Canadian Radio-television and Telecommunications Commission | Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2010-323

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Ottawa, 28 May 2010

TekSavvy Solutions Inc. and Yak Home Phone Corp. – Application for relief regarding Wholesale Local Service and Features

File number: 8661-T117-201000033

In this decision, the Commission directs Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies) to match their Wholesale Local Service and Features (WLSF) provisioning intervals with their retail service intervals. The Commission determines that the Bell companies are keeping WLSF requests confidential from their retail operations and directs that this practice continue. The Commission also directs the Bell companies to, among other things, cease applying WLSF service charges and to instead provide a one-time credit where WLSF customers add end-users whose origin is unknown. Lastly, the Commission determines that the local access reduction charge should not be waived.

Introduction

1. The Commission received an application by TekSavvy Solutions Inc. and Yak Home Phone Corp. (the applicants), dated 4 January 2010, requesting certain relief regarding the Wholesale Local Service and Features (WLSF) service provided by Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies).

2. WLSF is a wholesale service that provides customers with discounted rates when ordering high volumes of residential primary exchange services (PES) and select calling features. It is subject to a three-year minimum contract period. In Telecom Decision 2008-17, it was classified as a non-essential service, subject to a three-year phase-out period. In Telecom Order 2009-284, the Commission approved the Bell companies' application for destandardization, making the WLSF service unavailable to new customers.

3. The applicants submitted that

   - they are being unjustly discriminated against because the service provisioning intervals for WLSF are longer than those for retail service;
   - the Bell companies' employees who sell PES on a retail basis have access to information regarding pending PES orders under WLSF;
   - in some cases, the applicants are not receiving the $50 credit for adding new end-users that they are entitled to under the Bell companies' tariffs, but are required instead to pay a $25 service charge; and
   - the local access reduction charge (LARC) is equivalent to an early termination charge (ETC) and should therefore be waived.

4. The Commission received comments from the Bell companies and Primus Telecommunications Canada Inc. (Primus). The public record of this proceeding, which closed on 9 April 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

5. The Commission has identified the following issues to be addressed in this decision:

    I. Is the length of the provisioning intervals for WLSF unjustly discriminatory?

    II. Are the Bell companies sharing confidential wholesale information with their retail operations?

    III. Are the Bell companies entitled, pursuant to their tariffs, to charge a service charge and not to provide a credit when their WLSF customers add new end-users whose previous local service provider is unknown?

    IV. Should the LARC be waived?

I. Is the length of the provisioning intervals for WLSF unjustly discriminatory?

6. The applicants and Primus claimed that when the Bell companies introduced WLSF, its provisioning intervals were the same as those for retail PES, but that the WLSF intervals are now much longer. The applicants submitted that this longer time frame is unduly discriminatory for WLSF customers relative to the Bell companies' retail customers.

7. The Bell companies submitted that they had never been able to provide WLSF service under the same provisioning intervals as retail PES because a significant portion of WLSF orders require manual intervention. The Bell companies claimed that the longer service interval was not discriminatory but reflected the time required to provision the service.

8. The Commission notes that in their original WLSF tariff filings, the Bell companies submitted that the WLSF service was to be offered under the same terms and conditions as retail PES. The Commission also notes that the Bell companies presented an economic study that included capital costs for software to automate the order process. The Commission further notes that the Bell companies have chosen to retain manual processes that they originally planned to automate.

9. In light of the above, the Commission considers that the Bell companies' explanation of longer provisioning intervals for WLSF is not satisfactory and that, as a result, the WLSF intervals are unjustly discriminatory. Accordingly, the Commission directs the Bell companies to match their WLSF provisioning intervals with their retail PES intervals.

II. Are the Bell companies sharing confidential wholesale information with their retail operations?

10. The applicants submitted that a large amount of winback activity is occurring when an order for PES is placed under WLSF, but before the end-customer is switched from the Bell companies. The applicants submitted that the information provided to the Bell companies for

the activation of WLSF orders should not be available to the Bell companies' staff who sell retail PES before the WLSF PES orders are completed. The applicants claimed that using this information for winback purposes disadvantages WLSF customers and confers an undue preference on the Bell companies.

11. The Bell companies submitted that no confidential wholesale information is provided to their retail operations but that they periodically receive a list of all active published residential directory listings from a third party. This updated list is then compared to the Bell companies' list of all active in-service residential numbers. The Bell companies also submitted that the incremental difference between the lists consists of those end-customers that have recently cancelled the Bell companies' residential services and have been transferred to a competitor. They further submitted that these end-customers are then contacted as part of the Bell companies' routine winback activities.

12. The Commission notes that requests for WLSF services are handled by the Bell companies' carrier services groups and that these requests are kept confidential from their retail operations. Based on the evidence before it in this proceeding, the Commission is satisfied that the Bell companies do not share confidential information between their carrier services groups and retail operations. The Commission directs the Bell companies to continue to keep WLSF requests confidential from their retail operations.

III. Are the Bell companies entitled, pursuant to their tariffs, to charge a service charge and not to provide a credit when their WLSF customers add new end-users whose previous local service provider is unknown?

13. The applicants and Primus submitted that, according to their tariffs, the Bell companies must provide a $50 credit to the WLSF customer for each new end-user the customer adds where the end-user is not currently using the Bell companies for their residential PES. They also submitted that the Bell companies are not abiding by their tariffs because they do not provide the credit in cases where the Bell companies classify the origin of the end-user as "unknown."[1] The applicants and Primus further submitted that, for some categories of end-users classified by the Bell companies as having an unknown origin, the Bell companies are incorrectly applying a $25 service charge.

14. The Bell companies submitted that their practice is consistent with their tariffs and that they remit the $50 credit for those end-users who they determine have been disconnected from their local residential service for more than 90 days, unless the WLSF customer exceeds the churn rate set out in the tariffs. The Bell companies submitted that if they cannot verify the origin of the end-user, they cannot verify whether the end-user is new to the Bell companies and, therefore, whether the credit applies. They argued that to provide the credit for end-users for whom they cannot verify the previous local residential service supplier would allow WLSF customers to "game" the Bell companies by encouraging end-users to disconnect and reconnect with a new number in order to collect the credit.

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[1] The Bell companies classify these end-users in three different categories: Unknown origin > 90 days disconnect from the Bell companies' residential service, Unknown origin < 90 days disconnect from the Bell companies' residential service, and Unknown origin, no previous record of service with the Bell companies' residential service.

15. The Commission notes that the Bell companies' tariffs state that a WLSF service charge of $25 will be charged to the WLSF customer for each end-user who transfers residential PES from the Bell companies to the WLSF customer. On the other hand, the Bell companies' tariffs state that a one-time credit of $50 will be provided by the Bell companies to the WLSF customer for each end-user that is added to the residential PES provided by WLSF where the end-user is not currently using the Bell companies for their residential PES.

16. The Commission considers that in cases where the previous local residential service provider of the end-user is unknown, the end-user cannot be considered to be using the Bell companies for its residential PES. The Commission also considers that in the case where an end-user is being transferred from the Bell companies' residential PES to a WLSF customer, the Bell companies would know that they are the current service provider for that end-user. Furthermore, the Commission does not consider it likely that either the WLSF customer or an end-user would engage in the kind of behaviour that the Bell companies referred to, such as changing phone numbers, simply to obtain the one-time credit.

17. Therefore, the Commission considers that the Bell companies cannot impose a WLSF service charge where the previous local residential service provider of the end-user who is being transferred to WLSF is unknown and that, instead, the WLSF customer should be provided with the one-time $50 credit in this situation. The Commission notes, however, that the Bell companies' tariffs provide for a reduction or elimination of the credit if the WLSF customer's churn rate exceeds certain thresholds.

18. The Commission considers that to the extent that WLSF service charges have been imposed on WLSF customers for adding end-users whose previous local residential service providers were unknown, the WLSF customers were incorrectly billed. The Commission notes that the Bell companies are required, pursuant to their terms of service, to credit – with interest – a non-recurring charge that should not have been billed, provided the customer disputes the charge within 150 days of the date of the bill.

19. Regarding the $50 credits that should have been provided in the past but were not, the Commission notes that the Bell companies' terms of service have no limitation period for unpaid credits. However, the Commission considers that the unpaid credits are similar in effect to non-recurring charges that should not have been billed. The Commission therefore considers it appropriate in the circumstances to limit the Bell companies' liability for unpaid credits in the same manner as for non-recurring overbilled charges.

20. In light of the above, the Commission directs the Bell companies to

    - cease applying the $25 WLSF service charge to its WLSF customers for adding new end-users for whom the origin of the previous local residential service provider is unknown, and to provide the $50 credit in these situations in accordance with their tariffs;

- credit their WLSF customers, consistent with their terms of service, for WLSF service charges that were incorrectly billed in the 150 days prior to either the date of notification of a dispute by the customer or the date of this decision, whichever is earlier;

- provide their WLSF customers with the $50 credits that should, according to their tariffs and the Commission's determinations in this decision, have been paid in the 150 days prior to either the date of notification by the customer of a dispute or the date of this decision, whichever is earlier; and

- pay interest on any unpaid credits they are required to provide on the same terms as for charges that should not have billed.

IV. Should the LARC be waived?

21. The applicants and Primus claimed that the Bell companies have forced them to migrate their end-users from their WLSF services to other local exchange carriers' services. They also claimed that the Bell companies have then penalized them for their declining customer base by applying the LARC. As such, they submitted that the LARC is acting in effect as an ETC and should therefore be waived in accordance with Telecom Decision 2008-17.

22. The Bell companies submitted that the LARC is not an ETC, but a charge for WLSF customers when they do not meet prescribed demand levels. They also submitted that there was no evidence that the WLSF customers were removing end-users.

23. The Commission notes that there is no evidence on the record of this proceeding that the Bell companies are forcing their WLSF customers to migrate their end-users away from the WLSF service. The Commission also notes that the recent destandardization of the service does not mean that the service will be terminated, but rather that it is no longer available to new wholesale customers. The Commission further notes that the service may continue to be offered on a forborne basis after the three-year phase-out period and that the Bell companies are required to honour any existing contracts they have signed with the WLSF customers. If the WLSF customers wish to migrate their end-users to a different service or service provider then, pursuant to Telecom Decision 2008-17, they can break their contract with the Bell companies without having to pay an ETC.

24. The Commission considers that the LARC is not an ETC, but a condition of service that applies when there is a material reduction in the demand for WLSF service by WLSF customers. As noted above, the WLSF provides customers with discounted rates when they order high volumes of residential PES. The Commission considers that the LARC simply ensures that WLSF customers do not obtain the full discounted rates if demand does not meet the required levels.

25. In light of the above, the Commission determines that the LARC should not be waived.

Secretary General

Related documents

- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada - Destandardization of Wholesale Local Service and Features services*, Telecom Order CRTC 2009-284, 15 May 2009

- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008