



Telecom Order CRTC 2007-16

Ottawa, 19 January 2007

Bell Canada and Bell Aliant Regional Communications, Limited Partnership

Reference: Bell Canada Tariff Notice 6978
Bell Aliant Tariff Notice 29

Centrex III Service – Termination charge calculation

1. The Commission received an application by Bell Canada, dated 17 August 2006, in which the company proposed revisions to its General Tariff item 670 – Centrex III Service.
2. In its application, Bell Canada proposed to modify the wording in its tariff to reflect the removal of the present worth factor used to calculate termination charges. Instead of calculating the termination charge using the present worth of the remaining monthly rates applicable for the unexpired portion of the minimum contract period (MCP), Bell Canada proposed to set the termination charge equal to one half of the remaining charges for the unexpired portion of the MCP.
3. Bell Canada submitted that the proposed revision would bring the termination provisions in its Centrex III Service tariff in line with other Bell Canada tariffs, including its Terms of Service. It also submitted that the proposed revision would have a minor impact on the profitability of the service and that an imputation test for the Centrex III Service would not take into account early termination of the service. The company noted that, as a result, it had not provided an imputation test.
4. The Commission received an identical application by Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), also dated 17 August 2006.
5. The Commission approved Bell Canada's and Bell Aliant's (collectively, the Companies) applications on an interim basis in Telecom Order CRTC 2006-226, 28 August 2006, effective 1 September 2006.

Process

6. The Commission received comments dated 12 September 2006 from MTS Allstream Inc. (MTS Allstream) regarding the Companies' applications. The Companies filed reply comments dated 19 September 2006.

MTS Allstream's comments

7. MTS Allstream submitted that the termination provisions in the Centrex III Service tariffs were anti-competitive and that the Companies had conferred an undue advantage on themselves by waiving the Centrex III Service termination provisions for those customers

migrating to the Companies' Internet Protocol Centrex services. MTS Allstream submitted, further, that while the Companies' applications proposed to reduce the termination penalties in the Centrex III Service tariffs, this reduction did not adequately address the anti-competitive consequences of the current tariffs.

8. MTS Allstream submitted that the termination penalties stipulated in the Companies' Centrex III Service contracts contributed significantly to their dominant position in the business market. MTS Allstream was of the view that this dominance, in conjunction with the anti-competitive termination provisions, had allowed them to increase rates repeatedly for their Centrex III services from January 2005 to September 2006.
9. MTS Allstream indicated that the Companies and their Centrex III Service customers had signed contracts that outlined the terms and conditions, and set the rates for the service. MTS Allstream submitted that while the customers were bound by the clauses that set the rates and the termination charges, the Companies themselves were not bound by the clauses that dealt with the rates or other terms set and agreed to by both parties.
10. MTS Allstream submitted that because of the termination clauses embedded in the contractual agreements between the Companies and their Centrex III Service customers, those customers had had to incur all the price increases or pay substantial monetary penalties for early cancellation or changes to their contracts. MTS Allstream argued that the Companies' Centrex III Service customers should be allowed to migrate to competitors' services without incurring penalties.
11. MTS Allstream submitted that once a contract had ended, there were no transition or migration provisions that allowed the Companies' customers to keep the discounted rates held in the Centrex III Service contracts for the time needed to migrate to a competitor's service platform. MTS Allstream noted that, instead, prices simply reverted to the Centrex III Service monthly tariff rates, which were significantly higher than the discounted rates available under the long-term contracts.
12. MTS Allstream argued that the termination provisions needed to be modified in order to eliminate the termination penalties and to allow transition provisions for customers of the Companies' Centrex III services. MTS Allstream indicated that in *Bell Canada – Centrex III Service*, Telecom Order CRTC 2005-24, 14 January 2005, the Commission had established a precedent by allowing Bell Canada to waive termination charges for Centrex Data Locals and Centrex Microlink Access for customers who had chosen to terminate their MCP early.

Reply comments

13. The Companies submitted that MTS Allstream's comments had little or no relationship to their applications and that MTS Allstream did not appear to object to the proposed tariff changes. The Companies were of the view that MTS Allstream wanted to prohibit customers from migrating from the Companies' Centrex III services to the Companies' Managed Internet Protocol Telephony (MIPT) services without paying termination charges. The Companies argued that MTS Allstream also wanted to allow customers to cancel long-term contracts without incurring termination charges whenever the Commission approved changes to the Companies' Centrex III Service tariffs.

14. According to the Companies, the issues regarding migration from Centrex III Service to MIPT service had been dealt with by the Commission in *Bell Canada – Managed Internet Protocol Telephony service*, Telecom Order CRTC 2004-256, 30 July 2004 (Order 2004-256). The Companies submitted that MTS Allstream's allegations that the Companies had given themselves an undue advantage through the MIPT migration provisions had been rejected in Order 2004-256.
15. The Companies submitted that there was no merit in MTS Allstream's suggestion that contracts should be terminated whenever the Commission approved changes to the Companies' Centrex III Service tariffs. The Companies suggested that nearly all of their term contracts and, to their knowledge, those of all other service providers did not allow customers to cancel a service prior to a contract's expiry without incurring termination charges. The Companies noted that termination charge provisions had existed in the Companies' tariffs and contracts for decades.
16. The Companies submitted that MTS Allstream's argument that changes to the Companies' tariffs were anti-competitive because customers were not permitted to walk away from their long-term contracts without termination charges whenever a change to the tariffs was approved had no merit. The Companies added that MTS Allstream's comments on this subject were irrelevant to this proceeding and that they did not provide any reasons for denying the Companies' applications.

Commission's analysis and determinations

17. The Commission considers that MTS Allstream's comments on the Companies' applications raise the following three issues regarding the Companies' Centrex III Service tariffs:
 - a) contractual clauses related to rate increases and MCPs;
 - b) transition or migration provisions; and
 - c) contract termination provisions.
18. The Commission considers that the first two issues are not within the scope of this proceeding. Notwithstanding this consideration, the Commission will address all three issues below.
19. Regarding the first issue, 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, the Commission stated that:

... 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 [incumbent local exchange carriers] to continue to make available discounted pricing plans for their customers would be greatly reduced.

20. The Commission notes that, as a result, customers would only have non-contracted monthly rates in the tariff and that these are much higher than long-term rates.
21. Regarding the second issue, the Commission notes that the Companies' existing Centrex III Service tariffs contain provisions for the waiver of contract termination charges for a variety of circumstances, including migrations to other access services that are also subject to MCPs. The Commission also notes that similar provisions are found in other incumbent local exchange carriers' tariffs, including MTS Allstream's tariffs.
22. The Commission notes that in *MTS Communications Inc. – Terms of service for early termination of contracted service*, Telecom Order CRTC 2004-101, 26 March 2004, it found that allowing customers the flexibility to migrate services to other contracted services without incurring termination charges was an industry standard provision. In addition, the Commission considers that encouraging customers to migrate to newer technology-based services is not anti-competitive.
23. The Commission notes that MTS Allstream did not oppose the pricing aspect of the termination charge, which is the object of the Companies' applications, but instead opposed the existing termination provisions in their Centrex III Service tariffs.
24. Regarding the third issue, the Commission notes that the changes proposed by the Companies would result in reduced termination charges for customers with MCPs wishing to end their agreements associated with the Companies' Centrex III services. The Commission also notes that the proposed revisions would bring the termination provisions in line with those of the Companies' other tariffs, including their Terms of Service.
25. Accordingly, the Commission **approves on a final basis** the Companies' applications.

Secretary General

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