



Telecom Decision CRTC 2007-21

Ottawa, 5 April 2007

Bell Digital Voice Service

Reference: 8662-Q15-200512443
Bell Canada Tariff Notices 6899 and 6900

In this Decision, the Commission approves on a final basis Bell Canada Tariff Notice 6900, except for an aspect of Bell Canada's proposed tariff related to local number portability and subject to Bell Digital Voice service being included in the sub-baskets of residential optional services.

The Commission finds that Quebecor Média Inc. (QMI) did not establish substantial doubt as to the correctness of Bell Canada proposal for VoIP service pricing in Ontario and Quebec, Telecom Decision CRTC 2005-62, 20 October 2005 and, therefore, denies QMI's 31 October 2005 application to review and vary that Decision.

The Commission also approves Bell Canada's request to withdraw General Tariff item 7030, Bell Digital Voice.

Background

1. The Commission received an *ex parte* application dated 2 September 2005, under Tariff Notice 6899 (TN 6899), in which Bell Canada proposed an addition to General Tariff item 7030 to introduce Bell Digital Voice service for residential customers. The application was approved on an interim basis, effective 8 September 2005, in *Bell Canada – Ex parte application*, Telecom Order CRTC 2005-317, 6 September 2005 (Order 2005-317).
2. The Commission received a second *ex parte* application, also dated 2 September 2005, under Tariff Notice 6900 (TN 6900), in which Bell Canada proposed an addition to General Tariff item 7031 to re-introduce, with one modification, the service filed in TN 6899. Bell Canada stated that the service proposed under TN 6900 was intended to replace the service proposed under TN 6899 and that the two services were identical, with the exception that TN 6900 requested approval of rate ranges based on provincial boundaries.
3. Bell Canada requested the Commission's approval to withdraw the service described in TN 6899 coincident with the effective date of the approval of TN 6900. The company submitted that existing Bell Digital Voice customers would be seamlessly migrated from the service approved on an interim basis in Order 2005-317 to the service proposed in TN 6900 service, when the latter was approved.
4. In *Bell Canada proposal for VoIP service pricing in Ontario and Quebec*, Telecom Public Notice CRTC 2005-13, 9 September 2005, as amended by Telecom Public Notice CRTC 2005-13-1, 21 September 2005 (Public Notice 2005-13), the Commission invited comments on Bell Canada's request for distinct price ranges in Ontario and Quebec for a voice over Internet Protocol (VoIP) service.

5. In *Bell Canada proposal for VoIP service pricing in Ontario and Quebec*, Telecom Decision CRTC 2005-62, 20 October 2005 (Decision 2005-62), the Commission approved on an interim basis Bell Canada's TN 6900. In that Decision, the Commission noted that its determination to allow Bell Canada the ability to price its service differently in Ontario and Quebec was limited to the Bell Digital Voice service proposed in TN 6900.

Process

6. The Commission received comments regarding TN 6899 from Rogers Telecom Holdings Inc. (Rogers Telecom), dated 29 September 2005, and comments regarding TNs 6899 and 6900 from Quebecor Média Inc., on behalf of itself and its subsidiaries Vidéotron ltée and Videotron Telecom Ltd. (QMI), dated 3 October 2005. The Commission received reply comments from Bell Canada, dated 11 October 2005.
7. The Commission also received a complaint from QMI, dated 27 October 2005, alleging that Bell Canada was engaging in illegal targeted pricing and rate de-averaging within a band by limiting the availability of Bell Digital Voice service to certain urban centres. By Commission letter dated 1 November 2005, Bell Canada was requested to respond to QMI's complaint and to provide a detailed rollout plan for the service. Bell Canada responded to this request on 9 November 2005 and provided its service rollout plan in confidence on 21 December 2005.
8. The Commission received an application by QMI, dated 31 October 2005, filed pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure*, requesting that the Commission review and vary Decision 2005-62. QMI submitted that there was substantial doubt as to the correctness of Decision 2005-62 on the grounds that the Commission had erred when it concluded that Bell Digital Voice was a VoIP service.
9. By way of a letter dated 9 November 2005, Commission staff advised parties that since the proceeding related to TN 6900 was still ongoing, the matters raised by QMI in its Part VII application would be addressed when the Commission made its final determination regarding TN 6900.

Positions of parties

10. Rogers Telecom submitted that Bell Digital Voice was not a VoIP service and that there was no justification to treat it differently than any other proposal for a basic local service.
11. Rogers Telecom also submitted that Bell Canada's proposed tariff indicated that the service did not use a customer premises-based voice adapter, that the analogue-to-digital conversion was central office-based, and that power was provided by the central office. Rogers Telecom argued that this was how basic local service had been provided for the previous two decades or so, and while Bell Canada had indicated that the service used standardized Internet Protocol (IP) methods to transport voice features, there was no indication that the actual voice communication was transported over an IP network.

12. Rogers Telecom argued that the primary number, which is the customer's main telephone number used to originate and receive calls, was geographically based and operated in the same manner as a traditional local telephone number. Rogers Telecom also argued that the secondary number, which allows customers to receive calls in an exchange other than that of the primary number and is also geographically based, was treated in the traditional manner and that calls were forwarded to the user at the location of the primary number, which was the same functionality provided by Remote Call Forwarding service, which was not VoIP-based.
13. Rogers Telecom argued that the calling features included with Bell Digital Voice service were, for the most part, the same as those that were available with traditional basic service.
14. QMI agreed with Rogers Telecom's technical assessment of Bell Digital Voice service and submitted that, to its knowledge, all of the calling features offered with the service could be provisioned from a traditional central office switch complemented by a call-handling server with Advanced Intelligent Network capabilities. It also submitted that at no time did a given voice call need to be packetized into VoIP or transmitted as VoIP. QMI submitted, further, that a high degree of ambiguity prevailed regarding the precise involvement, if any, of VoIP technology in the Bell Digital Voice service offering.
15. QMI submitted that the cost study filed by Bell Canada in support of its proposal provided little or no useful information with which to establish the technical nature of Bell Digital Voice service. It also submitted that the cost study added to the confusion by providing evidence that the technical nature of the service would change 16 months into the study period.
16. QMI referred to notations in the cost study that identified that the tariffed rate for residential primary exchange service (PES) had been imputed for the first 16 months of the study and that the tariffed rate for local loops had been imputed for the last 36 months. QMI submitted that the transition from using PES to using local loops suggested a substantial network reconfiguration and called into question whether it was the same service before and after the transition. QMI questioned whether Bell Canada should be required to limit its initial cost study to its initial service, to be followed by a new cost study for its new service once the new service was ready to be launched.
17. QMI submitted that the Commission must undertake a thorough investigation of the technical nature of Bell Digital Voice service to ensure that its regulatory framework and tariff guidelines were not being circumvented. QMI argued that only after such an investigation was completed would the Commission be in a position to determine whether Bell Digital Voice was indeed a VoIP service versus just a new local service bundle.

Bell Canada's reply

18. In its 11 October 2005 response, Bell Canada stated that although several of the features offered with Bell Digital Voice service were similar to public switched telephone network features, there were important distinctions specific to Bell Digital Voice service that stemmed largely from the IP platform the company was using.

19. Bell Canada argued that its IP platform combined with a Web interface resulted in a service that was very different from traditional telephony. Bell Canada stated that unlike traditional telephone service, Bell Digital Voice features were enabled or made practical by the use of IP technology and could be controlled directly by the end-customer from a powerful Internet portal.
20. With regard to its cost study, Bell Canada noted that it was offering Bell Digital Voice with the same features throughout the whole study period, regardless of the underlying network configurations. Bell Canada argued that there was no service distinction before and after the transition to a new network configuration, and, accordingly, only one imputation test was required to demonstrate that the revenue from Bell Digital Voice service was sufficient to cover the costs associated with provisioning that service during the study period.
21. With regard to QMI's submission that the Commission should undertake a further public proceeding, Bell Canada argued that QMI was requesting that Bell Canada be required to disclose an unprecedented level of detail with respect to its technological solutions for Bell Digital Voice service. Bell Canada also argued that such information would be useful to competitors since it would provide insights into Bell Canada's future service capabilities and cost structures. It argued further that QMI's proposal would allow competitors to obtain competitively valuable information regarding Bell Canada's services that would not otherwise be available to them and to gain an advantage in the marketplace.

QMI complaint with respect to illegal targeted pricing and rate de-averaging within a band

22. In its 27 October 2005 complaint, QMI alleged that Bell Canada was illegally restricting the availability of its Bell Digital Voice service to the greater Montreal area, the greater Toronto area, and Hamilton.
23. QMI argued that there was nothing in Bell Canada's associated tariff that permitted Bell Canada to limit the availability of its service in this manner and nothing that suggested that the service would only be available in certain urban centres in Ontario and Quebec. QMI submitted that the only geographical limitation in the tariff regarding the availability of the service, and therefore the only limitation permitted, was that customers must be located in Ontario or Quebec.
24. In its 9 November 2005 response, Bell Canada stated that it was normal industry practice for services that required the deployment of new equipment and facilities to be made available typically as the required equipment and facilities were installed, and as the service provider ascertained whether demand for the service existed in any location.
25. Bell Canada argued that there was no illegal targeted pricing and rate de-averaging within a band as QMI had alleged, nor was the company limiting the availability of Bell Digital Voice service. Bell Canada also argued that it would be unreasonable to expect it to deploy a fully functional network to support a new service such as Bell Digital Voice across its entire territory all at once, in advance of service launch. Bell Canada stated that it had first introduced the service in the largest metropolitan areas in its incumbent local exchange carrier (ILEC) serving territory, and that it expected to launch the service in other areas in the coming months.

26. In its 17 November 2005 comments, QMI submitted that under section 25 of the *Telecommunications Act* (the Act), Bell Canada must provide its telecommunications services in accordance with an approved tariff. QMI also argued that if Bell Canada planned to rollout a service in its territory on an incremental basis, it must indicate this in its tariff application, explaining what those restrictions might be and why they were necessary. QMI stated that the only geographical limitation in the proposed Bell Digital Voice tariff was the requirement that customers must be located in Ontario or Quebec.
27. Bell Canada provided its detailed rollout plan to the Commission in confidence on 21 December 2005.

QMI Part VII application to review and vary Decision 2005-62

28. In its 31 October 2005 application, QMI submitted that there was substantial doubt as to the correctness of Decision 2005-62 on the grounds that the Commission had made an error of fact when arriving at its decision. It also submitted that, in particular, the Commission had erred when it concluded that Bell Digital Voice was a VoIP service. QMI stated that, as a result of this error, the Commission's analysis of Bell Canada's tariff application was flawed and the tariff approval inappropriate.
29. QMI stated that, by definition, a VoIP service involved the use of an IP network to carry telephone voice signals as IP packets, in compliance with the standards established by the International Telecommunications Union Standardization Sector (ITU-T).¹ QMI also stated that Bell Digital Voice service did not meet this definition.
30. QMI submitted that the Bell Digital Voice tariff did not state that the service carried voice signals as IP packets and did not characterize Bell Canada's managed network as an IP network. It submitted that, instead, it simply referred to the use of standardized IP methods to transport voice features as data packets. QMI further submitted that whatever the transportation of voice features as data packets might involve, it was not the transmission of voice signals as IP packets over an IP network, and, therefore, Bell Digital Voice was not a VoIP service.
31. QMI stated that Bell Digital Voice service was PES with bundled calling features, and that the rates and terms of access to the service must not involve unjust discrimination between Bell Digital Voice subscribers and other PES subscribers. QMI argued that a Bell Canada PES customer would have to pay significantly more than a Bell Digital Voice customer for the same set of services and that there was no justification for such rate discrimination. QMI also argued that Bell Digital Voice required customers to have Internet access, and because Bell Digital Voice was not a VoIP service, such a requirement was unnecessary and discriminatory against those consumers without Internet access at home.
32. QMI submitted that the Commission's assumption that Bell Digital Voice was a VoIP service, when it was not, constituted an error of fact that raised substantial doubt as to the correctness of Decision 2005-62 and gave rise to unjust discrimination, contrary to subsection 27(2) of

¹ QMI referred to *ITU-T H.323 – Packet-based Multimedia Communications Systems*.

the Act. QMI also submitted that a review of the Decision and withdrawal of interim approval of the Bell Digital Voice tariff was warranted, as was a reconsideration of Bell Canada TN 6900 on the basis of a proper characterization of the service.

Commission's analysis and determinations

33. In *Regulatory framework for voice communication services using Internet Protocol*, Telecom Decision CRTC 2005-28, 12 May 2005, as amended by Telecom Decision CRTC 2005-28-1, 30 June 2005 (Decision 2005-28), the Commission set out the details of the appropriate regulatory regime applicable to the provision of VoIP services.
34. In *Reconsideration of Regulatory framework for voice communication services using Internet Protocol*, Telecom Decision CRTC 2006-53, 1 September 2006 (Decision 2006-53), the Commission reaffirmed the regulatory regime for local VoIP services established in Decision 2005-28.
35. In Order in Council P.C. 2006-1314, dated 9 November 2006 (the Order in Council), the Governor in Council varied Decisions 2005-28 and 2006-53 in relation to the regulatory regime for retail local access-independent VoIP services. The Commission notes that Bell Digital Voice service is not an access-independent service.
36. Moreover, the Commission notes that it did not make its determination to grant interim approval to Bell Canada's application on the basis of whether or not Bell Digital Voice service was a VoIP service, or in consideration of the underlying technology used by Bell Canada to provide this service. Rather, in making its determination, the Commission relied on the following considerations:
 - the service was a bundle of local service and features;
 - the proposed rates passed the imputation test;
 - the proposed rate ranges were consistent with the Act;
 - price comparisons between the major cable companies' digital telephone service offerings in Ontario and Quebec indicated that these other carriers' digital telephone services were priced differently between, and within, Ontario and Quebec; and
 - the proposal for differential pricing would not result in rate de-averaging within rate bands in Ontario and Quebec.
37. As noted above, Bell Digital Voice service is a bundle of local service and features. Bell Digital Voice service is also available to Bell Canada's customers as an alternative to PES. The Commission considers it reasonable to expect that subscribers would realize a financial benefit when subscribing to the bundle, as compared to subscribing to the same set of services on an individual basis. With regard to the requirement for a customer to have access

to the Internet, the Commission notes Bell Canada's explanation that this allows customers to control feature functionality themselves, and that such a capability is not present with traditional telephony services.

38. The Commission considers that the aspect of Bell Digital Voice service being a bundle as discussed above distinguishes it from Bell Canada's PES, and thus that final approval of Bell Digital Voice service will not give rise to unjust discrimination between those who subscribe to that service and those who subscribe to Bell Canada's PES.
39. Accordingly, the Commission finds that QMI has not established substantial doubt as to the correctness of Decision 2005-62 giving rise to unjust discrimination. Therefore, the Commission **denies** QMI's 31 October 2005 application to review and vary Decision 2005-62.
40. With respect to Bell Digital Voice service being introduced on a limited basis, the Commission considers that it would not be reasonable to expect Bell Canada – or, for that matter, any other service provider – to deploy equipment and facilities in support of a new optional service on a universal basis throughout its entire operating territory coincident with the initial service launch. Rather, the Commission considers the usual practice for service providers to introduce new services in phases, based on availability of suitable facilities and customer demand, is reasonable in the circumstances.
41. The Commission is satisfied that Bell Canada's identified rollout plan represented a reasonable plan for the deployment of the equipment and facilities related to the introduction of Bell Digital Voice service in both Ontario and Quebec. The Commission finds that Bell Canada intended to roll out Bell Digital Voice service on a non-discriminatory basis and, therefore, determines that the company was not engaging in illegal targeted pricing and rate de-averaging within a band by initially limiting the availability of Bell Digital Voice service to certain urban centres.
42. In *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002 (Decision 2002-34) the Commission indicated that it did not anticipate that competition would be sufficient to discipline the ILECs' residential local exchange and residential optional local service rates during the second price cap period and, accordingly, those services would be subject to pricing constraints. The Commission noted that from the perspective of a residential customer, services that bundled a residential local exchange service or a residential optional local service with other telecommunications services were discretionary.
43. In view of this, the Commission found it appropriate to consider service bundles that included a residential local exchange service or a residential optional local service as an optional service. The Commission concluded that the sub-basket of residential optional local services would contain service bundles that included a residential local exchange service or a residential optional local service.
44. The Commission considers that Bell Digital Voice service is an optional service that bundles certain residential local exchange service functionality with optional features. The Commission determines that for price cap purposes, consistent with Decision 2002-34,

Bell Digital Voice service should be included in the sub-baskets of residential optional local services for non-high-cost serving areas or high-cost serving areas as appropriate, depending on the end-customer's exchange location.

45. The Commission notes that Bell Canada's proposal included provisions with respect to local number portability (LNP) that would allow customers to migrate their current telephone number to use as a primary telephone number for Bell Digital Voice service, and vice versa, where suitable facilities existed. Bell Canada did not, however, include provisions related to porting telephone numbers used as secondary numbers.
46. In Decision 2005-28, the Commission noted that in *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997, it had accorded certain rights, along with accompanying obligations, to local exchange carriers (LECs). It also noted that included among these obligations was the requirement that all LECs implement LNP. The Commission further noted that it considered that this ruling applied to LECs providing local VoIP services.
47. The Commission also examined the requirements for LNP for secondary numbers and denied a request for the removal of such requirements in Decision 2006-53.
48. The Commission notes that while Bell Canada's proposed tariff addresses porting telephone numbers to be used as primary numbers, no evidence was filed in this proceeding with regard to the customer demand and cost-effectiveness of implementing full LNP capabilities related to Bell Digital Voice service.
49. The Commission considers that further process is required to address matters regarding the extent to which LNP functionality must be supported for VoIP services, including:
 - implementation constraints, customer demand, and cost-effectiveness related to the support of LNP for secondary numbers;
 - different treatment for porting-in versus porting-out;
 - different treatment for in-territory numbers versus out-of-territory numbers; and
 - clarification with respect to Bell Canada's proposed tariff wording that indicates that LNP functionality is supported where suitable facilities exist.
50. In *Rate ranges for services other than voice over Internet Protocol services*, Telecom Decision CRTC 2006-75, 23 November 2006 (Decision 2006-75), the Commission set out guidelines with respect to applications involving rate ranges for services other than VoIP services, including the process to be followed when an ILEC changes operative price points within an approved rate range.

Impact of policy directive

51. The Governor in Council issued a Direction to the Commission, effective 14 December 2006, pursuant to section 8 of the Act with respect to the implementation of the Canadian telecommunications policy objectives set out in section 7 of the Act (the Direction).
52. The Direction states, among other things, that the Commission should rely on market forces to the maximum extent feasible and, when relying on regulation, use measures that are efficient and proportionate to their purpose. The Direction further states that the Commission, when relying on regulation, should use measures that satisfy certain criteria, including specifying the telecommunications policy objective that is advanced by those measures.
53. The Commission notes that Bell Canada's existing digital voice service is offered, on a tariffed basis, to customers in Bell Canada's serving territory. The present applications did not seek forbearance for this service, and thus tariff regulation applies. Accordingly, the Commission's reliance on regulation continues to be appropriate.
54. As noted above, one of the factors, still present today, upon which the Commission relied in order to grant interim approval to the tariff applications, was the fact that price comparisons between the major cable companies' digital telephone service offerings in Ontario and Quebec indicated that these other carriers' digital telephone services were priced differently between, and within, Ontario and Quebec. Further, as set out above, the Commission has found that Bell Canada's rollout plan is a reasonable one, and non-discriminatory, related to the introduction of the service. In light of these considerations, consistent with the Direction, the Commission is of the view that its determinations in this Decision do not deter economically efficient competitive entry, nor do they promote economically inefficient entry.
55. The Commission notes that it granted interim approval to the company's initial tariff applications, thus minimizing regulatory interference to the planned introduction of this IP-based service in the competitive marketplace as a bundled service that is distinct from, and an alternative to, Bell Canada's PES. The Commission considers that granting final approval to the tariff applications meets the requirements for reliance on market forces to the maximum extent feasible, within the context of tariff regulation. The approval granted in this Decision will advance the policy objectives, set out in sections 7a), b) and f) of the Act, of facilitating the orderly development in Canada of a telecommunications system that serves to strengthen the economic fabric of Canada; rendering reliable and affordable telecommunications services of high quality to Canadians; and ensuring that regulation, where required, is efficient and effective.

Conclusion

56. In light of the above, the Commission **approves on a final basis** Bell Canada TN 6900, with the exceptions noted below:
 - The Commission directs Bell Canada to assign Bell Digital Voice service to the sub-baskets of Residential optional local services for non-high-cost serving areas or high-cost serving areas as appropriate, depending on the end-customer's exchange location.

- Consistent with the Commission's determinations in Decision 2006-75, when Bell Canada establishes a new operative price point within an approved rate range, it is to issue revised tariff pages identifying the price point no later than the commencement of the business day that the new rate comes into effect. If the new rate is to come into effect on a non-business day, Bell Canada is to issue its revised tariff pages no later than the last business day immediately preceding the effective date.
 - The Commission's approval of the aspect of Bell Canada's proposed tariff related to LNP remains interim, as per Decision 2005-62.
57. The Commission notes Bell Canada's request that the service proposed in TN 6900 was to replace the service approved on an interim basis in Order 2005-317, and it **approves** Bell Canada's request to withdraw General Tariff item 7030, Bell Digital Voice.
58. The Commission intends to initiate a Public Notice to address matters regarding the extent to which LNP functionality must be supported for VoIP services.

Secretary General

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