



## Telecom Decision CRTC 2005-10

Ottawa, 4 March 2005

### **Part VI Application by Doncaster Consulting Inc. – Disconnection by Bell Canada**

*The Commission denies a Part VI application by Doncaster Consulting Inc. that challenged the appropriateness of Bell Canada's requirement that it provide a deposit in order for Bell Canada to provide service pursuant to Bell Canada's General Tariff items 5410 and 5420.*

#### **The application**

1. The Commission received an application filed under Part VI of the *CRTC Telecommunications Rules of Procedure* from Doncaster Consulting Inc. (Doncaster), dated 16 February 2005, that requested Commission intervention to prevent the disconnection of telecommunications services Doncaster currently purchases from Bell Canada.
2. Doncaster submitted that, in 1999, it had entered into a contract with Bell Advanced Communications 1998 Inc. (Bell Nexxia) for wholesale asymmetric digital subscriber line (ADSL) services. Doncaster alleged that, subsequent to the merger of Bell Nexxia into Bell Canada, it had taken the position that it should be billed at the tariffed rate set out in Bell Canada's General Tariff item 5400 rather than at the rates specified in the contract between it and Bell Nexxia. Doncaster further alleged that Bell Nexxia and Bell Canada had made billing errors that had not yet been corrected. According to Doncaster, the unpaid sum of \$1.2 million dollars remained in dispute between it and Bell Canada and that dispute was scheduled to proceed to arbitration in March 2005 under the terms of its original contract with Bell Nexxia. Doncaster submitted that it had paid all undisputed amounts owing to Bell Canada.
3. Doncaster submitted that on 23 December 2004 it had received a letter from Bell Canada demanding a deposit of \$300,000 on the basis that wholesale ADSL services would be provided under a tariff beginning 1 January 2005. Doncaster further submitted that on 12 January 2005 it had received a 30-day disconnection notice from Bell Canada.

#### **Bell Canada's response**

4. Bell Canada submitted a response to Doncaster's application, dated 18 February 2005. Bell Canada also provided accounts that, according to it, showed that Doncaster had not been making regular payments for services rendered to it by Bell Canada in 2003 and 2004. Bell Canada submitted that the bulk of the issues raised by Doncaster were related to services provided by Bell Canada prior to 1 January 2005, and that those disputes had been referred to arbitration pursuant to the terms of Doncaster's contract with Bell Canada.
5. Bell Canada submitted that the issue in this case was its request that Doncaster provide a deposit in the amount of \$300,000 by 10 January 2005 in order for Bell Canada to continue the provision of services pursuant to Bell Canada General Tariff items 5410 and 5420, which came into effect on 1 January 2005.

6. Bell Canada noted that Article 7 of its Terms of Service allowed it to require a deposit from a customer where that customer had an unsatisfactory credit rating with Bell Canada due to payment practices in the previous two years regarding Bell Canada's services, or where that customer clearly presented an abnormal risk of loss.
7. Bell Canada submitted that the \$1.2 million figure cited by Doncaster was incorrect and that the full amount owed to Bell Canada by Doncaster by the end of November 2004 was \$1.877 million. Bell Canada submitted that, contrary to Doncaster's submissions, Doncaster had not paid all undisputed amounts billed. Bell Canada submitted that between September and December 2004 it had submitted bills of \$540,000 to Doncaster for which no payment had been received.
8. Bell Canada submitted that the dispute between it and Doncaster centered on whether Doncaster was required to comply with the terms of its contract with Bell Nexxia for the provision of High Speed Access (HSA) service and Gateway Access Service (GAS).
9. Bell Canada argued that the dispute was really a ploy by Doncaster to avoid paying the charges that it was contractually bound to pay. Bell Canada submitted that there was no validity to any suggestion by Doncaster that HSA service and GAS should be charged at General Tariff item 5400 rates.
10. Bell Canada submitted that, pursuant to Article 7 of its Terms of Service, any deposit required from a customer could not exceed three months' charges for all services.
11. Bell Canada submitted that it had calculated the figure of \$300,000 by using the average current billing per month during the last six months of 2004. Bell Canada also submitted that an estimate of Doncaster's forward-looking billings based upon Doncaster's actual in-service quantities in January 2005 resulted in a figure of \$300,000 being reasonable as a deposit under the Terms of Service.
12. Bell Canada submitted that it had provided Doncaster with a 30-day notice of disconnection only following Doncaster's failure to provide the requested deposit of \$300,000 by 10 January 2005.
13. Bell Canada submitted that it had acted in a manner consistent with its Terms of Service in proceeding with the disconnection of Doncaster's services. Bell Canada submitted that it was clear that continuing to provide services to Doncaster in the absence of a security deposit would pose a substantial risk of further financial loss to Bell Canada.

**Doncaster's reply**

14. In its reply, dated 23 February 2005, Doncaster submitted that Bell Canada had no legal claim to any monies owing under the contract between Doncaster and Bell Nexxia since Bell Nexxia had ceased to exist as a corporate entity. Doncaster asserted that it had received services from Bell Canada only since 1 April 2003 and that Doncaster had no proof that Bell Canada had any legal claim to money owing for services delivered prior to that date.

15. Doncaster submitted that, due to unfair and inaccurate billing by Bell Canada, it had had to expend great effort to account for the undisputed amounts owed. Doncaster claimed that it had been making significant progress in its discussions with Bell Canada and was working to account for and pay undisputed amounts owed to Bell Canada.
16. Doncaster submitted that it had made a settlement offer to Bell Canada on 23 December 2004 and had made further unsuccessful efforts to get billing details from Bell Canada in order to audit Bell Canada's bills. Doncaster asserted that contrary to Bell Canada's submissions, its account with respect to undisputed charges had a credit balance of \$156,958.26 on 23 December 2004.
17. Doncaster repeated its assertion that the services it had purchased should be charged pursuant to Bell Canada's General Tariff item 5400/Tariff Notice 6622.
18. Doncaster argued that in seeking a deposit, Bell Canada was relying on something that was currently in an arbitration process, before the decision in that process had been made. Doncaster requested that the Commission rule on the merits of Bell Canada's demand for a deposit.

#### **Request for a stay**

19. In a letter dated 3 March 2005, following the receipt of a Commission staff letter dated 24 February 2005 that had expressed Commission staff's opinion that Bell Canada's request for a deposit was reasonable under the circumstances, Doncaster wrote to the Commission to reiterate its request for a Commission decision and to request a stay of Bell Canada's threatened disconnection of service pending resolution of its complaint on the merits.
20. The Commission also received comments from Bell Canada, dated 3 March 2005, with respect to Doncaster's stay request.

#### **Commission's analysis and determination**

21. The Commission has reviewed and carefully considered all of the material submitted by both Doncaster and Bell Canada.
22. The Commission considers that, regardless of any disputes over amounts which may be owed with respect to services provided prior to 1 April 2003 by Bell Nexxia, the record of this proceeding shows that Doncaster has not been making regular monthly payments for services rendered to it by Bell Canada in 2003 and 2004.
23. The Commission confirms that Bell Canada's Terms of Service do permit Bell Canada to require a deposit from a customer if the customer in question has an unsatisfactory credit rating due to payment practices in the previous two years and/or clearly presents an abnormal risk of loss.
24. The Commission considers that, based on the previous payment history, and the fact that the amounts at issue are significant, Bell Canada's position that Doncaster clearly represents an abnormal risk of loss is reasonable.

25. The Commission further considers that the \$300,000 figure for the deposit proposed by Bell Canada is reasonable under the circumstances since it is based on forecast usage by Doncaster for a three-month period at the rates specified in Bell Canada General Tariff items 5410 and 5420. The Commission notes that, pursuant to the Terms of Service, Doncaster may provide an alternative to the deposit, provided it is reasonable in the circumstances.
26. With respect to Doncaster's arguments on the applicability of Bell Canada General Tariff item 5400, the Commission notes that it addressed Doncaster's arguments in *Gateway Access Service and High Speed Access Service*, Telecom Order CRTC 2005-62, 17 February 2005 (Order 2005-62). The Commission notes that in Order 2005-62 it concluded that the ADSL access service available under Tariff Notice 6622 was different from the GAS and HSA services provided under General Tariff items 5410 and 5420.
27. In light of the above, the Commission **denies** Doncaster's application. Given this determination, the Commission finds that Doncaster's request for a stay of Bell Canada's disconnection of service is moot and does not need to be dealt with.

Secretary General

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*