⁴

I. How should voice mail services be defined?

14. SaskTel indicated that its voice mail services are examples of voice messaging services that can take messages while a customer is on the phone, on the Internet, or away from the phone. Parties submitted that voice mail can include many features, such as visual or audible notification that a message has been received, and that customers can retrieve their messages remotely from any Touch-Tone telephone or computer with Internet access.
15. The Commission considers that while the definitions of retail voice mail services proposed by the parties differed somewhat, these services generally consist of a service that is capable of taking voice messages and allowing customers to access these messages remotely.

³ The Commission notes that the ILECs' voice mail services are currently provided in accordance with each ILEC's tariffs in non-forborne markets. As such, for the purposes of this decision, the Commission considers that the ILECs' retail voice mail services consist of voice messaging services for which forbearance has not already been granted.

⁴ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006.

II. What is the relevant market for voice mail services?

16. Pursuant to the forbearance framework set out in Telecom Decision 94-19, the first step is to assess the competitiveness of a market by identifying the relevant market. In that decision, the Commission defined the relevant market as the smallest group of products and geographic area in which a firm with market power can profitably impose a significant, non-transitory price increase. Each relevant market, therefore, will contain both a product and a geographic component. The definition of the relevant market is based on the substitutability of the services in question.

a. Relevant product market

17. In this case, the determination of the relevant product market involves an assessment of the group of products that consumers would consider to be substitutes for the ILECs' retail voice mail services. Such substitutes are characterized by how accessible they are to the ILECs' customers, their ease of use, and their prices, all of which should be comparable to the ILECs' retail voice mail services.

18. The ILECs submitted that there are many competitive alternatives to their residential and business voice mail services including, among other things, telephone answering devices, including telephone sets with built-in messaging capabilities; answering services that offer live answering and voice messaging services; wireless service providers (WSPs) offering wireless voice mail and wireless text messaging; electronic messaging, such as fax, email, and online messaging; competitive local exchange carriers' (CLEC) voice mail services; and name and number display.

19. PIAC submitted that none of the services listed by the ILECs should be included in the relevant product market because they are not true substitutes for the ILECs' voice mail services. In its view, answering devices vary in terms of functionality and not all models provide functionalities similar to the ILECs' voice mail services. PIAC noted that many residential subscribers either cannot access some of those services or cannot afford them. It submitted that to be substitutes, alternative voice mail services should provide a voice element that allows callers to leave a voice message by telephone.

Possible substitutes for the ILECs' voice mail services

20. The Commission considers that telephone answering devices and, in some cases, telephone sets provide a caller with the same basic functionalities as the ILECs' voice mail services. The Commission also considers that while prices for these products generally involve a one-time purchase price, there is no monthly subscription fee, thereby making overall costs lower than the ILECs' retail voice mail services. As such, the Commission finds that answering devices are substitutes for the ILECs' voice mail services.

21. The Commission considers that wireless voice mail services provide customers who subscribe to wireless services with the same basic functionalities as the ILECs' voice mail services at prices comparable to the ILECs' retail voice mail service prices. As such, the Commission finds wireless voice mail services to be substitutes for the ILECs' voice mail services.
22. The Commission notes that answering services allow customers to forward their telephone calls to a host voice mail service provider. The Commission also notes that these services, which are more likely to be used by business customers, provide the same basic functionalities as the ILECs' retail voice mail services in the areas where they are available, at prices comparable to the ILECs' prices. The Commission therefore considers that answering services are substitutes for ILECs' voice mail services.
23. Other services put forward by the ILECs, such as wireless text messaging, as well as email and online messaging and/or Internet service, provide messaging functionality. The Commission considers these services to be partial substitutes to voice mail services as they are generally text-based.
24. The Commission considers that the ease of use of the alternatives discussed above is comparable to that of the ILECs' retail voice mail services.
25. Finally, the Commission notes that the ILECs' customers cannot access CLEC voice mail services if they do not subscribe to a CLEC's local service. As such, the Commission does not consider these services to be substitutes for the ILECs' voice mail services. Regarding name and number display service, the Commission considers that this service is not a substitute for the ILECs' voice mail services as it does not include messaging capabilities.
26. In light of the above, the Commission finds that telephone answering devices, answering services, and wireless voice mail are substitutes for each ILEC's retail voice mail services, while electronic messaging – such as email, and wireless text and online messaging – are partial but viable messaging alternatives. The Commission also finds that neither CLEC voice mail services, nor name and number display services, are substitutes for the ILECs' retail voice mail services.

b. Relevant geographic market

27. SaskTel submitted that while alternative products and services are available throughout Canada, the relevant geographic market should be considered to be each ILEC's serving territory. Bell Canada et al., TCC, and the OTA proposed that the relevant geographic market be national.
28. The Commission notes that the ILECs offer their tariffed voice mail services only within their incumbent serving areas. The Commission considers that the relevant geographic market for the ILECs' retail voice mail services should contain an aggregation of customers to whom the same substitutes are available.
29. Accordingly, the Commission finds that each ILEC's serving territory is the relevant geographic market for their respective voice mail services.

III. Should the Commission forbear from regulating the ILECs' retail voice mail services?

a. ILECs' market power for retail voice mail services

30. The Commission's power to forbear from regulating a telecommunications service or class of services provided by a Canadian carrier is set out in section 34 of the *Telecommunications Act* (the Act). Pursuant to the forbearance framework set out in Telecom Decision 94-19, the Commission has adopted the concept of market power to assess whether a market is, or is likely to become, sufficiently competitive to protect the interests of users.
31. In Telecom Decision 94-19 and subsequent decisions, the Commission considered a number of factors when assessing whether an ILEC possesses market power, including
- (i) market shares of the dominant and competing firms;
 - (ii) demand conditions affecting customer response to a change in the price of the product or service, including customers' ability to switch to another supplier or to reduce consumption (e.g. availability of practical substitutes, switching costs, importance of the product to the customer); and
 - (iii) supply conditions affecting the ability of other firms in the market to respond to a change in the price of the product, including the likelihood of entry into the market, barriers to entry, and evidence of rivalrous behaviour.

i. Market share criterion

32. The ILECs provided evidence to demonstrate that, over the past several years, there have been substantial decreases in the number of voice mail service subscribers that cannot be attributed to the relatively small decrease in the number of local customers they serve. The Commission further notes that the evidence also demonstrates that there are a number of unregulated alternative services in the relevant market.

ii. Demand conditions criterion

33. SaskTel, Bell Canada et al., and TCC submitted that they do not possess market power, noting that if they increased their retail voice mail service prices, their customers could use alternative voice mail services. TCC further submitted that due to the discretionary nature of voice mail services, customers could also choose to reduce consumption of those services.
34. As noted above, the Commission has found that there are many viable substitutes that provide direct, comparably priced substitutes to the ILECs' voice mail services. The Commission considers that customers are able to switch from an ILEC's retail voice mail services to those of another provider. The Commission also notes that the evidence presented by SaskTel and Bell Canada et al. shows that there is significant use of alternative voice mail services by the ILECs' customers.

35. Accordingly, the Commission finds that demand conditions for voice mail services are such that the ILECs' customers could use substitutes for these services in response to an increase in the ILECs' retail voice mail service prices.

iii. Supply conditions criterion

36. The Commission considers that the record of this proceeding demonstrates that there are no significant barriers to entry in the retail voice mail services market.

37. Accordingly, the Commission finds that supply conditions for retail voice mail services are such that alternative service providers may readily enter the market in response to an increase in the price of the ILECs' retail voice mail services.

Conclusion

38. In light of the above, the Commission concludes that the ILECs do not possess market power for retail voice mail services in their respective markets.

b. Determinations regarding subsections 34(1), 34(2), and 34(3) of the Act

39. Pursuant to subsection 34(1) of the Act, the Commission finds, as a question of fact, that forbearing from the regulation of the ILECs' retail voice mail services, to the extent provided for and subject to the conditions set out in this decision, would be consistent with the Canadian telecommunications policy objectives, specifically those in paragraphs 7(c), 7(f), and 7(h) of the Act.⁵

40. Pursuant to subsection 34(2) of the Act, the Commission finds, as a question of fact, that the retail voice mail services provided by each ILEC are subject to competition sufficient to protect the interests of users and that it is therefore appropriate to refrain, to the extent provided for and subject to the conditions set out in this decision, from the regulation of each ILEC's retail voice mail services.

41. Pursuant to subsection 34(3) of the Act, the Commission finds as a question of fact that forbearance with respect to the ILECs' retail voice mail services, to the extent provided for and subject to the conditions set out in this decision, would not be likely to impair unduly the continuance of a competitive market for retail voice mail services.

IV. What should be the scope of forbearance?

42. The Commission notes that, pursuant to subsections 34(1) and 34(2) of the Act, it is empowered to forbear, 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 of the Act.

⁵ These policy objectives are
7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;
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
7(h) to respond to the economic and social requirements of users of telecommunications services.

43. The ILECs submitted that, if the Commission found that it should forbear from the regulation of their retail voice mail services pursuant to section 34 of the Act, it should forbear wholly and unconditionally from exercising its powers under sections 25, 27, 29, and 31 of the Act.

Section 24

44. Bell Canada et al. and TCC proposed that should the Commission forbear from regulation of the ILECs' retail voice mail services, it could retain section 24 of the Act, which empowers the Commission to impose conditions on the offering and provision of these services.
45. PIAC submitted that the Commission should not forbear unconditionally from regulation of voice mail services because it would then lack the necessary powers to impose conditions on ILECs regarding privacy policies and access to voice mail services by persons with disabilities.
46. The Commission considers that in a forborne environment, the operation of market forces will generally be sufficient to protect the interests of users of voice mail services. However, in light of the telecommunications policy objectives set out in section 7 of the Act, and paragraphs 7(h) and 7(i)⁶ in particular, the Commission considers that it would be appropriate to retain its powers under section 24 of the Act in order to maintain its ability to impose future conditions as warranted. Accordingly, the Commission retains its powers under section 24 of the Act.

Section 25

47. In light of its finding that the ILECs do not have market power concerning retail voice mail services, the Commission considers that requiring the ILECs to obtain prior Commission approval of retail voice mail service prices and terms would not represent efficient and effective regulation. Accordingly, the Commission concludes that it would be appropriate to forbear from the exercise of its powers and the performance of its duties under section 25 of the Act.

Section 27

48. The Commission considers that, in a forborne environment, the operation of market forces will generally be sufficient to protect the interests of users of retail voice mail services. Accordingly, the Commission concludes that it would be appropriate to forbear from the exercise of its powers and the performance of its duties under subsections 27(1), 27(5), and 27(6) of the Act.
49. The Commission considers, however, that it would be appropriate to retain its powers and duties under subsection 27(2) of the Act to ensure that the ILECs do not unjustly discriminate against, or give an undue or unreasonable preference toward, any person in relation to the provision of retail voice mail services. As a necessary consequence of this determination, the Commission considers that it should also retain its powers

⁶ Paragraph 7(i) of the Act states the policy objective "to contribute to the protection of the privacy of persons."

and duties under subsection 27(4) of the Act. Finally, the Commission considers it necessary to retain its powers under subsection 27(3) of the Act in order to ensure compliance with the powers and duties from which it is not forbearing.

50. Accordingly, the Commission retains its powers under subsections 27(2), 27(3), and 27(4) of the Act.

Sections 29 and 31

51. The Commission considers that section 29 of the Act addresses matters that are not relevant to the retail voice mail services market and concludes that it would be appropriate to forbear with respect to its powers and duties under section 29 of the Act.
52. The Commission considers that in a competitive market for retail voice mail services, ILECs should be able to establish, through negotiations with their customers, the extent and scope of any limitations on their liability. Accordingly, the Commission concludes that it would be appropriate to forbear from the exercise of its powers and the performance of its duties under section 31 of the Act. The Commission notes, however, that any provision in effect as of the date of this decision that limits liability in any existing contracts or arrangements will remain in force until its expiry.

V. Would forbearance be consistent with the Policy Direction?

53. The Policy Direction requires, among other things, that the Commission rely on market forces to the maximum extent feasible as the means of achieving the Canadian telecommunications policy objectives. The Commission notes its finding that forbearance from the regulation of each ILEC's retail voice mail services, as set out in this decision, would be consistent with the Canadian telecommunications policy objectives set out in section 7 of the Act. The Commission considers that such forbearance would also be consistent with subparagraphs 1(a)(i) and 1(a)(ii) of the Policy Direction.
54. Consistent with subparagraph 1(b)(i) of the Policy Direction, the Commission considers that its determinations in this decision advance the telecommunications policy objectives in paragraphs 7(c), 7(f), and 7(h) of the Act. Consistent with subparagraph 1(b)(ii) of the Policy Direction, the Commission considers that its determinations in this decision neither deter economically efficient competitive entry into the retail voice mail services market nor promote economically inefficient entry.

Conclusion

55. In light of all the above, the Commission **approves** SaskTel's application for forbearance from the regulation of its retail voice mail services. The Commission also directs all ILECs, including SaskTel, to file revised retail voice mail service tariff pages to reflect the determinations in this decision.

56. Forbearance will take effect on the date that the ILECs issue revised retail voice mail service tariff pages.

Secretary General

Related documents

- *Forbearance from the regulation of retail voice mail services*, Telecom Notice of Consultation CRTC 2010-277, 14 May 2010
- *Framework for forbearance from the regulation of retail local exchange services in the serving territories of the small incumbent local exchange carriers*, Telecom Regulatory Policy CRTC 2009-379, 23 June 2009
- *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
- *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994