



Telecom Order CRTC 2007-477

Ottawa, 12 December 2007

Bell Aliant Regional Communications, Limited Partnership

Reference: Tariff Notice 218 (Aliant Telecom)

Centrex Business Service, Business Communications Service, and Provincial Centrex Service

In this Order, the Commission approves Bell Aliant Regional Communications, Limited Partnership's application to offer customers the option to extend their current Centrex Minimum Service Periods (MSPs) by one-year increments up to a maximum equal to the length of the original Centrex MSP.

Introduction

1. The Commission received an application by Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), dated 20 November 2006, proposing revisions to the General Tariffs of Island Telecom Inc., item 697 – Centrex Business Service; Maritime Tel & Tel Limited, item 770 – Centrex Business Service; NBTel Inc., item 70.1 – Business Communications Service; and NewTel Communications Inc., item 190 – Provincial Centrex Service (collectively, Centrex or Centrex service).
2. Bell Aliant proposed to offer its customers the option of extending their current Centrex Minimum Service Periods (MSPs)¹ by one-year increments up to a maximum equal to the length of their original Centrex MSPs. Bell Aliant submitted that the extended Centrex MSP would be set at the prevailing rates, terms, and conditions associated with the customer's original Centrex MSP.
3. Bell Aliant submitted that extending Centrex MSPs would provide its customers with additional operating flexibility regarding their present and future business communication needs. The company argued that extending Centrex MSPs would allow customers to consider product and technological developments, such as voice over Internet Protocol services, while retaining their contract terms for the extended period.
4. The Commission received comments from Bragg Communications Inc., carrying on business as EastLink (EastLink). The record of this proceeding closed with Bell Aliant's reply comments dated 19 February 2007. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

¹ MSPs are referred to as Minimum Contract Periods in NBTel Inc.'s and NewTel Communications Inc.'s respective General Tariffs.

Issues

5. The Commission has identified the following four issues to be addressed in its determinations:
- Does the Policy Direction² apply to Bell Aliant's application?
 - Would Bell Aliant's application result in unjust discrimination and/or undue preference within the meaning of subsection 27(2) of the *Telecommunications Act* (the Act)?
 - Is Bell Aliant required to file an imputation test in support of its application?
 - What is the impact of the Policy Direction on Bell Aliant's application?

Does the Policy Direction apply to Bell Aliant's application?

Positions of parties

6. EastLink submitted that the Policy Direction applied only when the Commission developed new regulatory measures. The company argued that the Policy Direction did not apply in this case, as Bell Aliant's application could be disposed of with the existing regulatory measures provided by subsection 27(2) of the Act.
7. Bell Aliant noted that EastLink filed its original comments with the Commission on 14 December 2006, corresponding to the effective date of the Policy Direction. Bell Aliant submitted that, as such, the record of its application was open and in process with the Commission on that date.

Commission's analysis and determination

8. Section 2 of the Policy Direction states that the Policy Direction is binding on the Commission beginning on the day on which it comes into force and, consistent with subsection 11(3) of the Act, applies in respect of matters pending before the Commission on that day. The Commission considers, therefore, that the Policy Direction applies to Bell Aliant's application.

Would Bell Aliant's application result in unjust discrimination and/or undue preference within the meaning of subsection 27(2) of the Act?

Positions of parties

9. EastLink submitted that Bell Aliant's application would result in unjust discrimination for new customers who would pay higher Centrex rates than renewing customers who chose to extend their existing Centrex MSPs for an equivalent term commitment, contrary to subsection 27(2)

² *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the Policy Direction).

of the Act. In support of its position, EastLink referred to three orders³ in which the Commission denied tariff applications proposing contract extension offers on the basis that they would have resulted in unjust discrimination for certain customers.

10. EastLink also highlighted competitive equity concerns associated with Bell Aliant's application. EastLink argued that a customer who could simply extend a long-term contract by one-year increments at the prevailing rates associated with the customer's underlying MSP would be deterred from considering a competitor's service offerings. EastLink also argued that competitors' abilities to compete effectively would be hampered as they would be less able to offer short-term comparable rates without having had the benefit of a previous long-term commitment from the prospective customer.
11. Bell Aliant replied that it was erroneous to compare customers having previously completed a Centrex MSP and new customers. Bell Aliant submitted that customers opting to extend their current Centrex MSPs had already made a longer term commitment to acquire services from the company than new customers. Bell Aliant also submitted that, as no customer could qualify for the rates associated with a contract extension without having first purchased a long-term contract, the contract and the extension should be considered as one contract.
12. Bell Aliant referred to nine orders⁴ in which the Commission had approved applications dealing with contract extensions for National Centrex customers. Bell Aliant noted that these applications had all been approved soon after the introduction of local competition in Telecom Decision 97-8. The company indicated that in the intervening years, local competition had developed to a vigorous level across the country. Bell Aliant submitted that competitors had managed to gain a significant share of the business market in Atlantic Canada.
13. Regarding EastLink's competitive equity concerns, Bell Aliant submitted that its application would not prevent competitors from accessing the company's client base, as customers nearing the end of their original Centrex contracts would be free to contact – or be contacted by – competitors for their telecommunications needs.

Commission's analysis and determination

14. The Commission notes that, in Telecom Order 2007-205, it approved two applications that were subject to the Policy Direction, in which changes were proposed to Megalink contract provisions. The Commission notes that approval of the applications allowed customers, at the end of their long-term Megalink service contracts, to convert to longer term contracts and benefit from the reduced rate associated with the longer term for the balance of the time remaining on the converted contracts.
15. With respect to the orders referred to by EastLink, the Commission notes that they were issued before the Policy Direction came into force. As noted above, the Policy Direction mandates the Commission to rely on market forces to the maximum extent feasible. In light of the Policy Direction and the current competitive state of the market, the Commission is of the opinion that these previous orders have little bearing on the current proceeding.

³ Telecom Orders 2003-99, 2003-100, and 2005-76.

⁴ Telecom Orders 98-956, 99-292, 99-293, 99-294, 99-295, 99-299, 99-300, 99-330, and 99-412.

16. The Commission is of the view that existing customers that have been paying contracted Centrex rates to Bell Aliant have opted to make a longer term commitment to the company, relative to new customers, and have provided the company with the opportunity to recover its related sunk costs prior to the exercise of any contract extension option.
17. With respect to the competitive equity concerns raised by EastLink, the Commission notes Bell Aliant's submission that the proposed tariff revisions are intended to provide customers with greater flexibility and additional contract options after completion of a pre-existing Centrex MSP. The Commission further notes that all customers approaching the end of a Centrex MSP would be free to either sign a new contract with the company, opt for an extension to their existing Centrex MSP, or migrate to a competitor's service offerings.
18. The Commission is of the view that Bell Aliant's application would not result in unjust discrimination and/or undue preference given that i) there are relevant and significant differences between new customers and those previously committed to a Centrex MSP, ii) current and future customers will be informed of the possibility of extending their Centrex MSPs, and iii) competitors will have the opportunity to match Bell Aliant's Centrex services, or provide other non-tariffed Centrex contract options to attract customers.
19. Accordingly, the Commission finds that the present application would not result in unjust discrimination and/or undue preference as contemplated by subsection 27(2) of the Act.

Is Bell Aliant required to file an imputation test in support of its application?

Positions of parties

20. EastLink noted that Bell Aliant failed to file an imputation test in support of its application. The company argued that Bell Aliant's application could be denied on this basis alone, given that with the extension of a contract period, Bell Aliant would incur additional notice, negotiation, and implementation expenses not provided for in the company's original imputation test submitted in support of the existing tariffed Centrex rates.
21. Bell Aliant replied that its application would not introduce any new causal costs associated with the delivery of Centrex service under contract extensions. The company submitted that a customer's Centrex service would be maintained without change, and billing would continue unaffected. Bell Aliant also submitted that given that it currently provides notice to customers of forthcoming Centrex contract terminations and conducts negotiations with customers prior to, or upon termination of, an existing Centrex contract, these expenses could not be characterized as causal to its contract extension proposal.

Commission's analysis and determination

22. The Commission accepts Bell Aliant's position that its contract extension process would not cause the company to incur any additional notice, negotiation or implementation expenses that it does not already incur. The Commission considers that the costs associated with customer notification and negotiation prior to, or upon termination of, a Centrex contract are incorporated in the costs of the existing Centrex contract. Accordingly, the Commission considers that an imputation test is not required.

What is the impact of the Policy Direction on Bell Aliant's application?

Positions of parties

23. EastLink submitted that approving Bell Aliant's application would be inconsistent with subparagraph 1(b)(ii) of the Policy Direction, as extending long-term contracts would deter economically efficient competitive entry.
24. Bell Aliant submitted that its application would result in enhanced customer choice and flexibility within a competitive business market, and would encourage all industry participants to improve their service offerings. The company also submitted that denying its application would run contrary to subparagraphs 1(a)(i) and (ii) of the Policy Direction.

Commission's analysis and determinations

25. Subparagraphs 1(a)(i) and (ii) of the Policy Direction state that the Commission should (i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and (ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives. The Commission considers that approving Bell Aliant's application would be consistent with the Policy Direction in that the regulatory intervention would not interfere with market forces in the Centrex market, and would neither promote economically inefficient entry into the market nor deter economically efficient entry.
26. The Commission considers that Bell Aliant's application would thus further the telecommunications policy objective set out in paragraph 7(f) of the Act, which is to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective.

Conclusion

27. In light of all of the above, the Commission **approves** Bell Aliant's application.

Secretary General

Related documents

- Telecom Order CRTC 2007-205, 7 June 2007
- *Société en commandite Télébec – Centrex service*, Telecom Order CRTC 2005-76, 23 February 2005
- *Aliant Telecom Inc. – Centrex Business service*, Telecom Order CRTC 2003-100, 4 March 2003
- *Aliant Telecom Inc. – Regional large business Centrex service*, Telecom Order CRTC 2003-99, 4 March 2003
- Telecom Order CRTC 99-412, 4 May 1999
- Telecom Order CRTC 99-330, 8 April 1999
- Telecom Order CRTC 99-300, 31 March 1999
- Telecom Order CRTC 99-299, 31 March 1999
- Telecom Order CRTC 99-295, 31 March 1999
- Telecom Order CRTC 99-294, 31 March 1999
- Telecom Order CRTC 99-293, 31 March 1999
- Telecom Order CRTC 99-292, 31 March 1999
- Telecom Order CRTC 98-956, 29 September 1998
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997

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