



## Telecom Order CRTC 2011-78

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Ottawa, 9 February 2011

### Bell Canada – Digital Network Access service

File number: Tariff Notice 907 (NST)

#### Introduction

1. The Commission received an application by Bell Canada, dated 17 September 2010, proposing revisions to its National Services Tariff item 301, Digital Network Access (DNA).
2. Bell Canada proposed to clarify that the transport component of its DNA service can only be purchased and used with the access component of that service. The company submitted that its proposal reflects its current practice and, if approved, would eliminate potential ambiguity.
3. The Commission received comments from MTS Allstream Inc. (MTS Allstream) and Rogers Communications Partnership. The public record of this proceeding, which closed on 19 October 2010, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings" or by using the file number provided above.

#### Should the Commission approve Bell Canada's application?

4. Both MTS Allstream and Rogers Communications Partnership submitted that Bell Canada's proposal is contrary to the Commission's requirements in Telecom Decision 2005-6 since it would prevent competitors from purchasing a combination of DNA transport and competitor digital network (CDN) access from Bell Canada.
5. MTS Allstream submitted that Bell Canada's proposal is anti-competitive since it would force competitors to forfeit CDN access and replace it with more expensive DNA access in order to obtain DNA transport. MTS Allstream also submitted that if the Commission approved the proposal, the existing retail rates for intra-exchange channels would no longer serve as the upper limit for the forborne price of these channels.
6. In reply, Bell Canada submitted that the CDN access and transport requirements of Telecom Decision 2005-6 have been superseded by those of Telecom Decision 2008-17. It added that in Telecom Decision 2008-17, the Commission noted that there was a high incidence of self-supply or alternative supply of certain access and transport facilities and, therefore, it had classified a number of CDN services as non-essential subject to phase-out. Bell Canada submitted that it would be contradictory to apply a mandated access rule to such non-essential services.

7. Bell Canada submitted that it does not have the market power to increase prices to the extent suggested by MTS Allstream because there are alternative sources of access and transport services that serve to adequately discipline market prices.
8. Bell Canada noted that in Telecom Order 2010-756, the Commission denied a similar request by interveners that, if approved, would have extended mandated access to Wholesale Local Service and Features (WLSF), another non-essential service subject to phase-out by 3 March 2011, into the forbearance period.

### **Commission's analysis and determinations**

9. The Commission notes that it has always allowed competitors to mix and match wholesale and retail services. In Telecom Decision 2005-6, the Commission confirmed that a competitor may use any service included as part of CDN services in conjunction with other incumbent local exchange carrier (ILEC) services or non-ILEC services and facilities.
10. The Commission also notes that in Telecom Decision 2008-17, it classified CDN DS-0 and DS-1 access facilities as conditional essential services<sup>1</sup> not subject to phase-out. As well, the Commission specified the following phase-out periods for CDN services classified as non-essential: five years from the date of that decision for (a) DS-0 and DS-1 intra-exchange transport, (b) DS-3, OC-3, and OC-12 access, and (c) associated channelization; and three years from the date of that decision for all other CDN services.
11. The Commission considers that if it approved Bell Canada's proposal, competitors would not be able to mix and match the services that are not yet phased out – that is, CDN DS-3, OC-3, and OC-12 access – with Bell Canada's DNA DS-3, OC-3, and OC-12 transport immediately after the phase-out of the corresponding CDN transport services, as of 3 March 2011. Competitors would instead have to subscribe to DNA DS-3, OC-3, or OC-12 access even though the phase-out period for the corresponding CDN access services extends for an additional two years. This would shorten the phase-out period for CDN DS-3, OC-3, and OC-12 access from five years, as stipulated in Telecom Decision 2008-17, to three years.
12. The Commission further considers that if it approved Bell Canada's proposal, competitors would not be able to subscribe to Bell Canada's CDN DS-0 and DS-1 access services in conjunction with DNA DS-0 and DS-1 intra-exchange transport as of 3 March 2013, once the corresponding CDN transport services are phased out. The Commission notes that this would be contrary to its determination in Telecom Decision 2008-17 that CDN DS-0 and DS-1 access services would not be phased out.

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<sup>1</sup> Services in the conditional essential services category are those the Commission has determined conditionally meet the essential service criteria. The classification of these services will continue until it is demonstrated in an application that functionally equivalent wholesale alternatives are sufficiently present such that withdrawing mandated access would not likely result in a substantial lessening or prevention of competition in the relevant downstream market.

13. The Commission notes that in Telecom Order 2010-756, it approved applications by Bell Aliant Regional Communications, Limited Partnership and Bell Canada to replace the one-year automatic contract renewal condition for WLSF with a monthly renewal condition. This ensures that mandated access to WLSF services will not extend into the forbore period that begins in March 2011. The Commission notes that subscriptions to Bell Canada's CDN access service are only available on a month-to-month basis and considers, therefore, that there is no risk that mandated access will extend into the forbore period of each CDN access service after its respective phase-out period. Accordingly, the Commission considers that Bell Canada's argument in this regard is unfounded.
14. The Commission reiterates that a competitor may use any service included as part of CDN services in conjunction with other ILEC services or non-ILEC services and facilities.
15. In light of all of the above, the Commission **denies** Bell Canada's application. Regarding the company's submission that its proposal reflects its current practice of requiring competitors to purchase and use the transport component of its DNA service only in combination with its DNA access component, the Commission directs the company to cease this practice immediately.

Secretary General

#### **Related documents**

- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Wholesale Local Service and Features*, Telecom Order CRTC 2010-756, 13 October 2010
- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008
- *Competitor Digital Network Services*, Telecom Decision CRTC 2005-6, 3 February 2005, as modified by Telecom Decision CRTC 2005-6-1, 28 April 2006