



Telecom Decision CRTC 2010-501

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Ottawa, 22 July 2010

Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application regarding proposed changes to competitor digital network provisioning time frames

File number: 8660-B54-200913865

In this decision, the Commission approves, with modifications, Bell Aliant and Bell Canada's request to revise service intervals for competitor digital network DS-1 service. The Commission also denies the companies' request to review and vary Telecom Decision 2009-514. As a result, the request for a stay of Telecom Decision 2009-514 is moot.

Introduction

1. The Commission received an application by Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies), dated 14 October 2009, requesting
 - that the Bell companies' current competitor digital network (CDN) DS-1 service intervals¹ be revised, consistent with the provisioning intervals used to provide similar retail services;
 - that, if their proposed revised service intervals are approved, paragraphs 19, 23, and 30 of Telecom Decision 2009-514 be rescinded;
 - that, if their proposed revised service intervals are denied, the implementation date of the Commission's directives in Telecom Decision 2009-514 be varied and the determination in paragraph 23 of that decision be rescinded; and
 - that the Commission stay its directives in paragraphs 19, 23, and 30 of Telecom Decision 2009-514 regarding the provisioning intervals to be used for CDN DS-1 service whenever line cards or conditioning is required prior to providing service, until the Commission renders a ruling on the Bell companies' application.

¹ Refers to the provisioning service intervals for CDN DS-1 service in the Bell companies' operating territories in Ontario and Quebec.

2. The Commission received comments from MTS Allstream Inc. (MTS Allstream) and TELUS Communications Company (TCC). The public record of this proceeding, which closed on 22 March 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.
3. The Commission considers that the Bell companies' request for a stay is moot, given that it is disposing of their application in this decision.
4. The Commission has identified the following issues to be addressed in this decision:
 - I. Should the service intervals for provisioning CDN DS-1 service be revised as proposed by the Bell companies?
 - II. Is there substantial doubt with respect to the determinations in Telecom Decision 2009-514?
- 1. Should the service intervals for provisioning CDN DS-1 service be revised as proposed by the Bell companies?**
5. In their application, the Bell companies noted that the service intervals to provide a CDN DS-1 service are 8 business days for unchannelized service and 10 business days for channelized service, as approved in Telecom Decision 2006-34.
6. The Bell companies submitted, however, that these CDN DS-1 service intervals only reflect the service delivery intervals provided to retail and wholesale customers for provisioning scenarios where the loop length is short. The Bell companies submitted that these scenarios are only a subset of all possible provisioning scenarios and are therefore inconsistent with the Commission's guiding principle that the CDN service intervals mirror those provided to each incumbent local exchange carrier's (ILEC) retail customers for similar services.
7. The Bell companies submitted that the same provisioning process is used to provide CDN and other similar data services to wholesale and retail customers.
8. The Bell companies proposed that current mandated CDN DS-1 service intervals be revised, consistent with the provisioning intervals used to provide similar retail services, as set out in the following scenarios:
 - Scenario 1: Unchannelized short loops (generally under 1.5 kilometres (km)) – 8 business days
 - Scenario 2: Channelized short loops (generally under 1.5 km) – 10 business days
 - Scenario 3: Testing required (where decibel (db) loss on theoretical circuit exceeds 15 db) – 13 business days

- Scenario 4: Single repeater case or line card in field required – 13 business days
 - Scenario 5: Multiple repeater case or multiple line cards in field required – 19 business days
 - Scenario 6: No copper or fibre facilities available or complex job required – service interval negotiated on a case-by-case basis
9. TCC submitted that, while the Bell companies' proposed intervals are not necessarily readily applicable in TCC's operating territory, the service provisioning intervals of 13 and 19 days as proposed by the Bell companies were reasonable.
 10. MTS Allstream stated that Bell Canada had proposed the current service intervals of 8 and 10 days for CDN DS-1 service in 2005, attesting that the intervals were consistent with those service intervals provided to Bell Canada's retail customers. MTS Allstream stated that the Bell companies are now claiming that, where facilities are available, provisioning intervals of up to 19 business days are required in order to be consistent with those provided to retail customers. MTS Allstream submitted that it was unable to reconcile the Bell companies' conflicting claims.
 11. With respect to the proposed scenarios, MTS Allstream submitted that the activities described by the Bell companies do not require the additional time requested. MTS Allstream argued that there is no justification for extending the service intervals to accommodate testing for db loss or the installation and testing of a single repeater case or line card in the field.
 12. MTS Allstream submitted that the Commission should look at retail intervals not only for digital network access (DNA) or private-line services in determining service intervals for CDN, but also for other services like Internet Protocol/virtual private network (IP/VPN), in order not to disadvantage competitors.

Commission's analysis and determinations

13. The Commission notes MTS Allstream's position that it is important to examine retail intervals for DNA or private-line services as well as for other services like IP/VPN. The Commission considers, however, that the provisioning intervals for the Bell companies' CDN DS-1 access facilities should not be determined by the type of service for which their wholesale or retail customers intend to use the facility as an input but rather by the specific provisioning activities required.
14. The Commission accepts the Bell companies' submission that their original proposed service intervals, which were approved in Telecom Decision 2006-34, do not properly reflect the work required to provision longer loops and that certain activities justify longer service intervals to provision CDN DS-1 service than were originally approved. Further, the Commission notes that the proposed service intervals are consistent with those applicable to the Bell companies' retail services.

Therefore, the Commission considers that it is appropriate to approve revised service intervals for CDN DS-1 service, as set out below.

15. In scenario 1, the Bell companies proposed a service interval of 8 business days for an unchannelized loop. The Commission notes the Bell companies' submission that all the activities required to provision a loop of under 1.5 km in length would be completed within the 8 business days, including a final end-to-end test and the installation of any line cards required. The Commission finds a service interval of 8 business days for the activities set out in scenario 1 to be appropriate.
16. The Commission notes that in scenario 2, in addition to the activities identified in scenario 1, the Bell companies submitted that channelization equipment is ordered, installed, and tested. The Bell companies proposed two additional business days for these activities. The Commission considers that a 10-day provisioning period is justified where all the activities required to provision a channelized loop of under 1.5 km in length, including a final end-to-end test, are performed. Accordingly, the Commission finds a service interval of 10 business days for the activities set out in scenario 2 to be appropriate.
17. The Commission notes that in scenario 3, in addition to the activities in scenarios 1 and 2, the Bell companies submitted that identification and testing of acceptable loops where theoretical db loss is predicted to exceed 15 db may also be required. In scenario 4, in addition to the activities in scenarios 1, 2, and 3, the Bell companies submitted that a single repeater and/or a single field line card may need to be installed and tested. The Commission considers that on some loops, it is necessary to install a repeater or field line card and then test the circuit. The Commission also considers that the additional activities described in scenarios 3 and 4 justify a service interval of 13 business days. Accordingly, the Commission finds a service interval of 13 business days for the activities set out in scenarios 3 and 4 to be appropriate.
18. In scenario 5, in addition to the activities in scenarios 1, 2, 3, and 4, the Bell companies submitted that additional provisioning time is required in cases where multiple repeater cases and field line cards are required. The Commission notes that it is necessary on some loops to install multiple repeaters or field line cards and then test the circuit, but considers that the Bell companies have failed to justify that an additional six business days are required for that purpose. The Commission considers that allowing for an additional two business days to complete these activities would be reasonable. Accordingly, the Commission finds a service interval of 15 business days for the activities set out in scenario 5 to be appropriate and notes that no other ILEC has a longer service interval.
19. In light of the above, the Commission **approves**, for the Bell companies operating in Ontario and Quebec, modified service intervals for the provision of CDN DS-1 service, as described above. These modified service intervals are effective as of the date of this decision.

20. With respect to scenario 6, the Commission notes that the Bell companies proposed to allow negotiated intervals in cases where the activities required to provision the CDN DS-1 service could be described as a “complex job” as well as in situations that qualify as “no facilities available” (NFA) situations. The Commission notes that the term “complex job” is not defined and is open to various interpretations. Given this absence of certainty, the Commission **denies** the Bell companies’ request to adopt proposed scenario 6. The Commission notes that the NFA claim remains available to the Bell companies in situations where the provisioning activities meet the definition of an NFA situation.

II. Is there substantial doubt with respect to the determinations in Telecom Decision 2009-514?

a) *Was there an error in law based on the argument that the Bell companies had not been given reasonable notice?*

21. The Bell companies submitted that the Commission’s determination in paragraph 23 of Telecom Decision 2009-514 with respect to the installation of line cards in remote terminals and end-customer premises constitutes an error in law because they were not given reasonable notice that these issues were being considered by the Commission.

22. The Bell companies submitted that, in process letters dated 15 January and 27 April 2009 related to an 18 December 2008 application by MTS Allstream regarding NFA situations,² the Commission defined the scope of the issue of “no facilities” with respect to line cards as being explicitly limited to situations where line cards are required in the serving central office (CO).

23. MTS Allstream submitted that there has been no error in law in Telecom Decision 2009-514, as the letter of 27 April 2009 provided clear wording from the Commission that the activities or circumstances that would or would not justify an NFA claim were within the scope of the proceeding to deal with MTS Allstream’s application.

Commission’s analysis and determinations

24. In its 27 April 2009 letter, the Commission reopened MTS Allstream’s application, inviting parties to comment on the application and to

- a) propose a clear definition, with supporting rationale, of a “no facilities available” situation that is consistent with the Commission’s findings in paragraph 59 of Telecom Decision 2006-34; and

² File number 8660-M59-200816994: MTS Allstream Inc. – Application concerning provisioning of competitor digital network services in accordance with competitor quality of service standards

- b) provide, in support of the proposed definition in a) above, a list of activities/circumstances that would and would not justify a “no facilities available” claim by an ILEC in response to a request for CDN service.
25. The Commission notes that the 27 April 2009 letter did not limit the scope of the proceeding to line cards required in serving COs.
 26. The Commission notes that in response to that letter, the Bell companies, among other things, described the steps taken following a competitor request involving the installation of a field line card.
 27. In light of the above, the Commission concludes that the Bell companies have failed to demonstrate an error in law in the Commission’s determination in paragraph 23 of Telecom Decision 2009-514 that the installation of line cards at remote terminals and end-customer premises does not justify an NFA claim.

b) Was there an error in fact with respect to the determination in paragraph 23 of Telecom Decision 2009-514?

28. The Bell companies submitted that the Commission made conclusions regarding the provisioning of line cards at remote terminals and end-customer premises based on statements regarding the provisioning of line cards at serving COs, and as a result committed an error in fact. Specifically, they submitted that the Commission’s determination in paragraph 23 of Telecom Decision 2009-514 regarding line cards was based upon an incorrect interpretation of statements attributed to Saskatchewan Telecommunications (SaskTel).
29. The Bell companies noted that, in paragraph 20 of Telecom Decision 2009-514, the Commission stated: “SaskTel submitted that the installation of a line card is not subject to significant business case review and does not justify an NFA claim.” The Bell companies further noted that, in paragraph 23 of that decision, the Commission determined that “the installation of line cards, whether in the serving CO, remote terminal, or at end-customer premises, does not justify an NFA claim.”
30. The Bell companies stated that they could not find any statements by SaskTel in the proceeding leading to Telecom Decision 2009-514 regarding the provisioning of line cards at remote terminals or at end-customer premises. The Bell companies submitted that the record indicates that SaskTel in fact confined its statements regarding line cards to those instances where line cards would be required in the serving CO.
31. MTS Allstream submitted that there was no evidence that the Commission had committed an error in fact, as the Commission had undoubtedly weighed the comments of all parties, as well as the expertise of its own staff, in arriving at its conclusion.

Commission's analysis and determinations

32. The Commission notes that the reference to SaskTel's submission was included in the decision as a position of one party and did not form the basis upon which the Commission reached its determination. Further, the Commission notes that it made its determination based on the complete record of the proceeding.
33. The Commission concludes that the Bell companies have failed to demonstrate an error in fact regarding the determination in paragraph 23 of Telecom Decision 2009-514 that the installation of line cards at remote terminals and end-customer premises does not justify an NFA claim.
 - c) ***Is there otherwise substantial doubt with respect to the determinations and the implementation timelines in paragraphs 19, 23, and 30 of Telecom Decision 2009-514?***
34. The Bell companies argued that the evidence submitted in support of their proposal to revise service intervals raises substantial doubt as to the correctness of the determinations, and the timelines to implement those determinations, contained in paragraphs 19, 23, and 30 of Telecom Decision 2009-514 regarding the provisioning of CDN DS-1 service when conditioning is required on aerial plant or when line cards are required. The Bell companies argued that their proposed service intervals are based on the long-standing principle that wholesale customers be treated the same as retail customers for similar services.
35. The Bell companies noted that changes to their systems, methods, and procedures would be necessary to implement the Commission's determinations and directives because their current retail and wholesale provisioning processes do not differentiate between cases where conditioning is required on aerial and non-aerial plant, since such a distinction had not existed prior to the release of Telecom Decision 2009-514. The Bell companies submitted that the implementation of the Telecom Decision 2009-514 determinations and directives would be costly and would take four months.
36. MTS Allstream submitted that in Telecom Decision 2009-514, the Commission merely applied the NFA rule established in Telecom Decision 2006-34, and that the Bell companies had had since May 2006 to implement any changes.
37. MTS Allstream also submitted that there is no relationship between the appropriate provisioning intervals where facilities are available and rules pertaining to when facilities are not available. MTS Allstream submitted that by failing to establish such a relationship, the Bell companies had failed to establish substantial doubt regarding Telecom Decision 2009-514.

Commission's analysis and determinations

38. In Telecom Decision 2009-514, the Commission found that some ILECs were incorrectly applying the NFA definition to classify orders for CDN services as “no facilities available,” which allowed ILECs to negotiate delivery dates instead of meeting specific service intervals. In that decision, the Commission clarified which provisioning situations met the NFA definition.
39. The Commission considers that the Bell companies' arguments do not challenge the interpretation of NFA in Telecom Decision 2009-514, but merely defend the merits of their service interval proposal. The Commission considers that the revised service intervals proposed by the Bell companies apply to situations where facilities are available and do not raise substantial doubt with respect to its determinations in Telecom Decision 2009-514.
40. The Commission notes the Bell companies' argument that it would take four months and would be costly to implement the directives in Telecom Decision 2009-514. The Commission also notes that, in Telecom Decision 2009-514, it interpreted and applied, but did not change, the NFA definition. Therefore, the Commission considers that the changes that the Bell companies claim they have to make to their systems as a result of Telecom Decision 2009-514 are changes that they could have chosen to put in place coincident with the approval of the current service intervals for CDN DS-1 service.

Conclusion

41. In light of all the above, the Commission finds that the Bell companies have not raised substantial doubt as to the correctness of the determinations in Telecom Decision 2009-514. Therefore, the Commission **denies** the Bell companies' request to review and vary paragraphs 19, 23, and 30 of Telecom Decision 2009-514.

Secretary General

Related documents

- *MTS Allstream Inc. – Application concerning provisioning of competitor digital network services in accordance with competitor quality of service standards*, Telecom Decision CRTC 2009-514, 21 August 2009
- *Follow-up to Finalization of quality of service rate rebate plan for competitors*, *Telecom Decision CRTC 2005-20 – Service intervals for provisioning CDN services and Type C loops*, Telecom Decision CRTC 2006-34, 26 May 2006