



Telecom Decision CRTC 2010-119

Ottawa, 26 February 2010

Worldlink Internet & Payphone Ltd. – Application to amend TELUS Communications Company's Pay Telephone Access Line Service tariff

File number: 8661-W42-200909203

In this decision, the Commission directs TELUS Communications Company to provide its Pay Telephone Access Line Service in Band D in Alberta at a rate equal to 75 percent of the lowest monthly rate for retail individual business line service in that band, or at cost, whichever is higher.

1. The Commission received an application by Worldlink Internet & Payphone Ltd. (Worldlink),¹ dated 17 June 2009, requesting that the Commission direct TELUS Communications Company (TCC) to amend its Carrier Access Tariff item 216 – Pay Telephone Access Line Service.
2. Specifically, Worldlink requested that the rate for a pay telephone access line (PAL) in Band D in Alberta be set at a level equal to 75 percent of the lowest individual business line rate in that band. Worldlink requested that, if the Commission did not agree with this request, the rate be set, at a minimum, at the lowest individual business line rate in Band D in Alberta. Worldlink also requested that the Commission make this change retroactive to a date to be determined by the Commission and that it direct TCC to pay Worldlink's costs.
3. The Commission received comments from TCC. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.
4. The Commission has identified the following three issues to be addressed in its determinations:
 - I. Should the PAL service rate in TCC Band D in Alberta be reduced?
 - II. If so, should the changes be applied retroactively?
 - III. Should costs be awarded to Worldlink?

I. Should the PAL service rate in TCC Band D in Alberta be reduced?

5. Worldlink noted that when PAL service rates were set relative to individual business line rates, local exchange service competition was in its infancy. It submitted that competition has since resulted in price reductions for many business phone lines.

¹ Worldlink, a competitive pay telephone service provider, owns and manages pay telephones in the Banff and Canmore exchanges, which are located within Band D in TELUS Communications Company's (TCC) incumbent operating territory of Alberta.

6. Worldlink noted that within a given band, TCC can reduce its individual business line rates in forborne exchanges without Commission approval, but the tariffed rate remains unchanged for non-forborne exchanges. Worldlink submitted that, as a result, TCC was offering individual business lines at the rate of \$39.95 per month (the competitive rate) in certain exchanges of Band D in Alberta, while the tariffed monthly rate for PAL service throughout this band was set, as of 1 June 2009, at \$55.84. It noted that this represents a 25 percent discount off the tariffed rate for individual business line service in Band D exchanges where business local exchange services remain regulated.
7. Worldlink argued that the PAL service rate premium over the competitive rate for individual business lines contravenes both the spirit and intent of the Commission's determinations regarding the rates for PAL service. It requested that the Commission set the monthly rate for PAL service in TCC's Band D in Alberta at \$29.95 – that is, a 25 percent discount off the competitive rate – or, at minimum, set the PAL rate at the competitive rate.
8. TCC noted that even if forborne retail individual business line service rates are adjusted, the rates for PAL service remain regulated, including in those areas where TCC has been granted forbearance from the regulation of business local exchange services. TCC submitted that it charges Worldlink the approved tariffed rates for PAL service in Band D and that Worldlink's application amounts to a request that the Commission force TCC to provide a regulated service at rates that are lower than the prevailing approved tariffed rates.
9. The Commission notes that PAL is a wholesale service that competitive pay telephone service providers require in order to operate. The Commission also notes that, while wholesale services are generally rated based on cost plus a markup, in Order 2000-858, it set PAL rates at 75 percent of the tariffed individual business line service rate in a given rate band.
10. The Commission notes that in an exchange where forbearance is granted to business local exchange services, including individual business line service, the PAL service rate for the forborne exchange remains at the same level as for the non-forborne exchanges in the same rate band, which has resulted in the PAL service rate being higher than some of TCC's individual business line rates in Band D in Alberta. The Commission considers that such a result is inconsistent with the Commission's previous determination in Order 2000-858 that PAL service rates were to be set at a lower level than individual business line service rates – namely, 75 percent of individual business line rates – since PAL service provides a lower grade of service.
11. TCC submitted that PAL service and individual business line service are separate and distinct services and that an automatic linkage between forborne individual business line rates and PAL service rates might cause PAL service rates to be lowered to levels that do not cover the costs of provisioning this service, which would be inconsistent with subsection 27(1) of the *Telecommunications Act* (the Act).²

² Subsection 27(1) of the Act states that “Every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable.”

12. TCC submitted that, pursuant to Telecom Regulatory Policy 2009-19, incumbent local exchange carriers have the flexibility to change rates for PAL service through negotiations, although they are not mandated to do so. It submitted that, therefore, there is no need for Commission intervention to impose a new tariffed rate that would apply to all of its PAL service customers for rate Band D and that, accordingly, the Commission should dismiss Worldlink's request.
13. The Commission notes Worldlink's submission that, pursuant to Telecom Regulatory Policy 2009-19, it had requested a negotiated PAL service rate of \$39.95 from TCC but that TCC had offered a rate based on the discounted contracted individual business line rate for Band D, namely 75 percent of \$68.17, or \$51.13. The Commission also notes Worldlink's submission that the offer was inadequate given that other businesses were receiving better service, namely individual business line service, at substantially lower rates and that its application was made only after negotiations with TCC had proven fruitless. The Commission agrees with Worldlink's view that a rate of \$51.13 is not reasonable in these circumstances.
14. In light of the above, the Commission determines that the PAL service rate in TCC Band D in Alberta should be reduced. The Commission considers that setting this rate at 75 percent of the lowest retail individual business line rate in that band, whether regulated or forborne, would be consistent with the Commission's determination that PAL service rates should be set at a lower level than individual business line service rates because PAL service provides a lower grade of service. The Commission considers, however, that the PAL service rate should not be set below TCC's costs to provide PAL service.

II. Should the changes be applied retroactively?

15. With respect to Worldlink's request that the PAL service rates resulting from the present proceeding be applied retroactively, the Commission notes that TCC's existing rates for its PAL service in Band D in Alberta have been approved on a final basis. The Commission considers that retroactively modifying rates that have previously been granted final approval in this case would create uncertainty as to the finality of Commission decisions and notes that as a matter of regulatory policy it typically does not modify such rates with retroactive effect. The Commission further notes that Worldlink provided no arguments to support its request for retroactive application of PAL service rates. In the circumstances, the Commission **denies** Worldlink's request to set PAL service rates on a retroactive basis.

III. Should costs be awarded to Worldlink?

16. The Commission notes that Worldlink provided no arguments in support of its request that TCC be ordered to pay Worldlink's costs with respect to this proceeding. The Commission notes that its practice has been to award costs to individuals and public interest groups but not to commercial entities. The Commission further considers that, in the circumstances, there is no reason for it to depart from its usual approach to awarding costs. Accordingly, the Commission **denies** Worldlink's request for costs.

Conclusion

17. In light of the above, the Commission directs TCC to
 - a. provide its PAL service in rate Band D in Alberta at a monthly rate equal to 75 percent of the lowest monthly rate for individual business lines it charges in that band, consistent with the contractual terms relating to volume and contract duration that the competitive pay telephone service provider subscribes to, or at cost, whichever is higher, effective the date of this decision; and
 - b. issue, within 30 days of the date of this decision, revised tariff pages reflecting the Commission's determinations in this decision regarding PAL service rates in Band D in Alberta.

Secretary General

Related documents

- *Bell Canada et al.'s application to review and vary Telecom Decision 2008-17 with respect to negotiated agreements*, Telecom Regulatory Policy CRTC 2009-19, 19 January 2009
- *Bell Aliant Regional Communications, Limited Partnership, Bell Canada, and TELUS Communications Company – Local exchange service and payphone access line service*, Telecom Order CRTC 2008-320, 24 November 2008
- *CRTC sets final rates for payphone access lines*, Order CRTC 2000-858, 15 September 2000

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