



Telecom Order CRTC 2006-281

Ottawa, 20 October 2006

Bell Canada and Bell Aliant Regional Communications, Limited Partnership

Reference: Bell Canada Tariff Notice 6966
Bell Aliant Tariff Notice 17

Centrex III and Enhanced Exchange-Wide Dial services

1. The Commission received an application by Bell Canada, dated 7 July 2006, in which it proposed changes to its Exchange Services Tariff item 350 – Enhanced Exchange-Wide Dial (EEWD) Service, and its General Tariff item 675 – Centrex III Service – Rates and Charges. The Commission also received an application on that date, by Bell Aliant Regional Communications, Limited Partnership (Bell Aliant),¹ in which changes were proposed to its General Tariff item 675 – Centrex III Service – Rates and Charges.
2. In its application, Bell Canada proposed a 10 percent increase to the monthly rates for EEWD locals and MessageManager Mailboxes. Bell Canada also proposed a housekeeping change to the EEWD tariff to update a reference to Bell Canada's General Tariff identifying minimum charges that would be applicable for additions, deletions, or changes to basic system or station features. Further, Bell Canada proposed a 10 percent increase to the monthly rates for Centrex III (Centrex) voice locals, Public Switched Telephone Network (PSTN) Connections, MessageManager Mailboxes, Per Agent Service, and Automatic Call Distributor Services.
3. In support of the proposed rate increases, Bell Canada noted that the rates for these components had remained unchanged since 2002, while network investments had continued. Bell Canada also noted that inflation over that same time period was 10.12 percent, based on statistics from the Bank of Canada.
4. Bell Canada submitted that, as it proposed to increase the monthly rates for its EEWD and Centrex services, an imputation test was not required. Bell Canada also submitted that since EEWD and Centrex were categorized as uncapped services, its proposal had no impact on the price cap indices.
5. Bell Canada requested approval of its proposed rate increases effective 1 September 2006. Bell Canada indicated that it intended to notify customers of the proposed changes through the use of information on their bills or by letter between 4 and 31 July 2006, giving customers advance notice of at least 30 days from the proposed effective date.

¹ On 7 July 2006, Bell Canada's regional wireline telecommunications operations in Ontario and Quebec were combined with, among other things, the wireline telecommunications operations of Aliant Telecom Inc., Société en commandite Télébec, and NorthernTel, Limited Partnership to form Bell Aliant Regional Communications, Limited Partnership.

6. In its application, Bell Aliant proposed the same changes to its Centrex III Service that were proposed by Bell Canada to its Centrex III Service in Tariff Notice 6966.
7. The Commission approved these applications on an interim basis in Telecom Order CRTC 2006-191, 21 July 2006.

Process

8. The Commission received comments dated 4 August 2006 from MTS Allstream Inc. (MTS Allstream) with regard to Bell Canada's and Bell Aliant's applications, and from the Department of Justice Canada, made on behalf of the Minister of Justice (the Minister of Justice), with regard to the changes to EEWD proposed by Bell Canada. Bell Canada and Bell Aliant (collectively, the Companies) filed reply comments dated 11 August 2006.

Positions of parties

9. MTS Allstream submitted that it appeared that Bell Aliant intended to increase Centrex rates for customers in Ontario and Quebec only, and not for Bell Aliant customers located in the Atlantic Provinces, adding that it was not clear whether the tariff application was intended to apply to all or a portion of Bell Aliant's serving territory.
10. MTS Allstream argued that the proposals made by the Companies were entirely without merit. In particular, MTS Allstream argued that the proposed rate increases could not be justified:
 - (i) solely on the grounds of inflation, given that this was not the first rate increase applied for by the Companies in the relevant period; or
 - (ii) on the grounds of network investments, as the sunk costs to provide both Centrex and EEWD services had long since been recovered, and any new investments were more likely attributable to the Companies' next-generation voice over Internet Protocol (VoIP) services rather than their legacy Centrex and EEWD services.
11. MTS Allstream submitted that, in their applications, the Companies were proposing to change the terms of the contracts with their Centrex and EEWD customers in order to unilaterally impose a 10 percent rate increase. MTS Allstream argued that the proposed rate increases represented a classic example of dominant suppliers using their significant market power to reap monopoly profits from a captured base of customers while at the same time conferring an unjust and undue preference on their next-generation VoIP services.
12. MTS Allstream submitted that many of the rate elements for which the Companies requested an increase were last modified on 20 December 2002. Specifically, MTS Allstream noted that, in *Bell Canada – Centrex III service*, Telecom Order CRTC 2002-464, 20 December 2002, the Commission approved a 3 percent increase to monthly rates for Centrex voice locals, a 5 percent increase to the monthly rates for PSTN connections, and a 7 percent increase to certain Centrex service charges. Similarly, in *Bell Canada – Enhanced Exchange-Wide Dial service*, Telecom Order CRTC 2002-466, 20 December 2002, the Commission approved

a 3 percent increase to EEWD voice locals. MTS Allstream submitted that the combined effect of the prior rate increases and those proposed in the current applications would result in increases that varied between 13 and 17 percent.

13. MTS Allstream submitted that the market for Centrex services typically involved long-term contracts designed to be extended numerous times, and that the contract for EEWD Service, the single largest Centrex provisioning contract in Canada, had been provided by Bell Canada to the Government of Canada (GoC) on a continuous basis since the early 1980s. MTS Allstream noted that Bell Canada was on record as preparing for the market evolution towards Internet Protocol-based services as a replacement for Centrex, and submitted that there was good reason to believe that Bell Canada had made only negligible network investments in support of what was now a mature legacy service.
14. MTS Allstream submitted that the termination and migration penalties that existed in the Companies' Centrex contracts contributed significantly to their overwhelming dominance in this market segment, and that with the introduction of the Centrex/Managed Internet Protocol Telephony (MIPT) aggregation feature, the Companies were doing everything within their power to transfer their existing base of Centrex customers to MIPT without those customers having an opportunity to migrate to a competitive alternative.
15. MTS Allstream submitted that these proposals should be denied unless they were modified to allow customers to terminate their contracts with the Companies and to transition to the service platforms of competing providers.
16. The Minister of Justice submitted that Bell Canada's application raised several important issues affecting the public interest, given:
 - (a) its potential financial impact on the GoC;
 - (b) its potential consequences, given the GoC's obligations when procuring telecommunications (and other) services; and
 - (c) the terms of a contract between Bell Canada and the GoC under which services are presently provided by Bell Canada under its EEWD tariff.
17. The Minister of Justice noted that, in November 2005, following a competitive procurement process, the GoC entered into a contract with Bell Canada for the provision of local access telecommunication services in the National Capital Region (NCR) (the Contract).²
18. The Minister of Justice submitted that any increase in rates for services provided pursuant to the EEWD tariff would have a significant financial impact, given that the Contract represented one of the largest agreements for the provision of telecommunication services in Canada. The Minister of Justice estimated that the 10 percent increase requested by Bell Canada would impose an additional cost of approximately \$4 million per year on the GoC. In the event that the three-year option period was exercised, the estimated total cost of a 10 percent increase in the rates provided for under the EEWD tariff would be in excess of \$20 million.

² The Minister of Justice noted that the Contract had a fixed term of three years and a three-year option period.

The Minister of Justice argued that approving Bell Canada's application would not be in the public interest, given the significant financial impact of the requested increase, the terms of the Contract, Bell Canada's representations regarding its pricing, and the GoC's obligations when conducting procurements.

19. The Minister of Justice argued that granting Bell Canada the requested rate increase, shortly after it had been awarded the Contract following a competitive procurement process, would not be consistent with the Canadian telecommunications policy objectives set out in section 7 of the *Telecommunications Act* (the Act). The Minister of Justice further argued that Bell Canada's proposed increase was also inconsistent with subsections 27(1) and 27(2) of the Act related to just and reasonable rates and undue or unreasonable preference to itself.
20. The Minister of Justice submitted that the requested increase in rates was inconsistent with several Request for Proposal (RFP) provisions dealing with the financial proposals of bidders. The Minister of Justice also submitted that approving Bell Canada's requested increase in rates for EEWD would be contrary to the spirit, if not the letter, of several provisions of the Contract and, therefore, contrary to the public interest.
21. The Minister of Justice submitted that the spirit of the Contract suggested that Bell Canada should have sought the consent of the GoC prior to seeking an amendment to the EEWD tariff, but that no such consent was sought or had been provided.
22. In their reply comments, the Companies clarified that Bell Aliant's proposal in Tariff Notice 17 applied to operations in Ontario and Quebec.
23. In response to comments related to the justification for the rate increases proposed in their applications, the Companies noted that the services that were the subject of those applications had been designated by the Commission as uncapped services and that, consistent with the treatment of uncapped services, neither Bell Canada nor Bell Aliant were obliged to justify increases to Centrex or EEWD service rates relative to an increase in their costs.
24. Further, the Companies argued that MTS Allstream had presented an erroneous comparison by examining the effect of their current proposals coupled with the price changes that went into effect on 20 December 2002, inferring that the combined price increases exceeded the rate of inflation since the 20 December 2002 price changes. The Companies argued that a more appropriate frame of comparison for the combined effect of the current proposal and the 2002 price changes would be to examine the rate of inflation since the previous price changes, which took place in 1997, during which time inflation was slightly over 20 percent.
25. In response to MTS Allstream's argument that the proposed rate increases could not be based on network investment costs associated with the Companies' Centrex and EEWD services, the Companies submitted that investment does not cease following the initial installation of a service. The Companies submitted that they have an obligation to provide quality service to their customers, and that this obligation required that they continually remove, rebalance, relocate, replace, and update network components associated with the services.

26. In response to MTS Allstream's comments related to contract termination provisions, the Companies argued that nothing was proposed that changed the treatment of termination charges already found in Bell Canada's and Bell Aliant's Centrex tariffs. Further, the Companies noted that numerous other incumbent local exchange carrier (ILEC) tariffs, including MTS Allstream's, contained a multitude of examples of similar termination provisions, whereby customers could migrate from one service provided by a company to another service provided by the same company without incurring early termination charges.
27. In response to MTS Allstream's comments that Bell Canada was changing the terms of its contracts with its Centrex and EEWD customers, the Companies argued that the proposed rate increases did not alter their contracts with existing Centrex and EEWD customers. The Companies argued that their contracts for Centrex and EEWD services explicitly contemplated potential adjustments and included clauses that stated that the Companies may amend their tariffs from time to time.
28. In response to the Minister of Justice's comments, the Companies submitted that Bell Canada's proposed rate increases were entirely consistent with the objectives of the Act, as they were just and reasonable, and fully compliant with the current price cap regime. Further, the Companies submitted that the Minister of Justice's suggestion that the proposed rates would confer an undue or unreasonable preference on Bell Canada itself was unsubstantiated.
29. In response to the Minister of Justice's comments that Bell Canada's proposed increase in rates would have a significant financial impact and would not be in the public interest, the Companies submitted that the Minister of Justice appeared to be arguing that any price increases that affected services procured by the GoC were not in the public interest. The Companies disputed this contention, noting that a vigorous and healthy telecommunications industry (indeed, any industry that provided services to the GoC) may depend on price increases from time to time. The Companies argued that such price increases were not innately contrary to the public interest.
30. The Companies noted that item C.21 – Basis of Payment, section (c) in the GoC's Contract clearly acknowledged that the pricing associated with tariffed services may change during the contract period, subject to Commission approval. This item of the GoC's Contract reads as follows:

Canada acknowledges that the prices set out in Annex D – Pricing in the rows setting out tariff items may change during the Contract Period as a result of tariff rate changes. All other prices set out in Annex D are firm prices applicable throughout the Contract Period and are all-inclusive.
31. The Companies also noted that item C.6 – Priority of Documents of the GoC's Contract also acknowledged that the tariffs prevailed over any other portion of the Contract.
32. In response to the Minister of Justice's comments related to the GoC's RFP provisions, the Companies submitted that the GoC's procurement processes were not relevant to a Commission decision in the present proceeding. Further, the Companies submitted that Bell Canada had no reason, nor any obligation, to seek the GoC's prior written consent in advance of filing its tariff application.

33. The Companies submitted that should the GoC feel that Bell Canada had breached in any way the terms of its EEWD contract, the GoC had the normal civil remedies available to it to address such alleged breaches. In the Companies' view, this was a matter unrelated to a disposition by the Commission of Tariff Notice 6966.

Commission's analysis and determinations

34. The Commission considers that the following three major issues have been raised with regard to the Companies' applications:
- justification for the proposed increase in rates;
 - contract termination provisions in the existing Centrex and EEWD tariffs; and
 - provisions related to rate changes included in the Contract between the GoC and Bell Canada for the provision of local access services in the NCR.

Justification for the proposed increase in rates

35. The Commission notes that Centrex and EEWD services were both assigned to the Uncapped Services basket in *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002, as amended by Telecom Decision CRTC 2002-34-1, 15 July 2002. In that Decision, the Commission did not consider it necessary to subject these services to basket and/or rate element pricing constraints, noting that Centrex was a premium business service that was used as a substitute for single-line and multi-line business local exchange services, which were subject to price cap constraints.
36. The Commission notes that in *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997, it directed the ILECs to file imputation test results with all applications proposing the introduction of new services or applications proposing either explicit or implicit price decreases for the local exchange market.
37. The Commission notes that as these applications both propose rate increases to uncapped exchange services, there are no pricing constraints that must be met and there is no requirement for either Bell Canada or Bell Aliant to include imputation test information with their respective applications.
38. The Commission considers that Bell Canada's and Bell Aliant's proposals are consistent with the Commission's pricing requirements.

Contract termination provisions in the existing Centrex and EEWD tariffs

39. The Commission notes that Bell Canada's and Bell Aliant's existing Centrex tariffs include provisions for the waiver of contract termination charges in a variety of circumstances, including migrations to other access services that are also subject to minimum contract periods. The Commission notes that it has already determined that service provisions that

allow customers the flexibility to migrate contracted services to other contracted services without incurring termination charges are standard industry provisions. The Commission considers that encouraging customers to migrate to newer technology-based services is not anti-competitive. In addition, the Commission notes that similar provisions are included in the other ILECs' tariffs, including MTS Allstream's.

40. Furthermore, if the Commission were to direct the Companies, as has been essentially suggested by MTS Allstream, to modify the terms of their Centrex tariffs, and by extension other tariffs, so as to provide customers with the ability to reduce or eliminate their use of a service during the term of a contract period without incurring any penalties, the Commission considers that incentives for the ILECs to continue to make available discounted pricing plans for their customers would be greatly reduced.
41. Finally, the Commission notes that neither Bell Canada's nor Bell Aliant's proposals affect currently approved provisions within their tariffs with regard to contract termination.

The Contract between the GoC and Bell Canada

42. The Commission notes that the language in the Contract that the GoC entered into with Bell Canada clearly identified that prices could change during the contract period as a result of tariff rate changes.
43. The Commission considers that any representations that Bell Canada may or may not have made during the GoC's procurement process that culminated in the Contract, as well as the business relationship that exists between the GoC and Bell Canada, are beyond the jurisdiction of the Commission and, therefore, there is no reason to deny the applications on these bases.
44. Accordingly, the Commission **approves on a final basis** these tariff applications.

Secretary General

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