Telecom Order

Ottawa, 3 November 1998

Telecom Order CRTC 98-1092

Applications Requesting Interconnection With The Telecommunications Networks Of The Federally Regulated Cellular and Personal Communications Services Providers and Related Issues

File No.: 95-1177

PART A - BACKGROUND

1.The Commission received applications from Gregory John Bezusko, In Trust (Bezusko), dated 8 November 1995, as amended 29 November 1995; AIReach Integrated Network Ltd. (AIReach), dated 4 December 1995, as amended 20 December 1995; and Sprint Canada Inc. (Sprint), dated 4 December 1995; for an Order requiring the federally regulated cellular providers (cellular providers), the newly licensed Personal Communications Services (PCS) providers and Clearnet Communications Inc. (Clearnet), in its capacity as a provider of enhanced specialized mobile radio (ESMR) services, to permit interconnection on an equal access basis to their networks.

2.In addition, AIReach requested an Order requiring (1) the carriers noted above to interconnect their telecommunications networks with that of AIReach; (2) the unbundling of wireless access from call processing, switching and transmission; (3) physical and virtual co-location of switching and other equipment; (4) local number portability; and (5) the termination of any exclusive agreements or arrangements between the cellular and PCS providers and specific wireline carriers.

3.On 23 May 1996, the Commission issued Telecom Public Notice CRTC 96-18, AIReach Integrated Network Ltd. - Application for Interconnection with the Telecommunications Networks of the Federally Regulated Cellular and PCS Providers and Related Issues, inviting comment on the issues raised by the above-noted applications, with the exception of local number portability. This latter issue was under consideration in a separate process. The cellular providers, the PCS licensees, Clearnet, AIReach, Bezusko and Sprint were made parties to the proceeding.

4.Comments were received from the Canadian Business Telecommunications Association (CBTA), fONOROLA Inc. (fONOROLA), Rogers Cantel Inc. (Cantel), Microcell Telecommunications Inc. (Microcell), Mobility Canada (Mobility), Telezone Corporation (Telezone), and AT&T Canada Long Distance Services Company (AT&T Canada LDS, formerly Unitel Communications Inc.).

PART B - POSITIONS OF PARTIES

5.Sprint and Bezusko submitted that it was in the public interest to make the benefits of interexchange competition available to the rapidly growing cellular consumer market, through interexchange equal access. In their view, the same public interest considerations which favoured interexchange equal access in wireline services in 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 (Decision 92-12), apply equally to the application of interexchange equal access for wireless service providers.

6.According to Sprint and Bezusko, equal access would ensure that customers purchasing wireless service are not forced to purchase long distance service from the same provider. Sprint stated that the implementation of equal access would enable alternate providers of long distance service (APLDS) to compete fairly with cellular providers for the interexchange traffic of cellular customers, while cellular customers in turn would be able to exercise their right to choose the carrier offering the best price and quality of service.

7.AIReach submitted that Commission approval of its application would enable the company to give customers a

choice of carrier for the wireline portion of any calls originated via a cellular, ESMR, or PCS offering. According to AIReach, this would enable wireless customers to share in the benefits of existing competition in the long distance market. Similarly, AIReach added that customers will also reap the benefits of emerging competition in the local services market, eliminating the exclusive dependence by a user on the wireless carrier of his or her choice to meet all of the customer's end-to-end telecommunications needs.

8.In AIReach's view, the same public policy grounds upon which the Commission's determinations in Decision 92-12 and in Review of Regulatory Framework, Telecom Decision CRTC 94-19, 16 September 1994 (Decision 94-19), were based, apply in the wireless market.

9.AIReach submitted that its request for relief lies on the basis that the facilities of the wireless carriers required by new entrants for the purpose of interconnection, equal access, unbundling, and co-location are facilities that are bottleneck (defined as essential in Telecom Decision CRTC 97-8, Local Competition, 1 May 1997 (Decision 97-8)). Accordingly, consistent with prior Commission determinations applicable to wireline carriers offering essential/bottleneck services, rates for essential/bottleneck services provided by wireless carriers should be cost justified and include no mark-up. AIReach submitted that the potential for anti-competitive abuse resulting from the setting of rates, as well as terms and conditions for the bottleneck services contemplated by AIReach in its application, provide a strong argument for continued regulatory supervision in the form of tariff filings and approval process.

10.AIReach requested that any exclusive agreements with specific wireline carriers for the interchange of traffic originating or terminating on the networks of the wireless carriers, which would bar competition as contemplated in its application, be terminated.

11.CBTA and Telezone supported the applications. CBTA stated that the specific requests were reasonable and in the best interest of consumers. In CBTA's view, the rules governing wireless service providers should be no different than those for wireline carriers so that the same opportunities for enhanced competition and variety of services are available to customers served by wireless services. Telezone submitted that the interconnection requested should not be limited to the applicants.

12.fONOROLA and AT&T Canada LDS supported, in principle, granting some of the relief requested in the applications. AT&T Canada LDS restricted its comments to that portion of the applications dealing with equal access interconnection. fONOROLA submitted that the applications in this proceeding were consistent with the Commission's position on equal access as enunciated in Decisions 92-12 and 94-19. fONOROLA added that despite the lack of specific reference to wireless providers in Decision 94-19, many of the provisions contained therein implicitly apply.

13.Microcell submitted that it is marketing third party access to its networks and network components, bundled or unbundled, to its wholesale customers. Microcell indicated that it had adopted this strategy in order to amortize the costs of its network deployment. According to Microcell, intervention by the Commission is not required to protect the interests of APLDS or end customers of the wireless carriers in this competitive marketplace.

14.Cantel, Clearnet and Mobility opposed the applications. Generally, they submitted that granting the relief requested would, in light of Telecom Decision CRTC 94-15 Regulation of Wireless Services, 12 August 1994, amount to re-regulation of the wireless market.

15.Cantel, Clearnet and Mobility submitted that it was inappropriate to apply the monopoly model to a competitive sector where no party is dominant and there is a multiplicity of networks. They added that to apply such a model would be counter to both Commission and Government policy in the wireless sector, as well as the principles of telecommunications policy embodied in the Telecommunications Act (the Act).

16.Cantel and Mobility added that if the Commission imposed requirements like equal access or unbundling on the industry, the net result would be re-regulation and the fundamental unravelling of its competitive framework for wireless providers. Clearnet was of the view that market forces were sufficient to deal with the relief sought by the applicants and regulatory intervention was unnecessary. Mobility stated that competitors would have no incentive to negotiate access on commercial terms but would use the regulatory process to obtain discounts and shift as much as possible to wireless carriers and their customers.

17.According to Mobility, the Commission should reject these applications on the grounds that they are not consistent with the regulatory framework or telecommunications policy objectives that mandate a greater reliance on market forces.

18.Cantel and Mobility generally submitted that AIReach's request for interconnection, unbundling and co-location is predicated on the flawed assumption that wireless air interfaces are bottleneck facilities. They stated that wireless carriers are neither the sole source of supply for wireless network elements, nor due to competitive alternatives, are they able to exercise substantial market power. Given the fact that duplicate wireless networks already exist across the country, including two new facilities-based wireless carriers, Cantel and Mobility stated that it is apparent that cellular, PCS and ESMR carriers do not control bottleneck facilities.

19.Mobility indicated that competitive safeguards, like equal access, unbundling and co-location adopted in Decision 92-12 and in Decision 94-19, were designed solely to curb monopoly power and are inappropriate to apply to a highly competitive and virtually unregulated industry such as the mobile wireless market.

20.In reply, AIReach and Sprint argued that wireless carriers exercise a high degree of market power over would-be new entrants in the market, and wireless networks constitute a significant bottleneck to toll service providers. They submitted that wireless providers are the exclusive beneficiaries of the spectrum. AIReach added that, inasmuch as spectrum licensing requirements preclude additional competitors from building their own facilities, there is no substitute available to such competitors to gain access to the wireless networks.

21.AIReach stated that the wireless marketplace is already highly regulated due to spectrum licensing requirements, and that the service competition which will develop upon approval of its application will increase reliance on market forces. Additionally, AIReach argued that its application for regulatory supervision in the form of a tariff filing and approval process for a new group of service offerings does not amount to re-regulation as it is not possible to "re-tariff" services which have not been previously offered because of regulatory policies.

22.However, AIReach reconsidered its position with respect to tariffing requirements and submitted that it was prepared to consider a regulatory framework which grants competitive open access to wireless networks on the basis of general terms and conditions of service regulated by the Commission pursuant to section 24 of the Act, as opposed to a regulatory framework based on detailed tariff filings.

PART C - CONCLUSIONS

23.The Commission notes that several parties argued that the policies in Decisions 92-12 and 94-19 implicitly apply to wireless service providers. In the Commission's view, however, the public interest considerations referred to in Decision 92-12 are not directly applicable in the current proceeding. The Commission notes that conditions existing in the wireless market are substantially different than those which existed in the wireline market when these issues were addressed. Preceding the Commission's findings in Decision 94-19, local exchange services were monopoly provided. Thus, all customers had to obtain their long distance services via the monopoly local network. Decision 92-12 ensured that customers could use the long distance carrier of their choice on an equal access basis through the monopoly local network.

24.By contrast, local wireless services are not monopoly-provided. Wireless customers have always had an alternative choice in terms of wireless access. While wireless customers subscribing to a particular provider may not be able to choose their preferred long distance carrier, if they are unsatisfied with their long distance service they are free to obtain service from another wireless provider, thus getting access to a different long distance provider.

25.AIReach argued that the facilities of the wireless carriers required by new entrants for the purpose of interconnection, equal access, unbundling, and co-location are essential bottleneck facilities. The Commission notes that in Decision 97-8 it found that to be essential, a facility, function, or service must meet all three of the following criteria: (1) it is monopoly controlled; (2) a Competitive Local Exchange Carrier (CLEC) requires it as an input to provide services; and (3) a CLEC cannot economically or technically duplicate it. Facilities that meet the definition are subject to mandatory unbundling and mandated pricing.

26.While this finding applies to CLECs in the particular context of local exchange competition, the Commission is of the view that it is also, in substance, applicable in the current context. The fact that AIReach may need access to these facilities or functions to offer its proposed service does not of itself make them essential. The fact that there are several facilities-based wireless providers in the market and none is compelled to rely upon the other for the facilities at issue demonstrates that these facilities are not monopoly controlled and, therefore, do not meet the definition set out above. The Commission notes that examples of the kinds of facilities that do meet the essential/bottleneck criteria include local loops in rural areas and interexchange private lines in rural and remote areas.

27.The Commission notes that it used the concept of essential facilities to provide for competitors' interconnection with the dominant wireline providers' networks to allow the evolution of facilities-based competition in the local and

long distance wireline markets. As previously noted, the circumstances that exist in the wireline industry are different from those prevailing in the PCS and cellular markets. In particular, in contrast to the wireline market, facilities-based entry was the initial form of competition in the wireless market. The Commission considers that the cellular and PCS markets are sufficiently competitive such that it cannot be said that facilities are monopoly controlled or cannot be economically or technically duplicated. As a result, none of the wireless providers can be said to have dominant market power or to control bottleneck or essential facilities. Accordingly, the Commission considers that wireless networks are not essential facilities as suggested by certain parties.

28.In view of the competitive nature of the wireless market, the Commission has developed, through numerous decisions, a different regulatory regime for wireless services. In particular, in Regulation of Mobile Wireless Telecommunications Services, Telecom Decision CRTC 96-14, 23 December 1996, the Commission forbore from regulating the rates, terms and conditions for the provision of cellular, PCS and ESMR services due to its determination that these markets were sufficiently competitive to protect consumers.

29.The Commission considers the current forbearance regime to be inconsistent with a regime which would mandate access to competitive wireless networks as proposed by AIReach. Mandating such access would run counter to the Commission's general approach of fostering the growth of competitive markets and, wherever possible, leaving rates, terms and conditions for the provision of services to be disciplined by competitive markets.

30.In Telecom Order CRTC 97-1797 dated 3 December 1997, concerning resale and sharing of cellular services, the Commission found that to refrain from mandating resale would be in the best interests of an increasingly competitive market. The Commission is of the view that, for similar reasons, refraining from mandating interconnection, co-location and unbundling of the networks of the competitive wireless carriers would better serve the competitiveness of the market.

31.The Commission notes that the PCS and cellular market has evolved into one characterized by multiple facilities-based service providers. In particular, several companies who were awarded licences in 1996 to provide PCS have begun to build and operate their networks and services. In addition, the entry of new facilities-based providers has resulted in further price competition with significant price decreases in respect of per minute usage charges.

32.The Commission notes that wireless telecommunications service carriers who become CLECs must fulfil the requirements set out in Decision 97-8. These requirements include, among other things, offering interconnection on an equal access basis, at terms and conditions that are equivalent to those in Stentor member companies' tariffs, to those providers of long distance services that qualify for equal access pursuant to the Commission's rulings on equal access.

33.In the Commission's view, based on the record of this proceeding, the question of whether to mandate interconnection with the wireless networks is best answered by individual providers responding to their business and investment requirements.

34.In light of the foregoing, the Commission denies the applications.

Secretary General

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