



## Telecom Decision CRTC 2005-74

Ottawa, 21 December 2005

### **Bell Canada - Application to review and vary Telecom Decision CRTC 2005-6**

Reference: 8662-B2-200509250

*In this Decision, the Commission **denies** a request by Bell Canada that the Commission review and vary part of Telecom Decision CRTC 2005-6, 3 February 2005, to amend the effective date of the competitor digital network access service order charges from 3 February 2005 to 1 June 2002.*

#### **Background**

1. In *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002 (Decision 2002-34), the Commission concluded that there was a need for the incumbent local exchange carriers (ILECs) to develop a competitor digital network access (CDNA) service, and directed the ILECs to (1) issue interim tariffs, effective 1 June 2002, with respect to the access and link components of the CDNA service, and (2) to file proposed tariffs for final consideration, supported by cost studies. Among the rates to be set out in the issued interim tariff pages were interim rates for service order charges.
2. In Decision 2002-34 and in *Competitor Digital Network Access service proceeding*, Telecom Public Notice CRTC 2002-4, 9 August 2002, the Commission established follow-up processes to finalize the rates, terms and conditions, and components of the CDNA service.
3. In *Interim Competitor Digital Network Access service*, Telecom Decision CRTC 2002-78, 23 December 2002, the Commission directed the ILECs, among other things, to issue revised interim tariff pages for the CDNA service, reflecting, effective 1 June 2002, (1) the cost study rates for the access and link components, and (2) the cost study rates for the service order charges, where such rates were lower than the rates set out in the previously issued interim tariff pages. The Commission also directed the ILECs, and through the ILECs the competitors, to retain records, from 1 June 2002, that would permit the ILECs and competitors to account for the provision of CDNA services to competitors under their interim CDNA tariff, DNA tariff, and their tariff for digital interexchange services.
4. In *Competitor Digital Network Services*, Telecom Decision CRTC 2005-6, 3 February 2005 (Decision 2005-6), the Commission established on a final basis the rates, terms and conditions and components of the service which was referred to as the competitor digital network (CDN) service. With respect to access circuits that were CDNA-eligible during the period 1 June 2002 to 2 February 2005 inclusive, the Commission determined that the monthly recurring rates specified in Decision 2005-6 would be effective 1 June 2002. In that decision, the Commission approved an effective date of 3 February 2005 for the one-time CDN access service order charge.

## **The application**

5. The Commission received an application from Bell Canada, dated 3 August 2005, filed under section 62 of the *Telecommunications Act* and Part VII of the *CRTC Telecommunications Rules of Procedure*, to review and vary part of Decision 2005-6, to change the effective date for the one-time CDN access service order charges, from 3 February 2005 to 1 June 2002, the same effective date as the monthly CDN access service rates.

## **Process**

6. On 2 September 2005, the Commission received comments from MTS Allstream Inc. (MTS Allstream), Rogers Telecom Inc. (RTI) and TELUS Communications Inc. (TCI).
7. Bell Canada did not file reply comments.

## **Position of parties**

8. In its application, Bell Canada claimed that there was substantial doubt as to the correctness of Decision 2005-6 as a result of the Commission's failure to consider a basic principle which had been raised in the original proceeding, namely the level of mark-up associated with the CDN access service. Bell Canada also claimed that this rating treatment for CDN access service order charges created a fundamental inconsistency within Decision 2005-6 and further raised substantial doubt about the correctness of this part of the decision.
9. Bell Canada submitted that the Commission had failed to consider the interrelationship between costs and rates for the CDN access service during the period 1 June 2002 to 2 February 2005 (the interim period) when it made the access service order charges effective 3 February 2005, the date of Decision 2005-6.
10. According to Bell Canada, the implicit mark-up for CDN service, in its entirety, both during the interim period and on a going forward basis, consists of the mark-up embedded in both the one-time and recurring rate elements. Bell Canada submitted that, by making the revised recurring CDN access service rates effective 1 June 2002, but not the revised CDN access service order charges, the Commission had inadvertently lowered the mark-up for the CDN service for the entire period when interim rates were in effect.
11. Bell Canada submitted that, by failing to set the revised CDN access service order charges effective 1 June 2002, the Commission had acted in a manner inconsistent with its own practices in the CDN proceeding. Bell Canada indicated that, during the proceeding, whenever the Commission changed the interim rates for CDN service as a result of updated costs, the Commission approved the rate changes effective for both the recurring and service order rate elements effective 1 June 2002.
12. Bell Canada further submitted that the Commission had not provided any reason for approving the CDN access service order charges effective 3 February 2005 rather than 1 June 2002.
13. Bell Canada submitted that the Commission's rate treatment for the CDN access service order charges during the interim period had resulted in substantial losses for the company. In

Bell Canada's view, it should have been entitled to recover the CDN access service order charges at the rates approved in the decision effective 1 June 2002.

14. With the exception of TCI, the other parties argued that the Commission should deny Bell Canada's application.
15. TCI agreed that the effective date for the final CDN access service order charges was inconsistent with the effective date of other rate changes that were made as a result of updated costs.
16. TCI submitted that the Commission's determination to approve the CDN access service order charges effective 1 June 2002 had resulted in significant financial losses for TCI.
17. TCI stated that the interim CDN access service order charges were significantly lower than the final service order charges approved by the Commission in Decision 2005-6. TCI submitted that the interim CDN access service order charges for DS-0 and DS-1 services were below their approved Phase II costs.
18. TCI submitted that if the Commission approved Bell Canada's application, it should allow the ILECs, at their discretion, to draw down the funds in question from their respective deferral accounts rather than bill the customers of CDN service. TCI further submitted that drawing down from the deferral account for this purpose would be consistent with the utilization of the deferral account to compensate the ILECs for the revenue loss resulting from the implementation of CDN services.
19. MTS Allstream submitted that Bell Canada had overlooked the fact that cost-based rates for certain components of the CDN service, such as intra-exchange channels, only came into effect on 3 February 2005, and that this had resulted in competitors overpaying Bell Canada and other ILECs for these facilities, from at least 1 June 2002.
20. MTS Allstream further submitted that if the Commission were to accept Bell Canada's argument respecting consistency, all other components of CDN services, namely, access facilities that terminate at an ILEC central office, intra-exchange facilities, non-forborne metro interexchange facilities and channelization, should similarly reflect a common effective date of 1 June 2002 instead of 3 February 2005.
21. RTI submitted that in Decision 2005-6, the Commission had made determinations, some of which had a positive effect on competitors, others a negative one. In this regard, RTI submitted that Bell Canada had requested the Commission to reverse part of Decision 2005-6 which had a negative impact on Bell Canada, while ignoring other determinations which had a positive impact.
22. RTI submitted that in Decision 2005-6, the Commission had made each determination on the basis of an extensive proceeding to create a balance that best achieved the objective of advancing competition in Canada, while giving due consideration to the situations of the various stakeholders. Consequently, the overall balance established in Decision 2005-6 would be upset if one determination were to be varied in isolation.

23. RTI argued that Bell Canada's submission that the Commission had failed to consider the interrelationship between costs and rates, was based on a narrow view of one determination, among many, in Decision 2005-6. RTI was of the view that, if the Decision were assessed as a whole with the overriding basic principle of promoting facilities-based competition, Bell Canada's application should be denied.
24. RTI indicated that if the Commission approved Bell Canada's application, RTI reserved the right to request that other aspects of Decision 2005-6 be reviewed and varied.

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

25. The Commission notes that its practice is not to always approve rates on a final basis, effective the date of the interim disposition. In exercising its discretion whether to make rates retroactive in such circumstances, the Commission considers and weighs the advantages and disadvantages of doing so.
26. The Commission notes that in *Interim approval for revised unbundled loop-service order charges*, Decision CRTC 2001-694, 16 November 2001, it did not approve loop service order charges effective the date such rates had been made interim, i.e., 22 December 2000. In that decision, the Commission approved service charge levels for numerous rate elements. The Commission notes that with respect to that proceeding, retroactive billing adjustments would have applied over a 13-month period, and considers that approving rates retroactively in that case would have involved many manual inputs and processes with a high potential for disputes.
27. The Commission notes that in Decision 2005-6, among other things, it considered a significant number of rate elements associated with the five CDN service components.<sup>1</sup> The Commission established separate service order charges and recurring rates for each CDN service component provided in each of nine different operating territories. For some service components, such as DS-0 access service, the Commission required that separate rates be established for up to seven rate bands. For other service components, such as intra-exchange services, the Commission established separate rates for up to five different transmission speeds. Given the significant number of separate service order charges and recurring rates that were established, and given that the Commission was required to consider a considerable number of other issues, many of which were significantly complex, explanations were not provided for the effective date of the approved rates, including the effective date for the CDN access service order charges.
28. The Commission considers that in this proceeding, approval of retroactive rate adjustments, as requested by Bell Canada, would involve numerous activities requiring manual intervention for both the ILECs and the CDN service customers. More specifically, such activities would be required to apply to five possible rate elements covering a 32-month period, with, in the Commission's view, a high potential for disputes. The activities in question would include: (a) each ILEC contacting its CDN service customers to confirm its record of CDNA-eligible service orders and the associated rate adjustments, (b) verification and confirmation by

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<sup>1</sup> CDN access, intra-exchange facilities, metropolitan interexchange facilities, channelization facilities and co-location links.

CDN service customers that the orders were in fact made and are CDNA-eligible, and (c) verification by the CDN service customers that the associated dollar amounts of the rate adjustments are accurate.

29. The Commission further considers that corporate acquisitions that have taken place during the interim period would make the application of retroactive billing adjustments over the 32-month period even more difficult.
30. In regard to interim CDN access service order charges for DS-0 and DS-1 services being below their approved Phase II costs, the Commission notes that rates for these charges were set equal to the corresponding retail DNA service order charges. The Commission further notes that when each of these service order charges are considered with their matching recurring rate element, the rates for the combined rate elements recover the associated costs over the applicable economic study periods.
31. With respect to TELUS's suggestion that the ILECs be allowed, at their option, to be compensated from their deferral accounts instead of billing competitors for the retroactive rate increases, the Commission considers that permitting the ILECs to choose whether or not to bill competitors would not be appropriate.
32. In light of the above, the Commission finds that there is no substantial doubt as to the correctness of Decision 2005-6 with respect to the effective date of the CDN access service order charges and, therefore, **denies** Bell Canada's application.

Secretary General

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