



Telecom Order CRTC 2005-415

Ottawa, 22 December 2005

Bell Canada

Reference: Tariff Notice 6862

Gateway Access Service over dry loops

1. The Commission received an application by Bell Canada, under Tariff Notice 6862 (TN 6862), on 31 March 2005, proposing to modify General Tariff item 5410, Gateway Access Service (GAS), to allow the service to be provisioned over dry loops¹. Bell Canada proposed a loop charge equivalent to the rate for an unbundled local loop (unbundled loop), assessed as a Type A unbundled loop as set out in Access Services Tariff item 105.4, Local Network Interconnection and Component Unbundling.
2. The Commission approved TN 6862 on an interim basis in *Bell Canada - Gateway Access Service*, Telecom Order CRTC 2005-144, 15 April 2005.
3. Comments were received from Istop.com (Istop) on 5 April 2005, the Coalition of Quebec ISPs (the Coalition) on 15 April 2005, the Independent Members of the Canadian Association of Internet Providers (IMCAIP) on 2 May 2005, MTS Allstream Inc. (MTS Allstream) on 2 May and 20 May 2005, and AOL Canada Inc. (AOL) on 19 May 2005. Reply comments were received from Bell Canada on 30 May 2005.
4. Comments made by Doncaster Consulting Inc. relating to the pricing of unbundled loops and of retail Internet services provided over unbundled loops on the record of its Part VII application regarding Bell Canada's naked digital subscriber line (DSL) service, dated 11 April 2005, were considered as part of the record of this tariff application.

Positions of parties

Comments

5. Istop and the Coalition submitted that an increasingly large portion of Bell Canada's asymmetric digital subscriber line (ADSL) installations used sub-loops, from a remote site to the end-user, as opposed to an unbundled loop from the wire centre to the end-user. Istop and the Coalition submitted that, consequently, the rate for a sub-loop should be lower than the rate for the full unbundled loop.

¹ Commission notes that for the purpose of this tariff application, a dry loop is defined as an unbundled local loop which is not used for primary exchange service.

6. IMCAIP indicated concern over Bell Canada's pricing practices in the retail market for high speed Internet services. IMCAIP noted that Bell Canada customers that subscribed to the Sympatico Lite high-speed Internet service and that were not primary exchange service (PES) customers were charged \$10 for the unbundled loop, whereas customers of the regular high-speed Internet service that were not PES customers did not pay this \$10 fee.
7. The Coalition submitted that when combining the Internet service provider's (ISP's) business costs, unbundled loop rates, and GAS access rates, the total costs incurred by ISPs far exceeded the retail rates charged by Bell Canada, resulting in a retail price squeeze.
8. AOL was of the view that ISPs should not be charged an unbundled loop access rate when the end-user did not subscribe to PES. AOL noted that in *Terms and rates approved for large cable carriers' higher speed access service*, Order CRTC 2000-789, 21 August 2000 (Order 2000-789), the Commission stated that ISPs would not be required to pay an additional amount to a cable company if the ISP's end-user did not subscribe to the cable company's basic cable service.
9. The Coalition submitted that the GAS tariff did not prevent Bell Canada from offering additional services over the unbundled loop, which was being paid for and used by a Coalition member to provide Internet service to a customer.
10. MTS Allstream submitted that Bell Canada had not proposed a similar revision to the High-Speed Access (HSA) service, which would allow HSA service to be used in conjunction with dry loops. MTS Allstream requested that the Commission direct Bell Canada to implement an unbundled loop option for HSA service.
11. IMCAIP submitted that Bell Canada would not provide GAS over unbundled loops for business end-users. IMCAIP noted that Bell Canada's GAS tariff did not indicate restrictions on who could use unbundled loops in conjunction with the service.

Reply comments

12. With regard to the rate being charged for dry loops, Bell Canada noted that the GAS service required a separate facility to transmit information to and from the competitors' end-users. Bell Canada further noted that it had not included any costs of this facility in the rates established for GAS. Bell Canada also noted, for clarification, that dry loops and Type A unbundled local loops provided the same functionality, and that the same physical facilities were used to provision unbundled loops and dry loops. Bell Canada submitted, therefore, that it was appropriate to charge unbundled loop rates to competitors wishing to combine dry loops with GAS in order to provide a competitor retail Internet service.
13. With respect to retail pricing and retail price squeezing, Bell Canada noted that its retail Internet service was priced at market rates in recognition of the highly competitive nature of the retail Internet market. Bell Canada also noted that the Commission had forborne from regulating rates for retail Internet services. Bell Canada submitted that if it chose to charge a higher rate for any of its retail Internet services, as in the case of Sympatico Lite when the end-user did not have PES, this rate would remain forborne.

14. With regard to the exclusive use of a loop, Bell Canada noted that when a competitor required an unbundled loop in conjunction with GAS to provide Internet service to its end-user, the entire unbundled loop was provided to the competitor, and hence Bell Canada had no alternate use for it.
15. With respect to allowing HSA customers and business users to use dry loops, Bell Canada noted that, currently, dry loop capability could not be provided to business end-users, whether they were retail customers of Bell Canada or a competitor. Bell Canada submitted that it was currently in the process of modifying its ordering systems so that dry loops could be provided to business customers. Bell Canada stated that when this capability became available, it would amend the appropriate tariffs to enable competitors to order dry loops for business end-users.

Commission's analysis and determinations

16. The Commission notes that the demarcation point of Bell Canada's GAS is either at a wire centre or at a remote site. The Commission further notes that when the end-user is served by a remote, the fibre umbilical that connects the remote to the wire centre is considered by Bell Canada to be part of the GAS service. This is reflected in the wording of section 2(c), paragraph 2 of item 5410 of Bell Canada's General Tariff which states: "In the case of a remote location, the GAS Access includes the umbilical facilities required to transport ADSL traffic to/from the host wire centre serving the remote location." Additionally, the Commission notes that rates for unbundled loops in item 105.4 also include the costs for the fibre umbilical between the remote and the wire centre.
17. Based on the above, the Commission notes that the GAS tariff excludes the copper facility between a remote and an end-user but includes the cost of the fibre umbilical between a remote and a wire centre when GAS is provided through a remote. Therefore, the Commission concludes that when GAS is provided over a dry loop, the cost of the fibre umbilical between a remote and the associated wire centre would be recovered twice, once under the unbundled loop tariff, and once under the GAS tariff. The Commission also notes that unbundled loop rates include costs for integrated digital loop carrier equipment, which is specific to PES, and should therefore not be recovered in the case of GAS over dry loops. Accordingly, the Commission considers that Bell Canada should only recover the costs associated with the copper loop facilities and the associated maintenance in its rates for dry loops used to provide GAS.
18. The Commission has analyzed the costs for Bell Canada's Bands A through C that make up the unbundled loop rate (based on the underlying loop costs determined in *Restructured bands, revised loop rates and related issues*, Decision CRTC 2001-238, 27 April 2001) and determines that the copper loop facility-related costs represent approximately 50 percent of the unbundled loop rate in these bands.
19. The Commission notes that in Bell Canada's Bands D through F, the copper loop facility-related costs exceed 50 percent of the corresponding per-band unbundled loop rate. The Commission considers, however, that GAS at higher speeds (currently 5-6 Mbps) is only available to customers located within approximately 3 kilometres from the ADSL equipment. The Commission notes that these customers can only receive ADSL Internet services directly from a wire centre or sub-tending remote over short copper loops.

20. The Commission notes that over the past several years, Bell Canada has been deploying an increasing amount of remote locations containing ADSL equipment in order to serve a greater number of its retail customers with high-speed retail Internet services using ADSL.
21. The Commission therefore considers that in order to enable more customers to access Internet services using ADSL at all speeds, Bell Canada will continue to deploy additional ADSL equipment in either its wire centres or remote locations using additional fibre facilities. The Commission notes this would result in ADSL Internet services being provided on copper loop lengths that are, on average, shorter than the current per-band blended average. The Commission therefore considers that the average copper loop length for Bands D through F will decrease and, over time, approach the average copper loop length of Bands A through C.
22. The Commission considers that only the copper facility costs used for ADSL Internet services needs to be recouped, as previously discussed. The Commission considers that the copper portion of the unbundled loop costs associated with ADSL Internet service customers in Bands D through F should be less than the current per-band loop average cost (which includes costs for unbundled loops that are too long to support ADSL).
23. In light of the above, the Commission determines that 50 percent of the standard unbundled loop rate will provide sufficient cost recovery of the copper facility loop costs and associated maintenance in Bands A through F, where GAS is available or expected to be made available, and is provided over dry loops.
24. The Commission notes that certain competitors raised the issue of retail price squeezing, which occurs when an ISP's total costs exceed the rate at which Bell Canada offers its retail Internet service. The GAS rates approved in this Order for Bell Canada are one component of the total costs of an ISP providing retail Internet services. The Commission notes that the current regulatory framework contemplates that Bell Canada provides GAS as a Competitor Service at tariffed rates, while its retail Internet service rates are forborne, and therefore are not tariffed. The Commission notes this framework reflects the different competitive conditions in the markets for these services and further notes that the regulatory framework supports the approach taken in this Order. The Commission also notes that the issue of retail price squeezing is also currently before it in the Part VII application made on 18 November 2005 by the Coalition with respect to Bell Canada and the enforcement of *Forbearance from retail Internet services*, Telecom Order CRTC 99-592, 25 June 1999.
25. With regard to AOL's submission that Bell Canada should not charge ISPs for unbundled loops as a result of Order 2000-789, the Commission notes that the cable infrastructure is based on a shared architecture, and that there is no equivalent in the cable network to the incumbent local exchange carriers' unbundled loop. Consequently, the Commission considers that the principles established in Order 2000-789 do not apply to GAS provided over dry loops.
26. With regard to Bell Canada providing other services over a loop being paid for by a competitor, the Commission notes that under item 105.4, there is no assurance that the ISP would have exclusive use of the unbundled loop. The Commission notes, however, that Bell Canada stated that in the case of GAS being used with dry loops, it would provide the entire unbundled loop to the competitor and would have no alternate use for it. Accordingly,

the Commission determines that Bell Canada should state in its tariff pages for GAS and HSA service that Bell Canada will not offer additional services over an unbundled loop when GAS or HSA service is provided to a competitor over a dry loop.

27. The Commission notes that Bell Canada submitted that dry loops and Type A unbundled loops provided the same functionality, and that the same physical facilities were used to provision both services. The Commission further notes that competitors can order unbundled loops for business addresses and that Bell Canada has not identified any difference between dry loops and Type A unbundled loops. The Commission considers that Bell Canada has provided no rationale as to why business and residential customers of GAS and HSA service should not be able to receive these services over dry loops. The Commission therefore determines that all end-users of GAS and HSA service should have the ability to receive these services over dry loops.

Conclusion

28. The Commission **approves with changes** the application and directs Bell Canada to modify General Tariff item 5410 such that 50 percent of the approved Type A unbundled loop rate in all bands be charged in addition to Bell Canada's GAS rates when provided over dry loops, irrespective of whether the end-user is a business or residential customer. Additionally, the Commission directs Bell Canada to reflect, in the GAS tariff, its position that it will not offer additional services over an unbundled loop being used by a competitor for GAS when it is provided over dry loops. The Commission further directs that Bell Canada make HSA service available over dry loops and that the above modifications to item 5410 are to be made to General Tariff item 5420, High Speed Access Service.
29. Accordingly, the Commission directs Bell Canada to file revised tariff pages for GAS and HSA service within 30 days of the date of this Order, reflecting the Commission's determinations with respect to the rates, terms and conditions for unbundled loops to be used in conjunction with GAS and HSA service. The Commission notes that these revised rates will be effective the date of the approval of the revised tariff pages.

Secretary General

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