



Telecom Order CRTC 2007-109

Ottawa, 5 April 2007

Bell Canada and Bell Aliant Regional Communications, Limited Partnership

Reference: Bell Canada Tariff Notice 6960
Bell Aliant Tariff Notice 11

Business IP Voice Standard service

In this Order, the Commission approves on a final basis Bell Canada Tariff Notice 6960 and Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) Tariff Notice 11, except for the aspects of Bell Canada's and Bell Aliant's proposed tariffs regarding local number portability related to the migration of customer telephone numbers.

Background

1. The Commission received an *ex parte* application dated 19 June 2006, under Tariff Notice 6960 (TN 6960), in which Bell Canada proposed to introduce General Tariff item 7026 – Business IP Voice Standard service, which included distinct price ranges for Ontario and Quebec. TN 6960 was approved on an interim basis, effective 10 July 2006, in *Bell Canada – Ex parte application*, Telecom Order CRTC 2006-171, 6 July 2006 (Order 2006-171).
2. The Commission also received a corresponding *ex parte* application dated 19 June 2006, under Tariff Notice 11 (TN 11), in which Bell Communications, now Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), proposed to introduce General Tariff item 7026 – Business IP Voice Standard service, for Ontario and Quebec. TN 11 was approved on an interim basis, effective 10 July 2006, in *Bell Communications – Ex parte application*, Telecom Order CRTC 2006-173, 6 July 2006 (Order 2006-173).

Process

3. The Commission received separate comments regarding TNs 6960 and 11 from MTS Allstream Inc. (MTS Allstream), each dated 31 July 2006. Bell Canada and Bell Aliant (collectively, the Companies) submitted reply comments dated 4 August 2006.

Positions of parties

4. MTS Allstream submitted that both proposals included provisions to eliminate termination penalties that would apply to a customer that migrated from Local Link Package and business primary exchange service (PES) to Business IP Voice Standard service, but that a customer that chose to migrate to the service of a competitor would incur significant penalties for terminating the service. MTS Allstream argued that the Companies were conferring an enormous advantage upon themselves by eliminating these penalties for customers that moved to Business IP Voice Standard service, but not for customers that moved to the service of a competitor.

5. MTS Allstream was of the view that if the Companies were allowed to continue to migrate their small and medium business customers to Internet Protocol (IP)-based services in this manner, it would only serve to further entrench their dominance with respect to this customer segment.
6. MTS Allstream submitted that repeated price increases had been imposed on the Companies' customers for Local Link Package and PES business services in 2005 to 2006 alone. It also submitted that because of the termination clauses embedded in their contractual agreements, customers had to incur all price increases or pay substantial monetary penalties for early cancellation of their contracts.
7. MTS Allstream noted that the Companies had requested approval of confidential rate ranges for Business IP Voice Standard service in Ontario and Quebec. MTS Allstream argued that given the ability of the Companies to impose significant rate increases on this customer segment, such pricing flexibility was unnecessary and would only serve to allow the Companies to further entrench their dominance in the small and medium business market.
8. MTS Allstream requested that the Commission only grant final approval to the Companies' proposals once the penalty provisions contained in the Local Link Package and PES business tariffs were modified to allow existing business customers to migrate from the Companies' existing services to either the proposed Business IP Voice Standard service or the service of another competitor.

Bell Canada's reply

9. Bell Canada responded that the proposed termination charge waiver in its Local Link Package, PES Business, and Business IP Voice Standard service tariffs would allow customers to migrate to Business IP Voice Standard service without obstacle. It submitted that this benefited existing Local Link Package and PES business customers by providing them the ability to migrate smoothly to an IP-based alternative.
10. Bell Canada stated that the Companies' General Tariffs contained numerous examples of similar arrangements whereby customers could migrate from one service to another without incurring early termination charges. Bell Canada stated that the proposed termination charge waiver was also similar to arrangements currently found within a number of MTS Allstream tariffs, such as its tariffs for National Centrex and IP Centrex.
11. Bell Canada submitted that provisions that enabled customers to replace one contract with another for a given supplier's services without incurring termination charges were commonplace in virtually every sector of the economy in which long-term contracts were offered. Bell Canada argued that the Companies were not conferring any form of undue or unreasonable preference upon themselves by not applying a termination charge for customers that migrated to Business IP Voice Standard service.
12. Bell Canada submitted that neither MTS Allstream nor any other competitor permitted its customers to terminate contracts in midstream in order to migrate to competitors' services. Bell Canada argued that adopting MTS Allstream's proposal would in effect render its contracts meaningless.

13. Bell Canada argued that Business IP Voice Standard service was a next-generation service designed to provide business customers with the inherent advantages of IP technology and that there was nothing inappropriate about it establishing incentives, such as termination charge waivers, to promote the adoption of new services.
14. Bell Canada submitted that MTS Allstream's comments that the Companies had stifled competition through successive local business market rate increases were groundless and, in any event, were outside the scope of this proceeding.
15. Regarding MTS Allstream's comments related to rate ranges, Bell Canada submitted that subsection 25(1) of the *Telecommunications Act* (the Act) contemplated the establishment of minimum and maximum limits for certain charges, each within a "range," and that it had demonstrated that the lowest rate in the range met the Commission's imputation test requirements.

Commission's analysis and determinations

16. Regarding the matter raised by MTS Allstream related to contract penalty provisions, the Commission notes that it has already addressed the same matter with respect to other services, for example in *Bell Canada and Bell Aliant Regional Communications, Limited Partnership – Centrex III and Enhanced Exchange-Wide Dial services*, Telecom Order CRTC 2006-281, 20 October 2006 (Order 2006-281).
17. In that Order, the Commission noted that the Companies' existing Centrex tariffs included provisions for the waiver of contract termination charges in a variety of circumstances, including migrations to other access services that were also subject to minimum contract periods. The Commission also noted that it had already determined that service provisions that allowed customers the flexibility to migrate contracted services to other contracted services without incurring termination charges were standard industry provisions. The Commission considered that encouraging customers to migrate to newer technology-based services was not anti-competitive. In addition, the Commission noted that similar provisions were included in the other incumbent local exchange carriers' (ILECs) tariffs, including MTS Allstream's. The Commission notes that the circumstances of the present case related to the issue of waiver of termination charges are the same as those dealt with in Order 2006-281, and consequently the Commission's reasoning and disposition of the matter in that case apply in the present case.
18. Regarding MTS Allstream's comments on the proposed confidential rate ranges, the Commission notes that subsection 25(1) of the Act states that:

No Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission that specifies the rate or the maximum or minimum rate, or both, to be charged for the service.
19. The Commission considers that approval of the Companies' proposals for minimum and maximum rates within which Business IP Voice Standard service would be priced is consistent with the Act, which allows the Commission to approve ranges of rates.

20. The Commission notes that the Companies' proposals included provisions with respect to local number portability (LNP) for telephone numbers used as primary or secondary telephone numbers for Business IP Voice Standard service, where suitable facilities existed within each company's respective footprint. The Companies did not, however, include provisions related to LNP for out-of-territory numbers.
21. 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 stated 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), and included among these obligations was the requirement that all LECs implement LNP. The Commission further stated that it considered that this ruling applied to LECs providing local voice over Internet Protocol (VoIP) services.
22. The Commission also examined the requirements for LNP for secondary numbers in *Reconsideration of Regulatory framework for voice communication services using Internet Protocol*, Telecom Decision CRTC 2006-53, 1 September 2006 (Decision 2006-53), and denied a request for the removal of such requirements.
23. The Commission notes that while the Companies' proposed tariffs address porting of in-territory telephone numbers, the Companies' tariffs are not compliant with the Commission's determinations with respect to LNP in Decisions 2005-28 and 2006-53. The Commission further notes, however, that no evidence was filed in this proceeding regarding the customer demand and cost-effectiveness of implementing full LNP capabilities related to Business IP Voice Standard service.
24. 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 the Companies' proposed tariff wording that indicates that LNP functionality is supported where suitable facilities exist.
25. The Commission notes that it set out guidelines with respect to applications involving rate ranges for services other than VoIP services in *Rate ranges for services other than voice over Internet Protocol services*, Telecom Decision CRTC 2006-75, 23 November 2006 (Decision 2006-75), including the process to be followed when an ILEC changes operative price points within an approved rate range.

26. In light of the above, the Commission **approves on a final basis** Bell Canada TN 6960 and Bell Aliant TN 11, except for the aspects of Bell Canada's and Bell Aliant's proposed tariffs regarding LNP related to the migration of customer telephone numbers. The Commission's approval of these aspects remains interim, as per Orders 2006-171 and 2006-173.
27. Consistent with the Commission's determinations in Decision 2006-75, when Bell Canada and/or Bell Aliant establish a new operative price point within an approved rate range, they are 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 and/or Bell Aliant are to issue revised tariff pages no later than the last business day immediately preceding the effective date.
28. 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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