



Telecom Decision CRTC 2011-204

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Ottawa, 23 March 2011

Convergia Networks Inc. – Request to recover charges related to Competitor Digital Network Access services from Bell Canada

File number: 8622-C95-201016197

In this decision, the Commission denies a request by Convergia Networks Inc. to recover charges related to Competitor Digital Network Access services from Bell Canada, dating back to 2005.

Introduction

1. Convergia Networks Inc. (Convergia) filed an application with the Commission, dated 29 October 2010, in which it requested that the Commission direct Bell Canada to refund previously overbilled charges related to Competitor Digital Network Access (CDNA) services, dating back to 2005.
2. The Commission received comments from Bell Canada. The public record of this proceeding, which closed on 12 January 2011, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Should the Commission grant refunds to Convergia?

3. Convergia submitted that it had been subscribing to Bell Canada's retail Digital Network Access (DNA) service since 2005 and that, in January 2010, it realized that it had been eligible for Bell Canada's wholesale CDNA service over that five-year period.
4. Convergia indicated that it had been compliant with the Commission's eligibility requirements for CDNA¹ during that time period, namely that it had not engaged in simple resale and that it had a point of presence in Canada. Convergia submitted that it was willing to file an affidavit attesting to this fact but that Bell Canada refused to accept this offer and refused to refund the difference in cost between the two services.
5. Convergia argued that the requirement for companies to file annual affidavits attesting to meeting CDNA eligibility requirements is an enforcement mechanism and is not itself an eligibility requirement for CDNA services. Convergia further

¹ The eligibility requirements for CDNA are set out in Telecom Decision 2005-6.

argued that it is Bell Canada's responsibility to ensure that its tariffs are applied correctly, and that by charging Convergia for DNA instead of CDNA services over the time period in question, Bell Canada was in violation of its General Tariff.²

6. As a result, Convergia argued that it is owed refunds, plus interest, to cover the difference in cost between retail DNA services and the CDNA services which it should have received and been billed for over the period in question.
7. Bell Canada submitted that Convergia is not entitled to retroactive refunds because it failed to notify Bell Canada that it wanted CDNA services, and did not provide annual affidavits to demonstrate that it had met the eligibility requirements for CDNA services.
8. Bell Canada argued that an after-the-fact affidavit, as Convergia has offered to provide, is unacceptable because the restriction placed on CDN resale is prospective. Bell Canada submitted that it is not appropriate for Convergia to claim, after the fact, that because it did not end up engaging in simple resale it should have enjoyed CDNA pricing all along. In its view, approving Convergia's request would set a dangerous precedent where companies could game the system by requesting refunds if a particular business strategy were to fail.
9. Bell Canada submitted that many companies subscribe to a mix of DNA and CDNA services, depending on a company's specific business strategy. As a result, Bell Canada argued that it could not have known that Convergia wanted CDNA services exclusively.
10. The Commission notes that Telecom Decision 2005-6 (the CDN Decision) required that competitors file annual affidavits to attest that they meet the eligibility requirements associated with an incumbent local exchange carrier's CDNA services.
11. The Commission notes that following the issuance of the CDN Decision in 2005, Convergia did not (a) file any affidavits with the Commission, (b) request CDNA services from Bell Canada until January 2010, and (c) provide any reasons as to why it delayed requesting CDNA services until January 2010.
12. The Commission also notes that Bell Canada began providing CDNA services to Convergia in 2010, on a going-forward basis, once Convergia demonstrated that it satisfied the eligibility requirements outlined in the CDN Decision by filing an affidavit.
13. With regards to Convergia's argument that it is Bell Canada's responsibility to ensure that its customers are being properly billed according to its tariffs, the Commission notes that many companies elect to use a mix of retail DNA services

² In particular, article 19 of Bell Canada's General Tariff which states: "In the case of a recurring charge that should not have been billed or that was overbilled, a customer must be credited with the excess back to the date of the error, subject to applicable limitation periods provided by law."

and wholesale CDNA services, depending on their particular business plans. As a result, the Commission considers that, in this case, Bell Canada could not have known that Convergia wanted CDNA instead of DNA without proper notification and without assurance that Convergia was meeting the eligibility requirements.

14. The Commission is of the view that because Convergia failed to comply with the requirements outlined in the CDN Decision, it is not appropriate to grant a retroactive refund for the period in question. The Commission therefore **denies** Convergia's request.

Secretary General

Related document

- *Competitor Digital Network Services*, Telecom Decision CRTC 2005-6, 3 February 2005, as amended by Telecom Decision CRTC 2005-6-1, 28 April 2006