



Telecom Order CRTC 2007-253

Ottawa, 20 July 2007

Bell Canada and Bell Aliant Regional Communications, Limited Partnership

Reference: Bell Canada Tariff Notice 7002
Bell Aliant Tariff Notice 57

Business Order Cancellation

In this Order, the Commission approves with changes applications by Bell Canada and Bell Aliant Regional Communications, Limited Partnership to introduce Business Order Cancellation.

Introduction

1. The Commission received applications by Bell Canada and Bell Aliant Regional Communications, Limited Partnership (collectively, the Companies), dated 13 November 2006, proposing to introduce, in their respective General Tariffs, item 107 – Business Order Cancellation.
2. The Companies noted that, pursuant to their respective General Tariff items 10 – Terms of Service, Article 20.2 - Minimum Contract Period and Cancellation Before Service Commencement (Article 20.2), they were entitled to recover costs incurred or related expenses for installation work done at a customer's request should the customer cancel or delay a request for service. The Companies submitted that, by implementing charges in the proposed Business Order Cancellation (BOC) tariff, they would be able to apply easily identifiable standard charge, depending on the applicable circumstances, that would provide a simple means of implementing Article 20.2.
3. The Companies proposed that the BOC charge apply to business customers that cancelled a service order after the Companies had undertaken activities and incurred costs associated with fulfilling the order. For exchange services, the Companies proposed applying the BOC charge if the cancellation request was made within two business days of the due date. For data services, and various Competitor Services, the Companies proposed specific charges for cancellations up to the scheduled implementation date, engineering receipt date, plant test date, and due date.
4. The Companies proposed to assign BOC to the Uncapped Services basket.
5. The Commission received submissions and/or responses to interrogatories from the Companies, Rogers Communications Inc. (Rogers), MTS Allstream Inc. (MTS Allstream), the Canadian Security Association (CANASA), and the following alarm companies – Fire Monitoring of Canada Inc., ADT Security Services, Canadian Security Team, Fitch Surveillance Systems Inc., Alcom Security Monitoring & Services Inc., Anixter Montreal,

Calbrooke Marketing Inc., Eastern Security, H & B Security Centre, Intercon Security, S.O.S. Surveillance Inc., Trent Security Systems Ltd., Royal Alarms Ltd., Northern Communications, Damar Security Systems, Halton Alarm Response and Protection Ltd., Centrale Ashton Inc., Dyson Alarm Tech Systems, Digital Alarm System, Warden Security Systems, and Phantom Security Group Inc. The record of this proceeding closed with the Companies' reply comments, dated 22 December 2006.

6. While the positions of parties have necessarily been summarized in this Order, the Commission has carefully reviewed and considered the submissions of all parties.
7. The Commission considers that the Companies' applications raise the following issues:
 - I. Appropriateness of the proposed tariff,
 - II. Application of the proposed tariff, and
 - III. Assignment of BOC to a price cap basket.

I. Appropriateness of the proposed tariff

Positions of parties

8. CANASA submitted that the Companies' applications should be denied. CANASA argued that the Companies' right to reasonable compensation in the event of a cancellation was adequately addressed in Article 20.2 of the Companies' Terms of Service. CANASA submitted that Article 20.2 was not difficult to implement, that any customer who cancelled an order prior to completion could readily understand the reason for the charge, and that no reasonable customer could fairly object to the charge as it now existed. CANASA also submitted that the proposed charges were not representative of the costs incurred by the Companies and, if approved, would conflict with Article 20.2.
9. According to CANASA, if the Companies' applications were approved, customers who determined that a service order should be cancelled would simply allow the work to be completed, wait a few days before invoking the minimum contract period (MCP) of one month as provided for in General Tariff item 10 – Terms of Service, Article 20.1 (Article 20.1), then request disconnection of the service. CANASA indicated that an alarm signalling circuit would be subject to an order cancellation fee of \$1,900.00 if cancelled two days prior to the due date, but if installed and then cancelled a few days later, the total charge payable for the installation and the one month MCP would be less than \$100.00. The alarm companies generally supported CANASA's views.
10. Rogers noted that Bell Canada had provided it with a chart listing the cancellation charges due at each stage of the order process. Rogers submitted that the majority of the proposed BOC charges were higher than those in the chart. Rogers also submitted that, while it was not opposed to Bell Canada filing a tariff for cancellation charges in order to comply with the *Telecommunications Act* (the Act), it was opposed to significant increases in these charges.

Reply comments

11. The Companies noted that the proposed revisions would allow them to consistently apply the language of Article 20.2 in a manner that would not require their representatives to calculate cancellation charges on a case-by-case basis. The Companies further noted that the BOC tariff would allow for a standard charge to be easily applied and identified to customers during order placement.
12. In response to comments that customers would allow services to be installed and immediately cancelled in order to avoid the BOC charges, the Companies noted that, in accordance with their proposed applications, customers would always be billed the lesser of the BOC charge and the charges over the MCP plus the installation charge, so the situations hypothesized by CANASA and others in the security industry would not arise. The Companies indicated that they could add wording to their proposed tariff to state that the BOC charge would not apply in circumstances where the charge would be greater than the charges that would apply over the MCP plus the installation charge.
13. The Companies submitted that their cost study demonstrated that the proposed charges reflected the costs incurred by the Companies up to each point in the service provisioning process. The Companies noted that the rates in the chart provided to Rogers would not pass an imputation test since they only recovered a portion of the Companies' costs. The Companies submitted that the chart reflected, at the time of its preparation, a best effort to estimate and recover some of the considerable costs they were incurring due to cancelled orders in the wholesale market.

Commission's analysis and determinations

14. The Commission notes that Article 20.2 of the Companies' Terms of Service allows them to charge a customer who cancels or delays a request for service after installation work has started, but before service has started. Specifically, a customer will be charged the lesser of i) the full charge for the entire MCP plus the installation charge and ii) the estimated costs incurred in installation less estimated net salvage. The Commission also notes that the proposed BOC tariff sets out the lesser charge principle.
15. Although a specific tariff may override the Terms of Service, the Commission considers that the proposed BOC tariffs generally replicate Article 20.2 by replacing the phrase "estimated costs incurred in installation less estimated net salvage" with the BOC charge. However, the Commission notes that proposed item 107.1 (c), which states "The Business Order Cancellation Charge includes the cost of engineering, labour and supervision, resulting from the installation and removal work," may not include savings to the Companies due to salvage. To ensure that the intent of Article 20.2 is maintained, the Commission considers that the Companies should modify the BOC tariff, as set out in the conclusions below, to reflect that the BOC charge is to be net of salvage.
16. Regarding the possibility that customers would let an order be carried out and cancel the service afterwards, the Commission notes that the proposed tariffs state that customers would be charged the lesser of the full charge for the entire MCP plus the installation charge, and the

BOC charge. The Commission therefore considers that the scenarios provided by the alarm companies would not arise.

17. The Commission notes the Companies' proposal to modify their tariffs to state that the BOC charge would not apply in circumstances where the charge would be greater than the charges that would apply over the MCP plus the installation charge. The Commission considers that such modification is unnecessary as it is simply a restatement of the lesser-charge concept already set out in the proposed BOC tariff.
18. In the Commission's view, approval of the BOC tariff with the above-noted modification would be reasonable, as it is easier to implement than Article 20.2; and will leave the customers better informed of the costs of cancelling a service before its delivery.

II. Application of the proposed tariff

Positions of parties

19. MTS Allstream submitted that it was inappropriate to include the following Competitor Services in the body of a retail tariff: Competitor Digital Network (CDN), Asymmetric Digital Subscriber Line (ADSL) Access Service, and Local Network Interconnection and Component Unbundling. MTS Allstream indicated that the process and rules established for the introduction and approval of Competitor Services tariffs, such as pricing and tariff structure, was different than that for retail services. Rogers had similar concerns noting that the proposed charges would be applied on Competitor Services. Rogers submitted that a portion of the mark-up related to lowering the total number of cancellations was punitive in nature. Rogers submitted that, if the Commission determined that BOC charges were appropriate on Competitor Services, these cancellation charges must be priced as Category I Competitor Services.
20. Rogers indicated that the tariff wording provided Bell Canada with the discretion to determine when and upon whom it would charge BOC fees. Rogers expressed concern that Bell Canada might choose to waive BOC charges when it was beneficial to do so when dealing with its own local business customers, but might then use its discretion to implement these charges on order cancellations from competitors. Rogers submitted that Bell Canada could use the BOC charges as an unfair competitive advantage and, as a result, the fee would largely be borne by competitors for whom few other competitive service alternatives existed.
21. Rogers submitted that it ordered wholesale services for its own end-customers to provision its various telecommunications services. Rogers noted that, frequently, cancelled orders were beyond the competitors' control because either the end-customer decided to cancel services or the incumbent local exchange carrier (ILEC) did not have the facilities to provision a loop.

Reply comments

22. Regarding the appropriateness of including Competitor Services in the body of a retail tariff, the Companies submitted that in their view, the incidental application of the charge with respect to orders for wholesale services had not altered the predominant nature of this service as a discretionary retail service.

23. In response to Rogers' concerns that the proposed charges included a punitive portion, the Companies submitted that increased customer awareness would make them realize that they would be liable for the Companies' costs should they cancel an order, and would reduce the number of cancellations. The Companies also submitted that restricting prices to Phase II costs plus a 15 percent mark-up should be reserved for essential services only, and argued that the BOC could not reasonably be considered to be an essential service.
24. In response to Rogers' comments regarding discretionary application of the tariff, the Companies noted that the use of the word "may" was intended to reflect that the order cancellation charge or the installation charge plus charges over the MCP would apply. The Companies indicated that they would be willing to modify proposed item 107.1 (b) to state that "A customer . . . will be billed the Business Order Cancellation Charge" instead of "A customer . . . may be billed the Business Order Cancellation Charge."
25. Regarding an ILEC's lack of facilities being the cause of delays that would result in the cancellation of orders, the Companies noted that if an order was coded as "pending facilities," their policy was to waive the cancellation charges. The Companies also noted that they would be willing to revise their tariffs to reflect this policy.

Commission's analysis and determinations

26. On 14 December 2006, the Governor in Council issued *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534 (the Policy Direction). The Policy Direction requires, among other things, that the Commission should, 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 Canadian telecommunications policy objectives set out in section 7 of the Act.
27. The Commission notes the Companies' submission that they filed the proposed BOC tariff in the General Tariff because the majority of the services covered by the applications were retail services. The Commission also notes that Competitor Services are included in other retail tariffs. The Commission considers that directing the Companies to remove Competitor Services from the BOC tariffs could result in the Companies having to file separate tariffs, which would not be efficient or effective, and would therefore not be consistent with the Policy Direction. The Commission considers, therefore, that it is reasonable to include Competitor Services in the BOC tariff.
28. The Commission notes that, with respect to the pricing, the mark-up on the BOC charge is minimal and considers the specific proposed BOC charges to be reasonable.
29. The Commission notes that proposed item 107.1 (b) provides certainty that a charge is applied when work is cancelled after it has started, and defines which one will apply. The Commission considers that the Companies' proposed modification would conflict with the lesser charge principle described in proposed item 107.1 (b).

30. The Commission notes the Companies' response that the cancellation charges are waived if the order is coded as "pending facilities." The Commission also notes the Companies' willingness to modify their proposed tariffs to ensure that the BOC charge would not apply in circumstances where orders are cancelled due to a lack of suitable company facilities. The Commission considers that the intent of Article 20.2 is that no charge applies before installation work has started, which would also be the case if no facilities were available. Therefore, the Commission considers that the Companies should modify the BOC tariff, as set out in the conclusions below, to reflect that no charges would apply in these cases.

III. Assignment of BOC to a price cap basket

Commission's analysis and determinations

31. The Commission notes the Companies' request to assign the proposed BOC to the Uncapped Services basket. The Commission notes that the services contained in the proposed BOC tariff were previously assigned to various baskets, including Business, Other Capped, Competitor and Uncapped Services baskets.
32. The Commission notes that the Companies' costs may change over time. However, in view of the nature of the proposed BOC charge, the Commission is concerned about inappropriate rate increases. However, the Commission considers that the modifications to the proposed BOC tariff, as directed below, would ensure that it mirrors Article 20.2, which regulates the recovery of expenses incurred prior to service delivery, and would be different from a regular uncapped service which maximizes the Companies' revenues. The Commission considers that these modifications would ensure proper consideration is given to any future application for rate changes to the BOC charge.
33. Accordingly, the Commission considers that the proposed BOC charge should be assigned to the Uncapped Services basket.

Conclusions

34. In light of the above, the Commission **approves with changes** the Companies' applications, effective two weeks from the date of this Order.
35. The Commission directs the Companies to:
- a) issue wording changes and additions to the proposed BOC tariff as follows:
 - i) change item 107.1 (c) to read "The Business Order Cancellation Charge reflects the cost of engineering, labour and supervision, resulting from the installation and removal work, net of salvage."

- ii) add item 107.1 (d) "No charges are applicable where:
 - (1) a customer cancels an order in advance of installation work starting, or
 - (2) orders are cancelled as a result of a lack of suitable company facilities."
- b) assign the BOC tariff to the Uncapped Services basket.

Secretary General

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