Telecom Decision CRTC 2006-67

Ottawa, 5 October 2006

Telnet Communications – Application with respect to unbundled loops for digital subscriber line service providers

Reference: 8661-T27-200601973

The Commission ***denies*** *an application by Telnet Communications in which the company requested that the Commission direct Bell Canada to modify its tariffs with respect to the rate charged to digital subscriber line (DSL) service providers for unbundled loops for DSL service.*

Introduction

1. The Commission received an application by Telnet Communications (Telnet), dated 23 February 2006 and filed pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure*, in which it requested that the Commission direct Bell Canada to modify item 105 of its Access Services Tariff, or any other tariff item that the Commission deems just, with respect to the unbundled loop rate charged to digital subscriber line service providers (DSLSPs). Specifically, Telnet requested that unbundled loops obtained by DSLSPs be provided at a 50 percent discount to the approved Type A unbundled loop rate. Telnet submitted that, in doing so, the Commission would eliminate the competitive disadvantage that DSLSPs were facing as a result of the Commission's determinations in *Bell Canada – Gateway Access Service over dry loops*, Telecom Order CRTC 2005-415, 22 December 2005 (Order 2005-415).

Process

2. The Commission received Bell Canada's answer, dated 27 March 2006.

3. The Commission received comments from Xit télécom inc. on behalf of itself, Télécommunications Xittel inc., 9141-9077 Québec inc., and La Bande Passante Inc. (collectively, Xit télécom), dated 23 March 2006, and from MTS Allstream Inc. (MTS Allstream), dated 27 March 2006.

4. Telnet filed reply comments dated 27 March and 6 April 2006.

Background

5. In a letter dated 21 September 2000, the Commission directed the incumbent local exchange carriers (ILECs) to provide unbundled loops, the associated connecting links, and co-location to DSLSPs at the same rates and under the same terms and conditions as these were provided to the competitive local exchange carriers (CLECs). In *Digital subscriber line service providers' access approved for unbundled loops and co-location*, Order CRTC 2000-983, 27 October 2000, the Commission noted that its determinations in the above-noted letter were based on the fact that the ILECs were providing the DSLSPs with the same loops and connecting links as those that they were providing to the CLECs.

6. In Order 2005-415, the Commission also approved, with changes, Bell Canada's proposal to modify its General Tariff item 5410, Gateway Access Service (GAS) (item 5410), to allow GAS to be provisioned over dry loops. In this regard, the Commission directed Bell Canada to modify item 5410 to charge, in addition to its GAS rates, 50 percent of the approved Type A unbundled loop rate in all bands when providing GAS over dry loops, irrespective of whether the end-user was a business or residential customer.

7. In addition, the Commission directed Bell Canada to make High-Speed Access (HSA) service available over dry loops and to apply the modifications made to item 5410 in that Order to General Tariff item 5420, High Speed Access Service.

The application

8. Telnet submitted that while it agreed with the Commission's determination in Order 2005-415 that the unbundled loops used in conjunction with Bell Canada's GAS and HSA service would be priced at 50 percent of the approved Type A unbundled loop rate, this determination had placed DSLSPs at a competitive disadvantage to the dry loop customers of Bell Canada's GAS and HSA service.

9. In this regard, Telnet noted that DSLSPs had to pay 100 percent more for unbundled loops than the dry loop customers of Bell Canada's GAS and HSA service did, even though the loops provided to facilities-based DSLSPs were similar, if not identical, to the dry loops used by Bell Canada's GAS and HSA service customers.

10. Telnet further submitted that, as noted by the Commission in Order 2005-415, the unbundled loop tariff recovered, among other things, the cost of a fibre umbilical and integrated digital loop carrier (DLC) equipment. Telnet noted that the rates paid by DSLSPs recovered the cost of both the fibre umbilical and the DLC equipment, even though the loops they used to provide digital subscriber line (DSL) service made use of the copper loop facility only. Telnet submitted that, as such, DSLSPs should only be required to pay for the cost of the copper loop facility.

11. Accordingly, Telnet requested that the Commission issue an order directing Bell Canada to modify its tariffs so that the unbundled loops used by DSLSPs would be provided at a 50 percent discount to the approved Type A unbundled loop rate, consistent with the Commission's determinations in Order 2005-415 with respect to GAS and HSA service.

12. Telnet also submitted that the Commission needed to address the issue of access to loops at remotes and Outside Plant Interfaces (OPIs) by DSLSPs and/or CLECs, but conceded that the issue was beyond the scope of its application.

Bell Canada's answer

13. Bell Canada submitted that the Commission should deny Telnet's request. In this regard, Bell Canada submitted that Telnet had misunderstood the Commission's rationale for directing that users of GAS and HSA service be granted a 50 percent discount. Bell Canada submitted that the Commission had granted this discount because the Type A unbundled loop functionality was being recovered through multiple rate elements whenever the company

was using dry loops to provide GAS and HSA service. Bell Canada argued that the discount was required for users of GAS and HSA service to ensure that the company did not recover more than the existing Type A unbundled loop rate for the use of the underlying loop facilities from users of GAS and HSA service. Bell Canada submitted that since none of the functionality recovered via Type A unbundled loop charges was recovered through any other charges levied by the company on DSLSPs, the approved rate for Type A unbundled loops should be applied in full.

14. Bell Canada further noted that the Type A unbundled loops used by DSLSPs were, by Telnet's admission, similar, if not identical, to the dry loops used by the company's customers of GAS and HSA service. Bell Canada argued that granting Telnet's request would amount to granting an unfair advantage to DSLSPs vis-à-vis the company's customers of GAS and HSA service.

Xit télécom's and MTS Allstream's comments

15. Xit télécom supported Telnet's request that the Commission order Bell Canada to charge 50 percent of the rate for Type A unbundled loops to service providers offering DSL service to end-customers served from a metallic interconnection point. In this regard, Xit télécom submitted that, as Bell Canada had not argued that the Commission's determination in Order 2005-415 that the costs associated with the installation of copper loops accounted for only 50 percent of the unbundled loop rate for Bands A to C was erroneous, Bell Canada implicitly agreed with that determination.

16. Xit télécom also supported Telnet's request for access to loops at remotes and OPIs by DSLSPs.

17. In contrast, MTS Allstream submitted that Telnet's request should be denied. In this respect, MTS Allstream noted that Telnet's situation was similar to that of the DSLSPs and the CLECs that used unbundled loops to provide central office (CO) co-location-based voice and DSL services and were required to pay 100 percent of the unbundled loop rate, rather than to that of competitors subscribing to GAS and HSA service.

18. MTS Allstream argued that Telnet had misinterpreted both what the Commission had approved in Order 2005-415 and the rationale that the Commission had used as the basis for its determinations in that Order. MTS Allstream noted that Order 2005-415 dealt with services that used sub-loops from Bell Canada's remote sites provided to end-users, not the DSLSPs' and the CLECs' use of unbundled loops provided from Bell Canada's COs to end-users. MTS Allstream noted that Bell Canada considered the fibre umbilical connecting the remote to the wire centre to be part of GAS and HSA service when end-users were served from remotes. MTS Allstream further submitted that, as the 50 percent unbundled loop rate was established in Order 2005-415 to address situations in which either GAS or HSA service was provided over a dry loop, the cost of the fibre umbilical between a remote and the associated wire centre would be over-recovered if the unbundled loop rate were applied.

19. Finally, MTS Allstream noted that, while it did not support Telnet's application, it agreed that co-location-based DSLSPs were at a competitive disadvantage to Bell Canada and other ILECs with respect to the provision of DSL-based services, particularly when ILECs provided the services from remotes. MTS Allstream submitted that the shorter loop lengths associated with

Bell Canada's offering of DSL-based services in these instances provided Bell Canada with an advantage in terms of both service quality and addressable market. MTS Allstream submitted that, as Telnet noted, the issue of DSLSP and/or CLEC access to loops at remotes was long-standing. MTS Allstream submitted that, in its view, this issue could only practically be resolved through a cost-based, ILEC-provided, competitor DSL service. As such, MTS Allstream urged the Commission to complete its review of the proper classification and rate structure of the ILECs' competitor DSL services.

Telnet's reply comments

20. Telnet reiterated its position that DSLSPs like itself were forced to operate at a competitive disadvantage as a result of being unjustly required to pay the full Type A unbundled loop rate, despite the fact that DSLSPs only made use of copper loop facilities.

21. In response to Bell Canada's statement that Telnet did not understand the Commission's rationale for directing that the rates for the dry loops used by GAS and HSA service customers be discounted by 50 percent, Telnet reiterated its position that the dry loops used with GAS and HSA service were similar, if not identical, to the unbundled loops used by facilities-based DSLSPs.

22. In response to Bell Canada's argument that granting Telnet's request would result in granting a competitive advantage to Telnet vis-à-vis Bell Canada's dry loop customers, Telnet submitted that the loops that Bell Canada used to provision its DSL service to customers that did not subscribe to primary exchange service (PES) were metallic-only and, as such, did not make use of the fibre umbilical or the DLC equipment used for PES. Telnet argued that the only cost incurred by Bell Canada for these loops was that of the copper loop facility and that other costs that Bell Canada might have incurred to provide service over a copper loop facility were irrelevant to the cost of the copper loop facility itself.

23. Telnet submitted that DSLSPs like itself had other significant costs to provide service apart from the cost of unbundled loops. Telnet submitted that these costs were parallel in nature to the costs that Bell Canada incurred to provide its GAS or HSA service, whether these were provided on a dry loop basis or a shared facility basis (in which DSL service is provided on the same loop as PES).

Commission's analysis and determinations

24. The Commission notes Telnet's argument that, as a result of Order 2005-415, DSLSPs were placed at a competitive disadvantage, as they had to pay 100 percent more for unbundled loops than the dry loop customers of Bell Canada's GAS and HSA service, even though the loops used by DSLSPs were copper facilities only and were similar, if not identical, to the dry loops used by customers of Bell Canada's GAS and HSA service.

25. The Commission notes that in Order 2005-415 it determined the following:

- The portion of the unbundled loop associated with the fibre umbilical between a remote and the associated wire centre was part of the GAS and HSA service; and

- If the full unbundled loop rate was charged when GAS or HSA service was provided over a dry loop, the average cost of the fibre umbilical between a remote and the associated wire centre would be recovered twice by Bell Canada: once under the unbundled loop tariff and once under the GAS and HSA service tariffs.

26. Accordingly, in that Order, the Commission required that a GAS or HSA service customer only pay 50 percent of the average loop rate for the use of the portion of the loop not already recovered by the GAS or HSA service.

27. The Commission notes that, unlike Bell Canada's customers of GAS and HSA service whose service is provided over dry loops, DSLSPs such as Telnet make use of Type A unbundled loops and, in such cases, make use of the entire loop between the end-customer premises and the serving wire centre. In light of the above, the Commission considers that there is no issue of over-recovery by Bell Canada of the loop costs when the full approved rate for Type A unbundled loops is charged to DSLSPs.

28. In *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997 (Decision 97-8), the Commission determined that rates charged to competitors for unbundled loops were not to be varied according to the costs of unbundling a particular loop technology used in a particular location. In that Decision, the Commission first set out the rates for Type A and Type B unbundled loops. The Commission notes that the current rates for Type A unbundled local loops are based on the average costs within a rate band, where the average costs include the costs of copper distribution facilities, of copper feeder facilities, and of fibre umbilicals and DLC components that are used when a customer is served from a remote.

29. In light of the above, the Commission considers that Telnet's situation is not comparable to that of the GAS and HSA service customers.

30. The Commission considers that Telnet's request for a 50 percent discount for Type A unbundled copper loops used by DSLSPs is in effect a request to de-average loop rates and, thus, is in opposition to the Commission's policy set out in Decision 97-8.

31. Accordingly, the Commission **denies** Telnet's request that Bell Canada be directed to discount the rate it charges DSLSPs for unbundled loops for DSL service.

Other matters

Competitor DSL service

32. In regard to MTS Allstream's comments with respect to the issue of a cost-based rate for competitor DSL service, the Commission addressed this issue in *The Quebec Coalition of Internet Service Providers – Part VII application regarding Internet services*, Telecom

Decision CRTC 2006-49, 3 August 2006. In that Decision, the Commission denied a request by the Quebec Coalition of Internet Service Providers to reclassify the components of General Tariff item 5400, GAS, and HSA service that are currently classified as Category II competitor services to Category I competitor services. Accordingly, the Commission finds that MTS Allstream's comments on the issue are moot.

Access to remote loops

33. The Commission notes that Telnet and Xit télécom raised the issue of access to loops at remotes and OPIs, although Telnet acknowledged that the issue was outside the scope of its application.

34. The Commission finds that this issue was outside the scope of this proceeding and notes that it is before the Commission in the proceeding related to Bell Canada Tariff Notice 6622 – Asymmetric Digital Subscriber Line Access Service.

Secretary General