



Telecom Decision CRTC 2011-407

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Ottawa, 4 July 2011

Bell Aliant Regional Communications, Limited Partnership – Application to access TBayTel’s competitor digital network service rates

File number: 8661-B54-201100750

In this decision, the Commission denies Bell Aliant’s request to be granted access to TBayTel’s competitor digital network service rates for its existing dedicated services.

Background

1. From 1 January 2003 to 31 December 2010, Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) received dedicated services from TBayTel under the terms of a Dedicated Services Interconnection and Settlement Agreement (DSISA).¹
2. In Telecom Order 2007-398, the Commission approved, on an interim basis, TBayTel’s competitor digital network (CDN) services tariff. Prior to that order, TBayTel had only offered digital network access (DNA) services and rates, pursuant to its DNA services tariff.² The Commission approved TBayTel’s CDN services tariff on a final basis in Telecom Order 2010-294.
3. On 22 July 2010, TBayTel filed an application with the Commission requesting to either remove the CDN services tariff, or amend the CDN services tariff with respect to certain large carriers’ entitlement to CDN services and rates. TBayTel submitted that the CDN services tariff should be removed because it was not an essential service required by competitors for local competition and that, in any event, the CDN services tariff should not apply for competitors that were not party to Telecom Decision 2007-78.
4. In Telecom Decision 2010-897, the Commission noted that, unlike the large incumbent local exchange carriers, TBayTel’s CDN services were not mandated by the Commission. The Commission considered that TBayTel’s CDN services tariff should continue to be available, but be limited to the CDN services that TBayTel was currently providing. Consequently, the Commission directed TBayTel to

¹ Bell Canada and TBayTel originally agreed to the DSISA. However, by letter dated 6 June 2006, Bell Canada advised the Commission that the DSISA was being assigned to Bell Aliant as part of an internal restructuring between Bell Aliant and Bell Canada.

² CDN service makes an incumbent local exchange carrier’s DNA services and associated link facilities available to competitors at rates less than retail DNA service rates.

continue to provide CDN services with associated rates to MTS Allstream Inc. (MTS Allstream) and TELUS Communications Company (TCC) for existing circuits, subject to a phase-out period. The Commission further directed that any new circuits ordered by any new or existing customers should be provided at DNA rates.

The application

5. On 19 January 2011, Bell Aliant filed an application requesting that the Commission direct TBayTel to provide dedicated services to Bell Aliant at CDN rates for its existing circuits, similar to what was granted to MTS Allstream and TCC in Telecom Decision 2010-897.
6. The Commission received comments from TBayTel and TCC. The public record of this proceeding, which closed on 4 May 2011, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

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7. Bell Aliant submitted that the dedicated services that it subscribed to, including network access services, were functionally identical to the access services in TBayTel's CDN services tariff. Further, Bell Aliant indicated that, as part of its DSISA, it subscribed to Central Office (CO) Link services for toll trunks, and was of the view that such a service formed part of TBayTel's CDN services tariff. Accordingly, Bell Aliant considered that TBayTel had been providing it with CDN services that should be eligible for grandfathered CDN rates.
8. Bell Aliant noted that it had requested to migrate its circuits when TBayTel's CDN services tariff was still in effect, but that TBayTel refused to deal with the request until after the Commission ruled on the proceeding leading to Telecom Decision 2010-897. Bell Aliant considered that, if TBayTel had agreed to the request, its dedicated circuits would have been treated in that decision as existing circuits subject to CDN rates, similar to those granted to MTS Allstream and TCC.
9. Bell Aliant considered that one of the reasons that the Commission grandfathered CDN rates for MTS Allstream and TCC was due to the potential economic hardship that those companies would have been faced with if such rates had no longer been available. Bell Aliant submitted that it had negotiated contracts and made business plans based on the availability of TBayTel's CDN service rates effective 1 January 2011, and that it would likewise suffer economic hardship if CDN rates were not available to it.
10. Finally, Bell Aliant claimed that denial of its request would be unjustly discriminatory, under subsection 27(2) of the *Telecommunications Act* (the Act). Bell Aliant argued that the rates paid by it for existing circuits in TBayTel's territory would be several times higher than the CDN rates paid for existing circuits by MTS Allstream and TCC. Bell Aliant was of the view that it would be at a competitive disadvantage relative to

MTS Allstream and TCC because it would not be able to win those companies' customers that are receiving services in TBayTel's territory based on underlying CDN rates.

11. TCC submitted that Bell Aliant had been locked into the DSISA with TBayTel and that it would not have been in a position to subscribe to CDN service prior to Telecom Decision 2010-897. As such, TCC submitted that TBayTel's grandfathered CDN services tariff should not be available to Bell Aliant.
12. TBayTel and TCC were of the view that Bell Aliant accepted certain risks when it negotiated business contracts based on an expectation of receiving CDN rates, since there was no guarantee that such services and associated rates would still be available when the DSISA expired.
13. TCC noted that it had been paying higher rates than Bell Aliant for functionally similar services since 2002 because it was leasing services on an à la carte basis, while Bell Aliant had made the decision to lease services pursuant to the DSISA with all of its attendant risks and benefits. TCC considered that Bell Aliant was in the same position as any other telecommunications carrier that requested a new circuit in TBayTel's territory.

Commission's analysis and determinations

14. The Commission considers that the circumstances which led to the grandfathering of CDN rates for MTS Allstream and TCC in Telecom Decision 2010-897 are different than those for Bell Aliant. For example, the Commission notes that MTS Allstream and TCC had been providing services to customers for at least two years on existing circuits at CDN rates. Conversely, the Commission considers that Bell Aliant has never provided services to customers on existing circuits at CDN rates.
15. The Commission notes that, in Telecom Decision 2002-39, it approved a consensus report which determined that CO Link services for toll trunks should be provided at near-essential facility pricing, but did not categorize them as CDN services under a CDN tariff. Further, the Commission notes that Bell Aliant's subscription to CO Link services occurred even prior to the introduction of TBayTel's CDN services tariff. Accordingly, the Commission does not consider such services to be CDN services.
16. The Commission also notes that Bell Aliant was locked into the terms of the DSISA with TBayTel at DNA rates until 31 December 2010. The Commission considers that Bell Aliant's dedicated services were equivalent to DNA services at the time of Telecom Decision 2010-897, and were not eligible for migration to CDN rates at the time of that decision.
17. With regard to Bell Aliant's claim of unjust discrimination, the Commission notes that its analysis of an allegation concerning a contravention of subsection 27(2) of the Act is conducted in two phases. The Commission first determines whether the

conduct in question is discriminatory or preferential and, where it so determines, it then decides whether the discrimination is unjust or the preference is undue or unreasonable.

18. In this case, the Commission notes that all telecommunications carriers in TBayTel's territory, regardless of whether they have access to grandfathered CDN rates or not for existing circuits, are unable to negotiate contracts for new circuits based on CDN rates. The Commission notes therefore that all telecommunications carriers are on a level playing field for such competitive activities and considers that denial of Bell Aliant's request would not be discriminatory or preferential. Accordingly, the Commission considers that, in the circumstances of this proceeding, denial of Bell Aliant's request would not violate subsection 27(2) of the Act.
19. In light of the above, the Commission **denies** Bell Aliant's request to be granted access to TBayTel's CDN service rates for its existing dedicated services.

Secretary General

Related documents

- *TBayTel - Application for relief regarding provision of competitor digital network services*, Telecom Decision CRTC 2010-897, 2 December 2010
- Telecom Order CRTC 2010-294, 19 May 2010
- Telecom Order CRTC 2007-398, 29 October 2007
- *Implementation of local competition in TBayTel's serving territory – ExaTEL Inc. and Shaw Communications Inc.*, Telecom Decision CRTC 2007-78, 31 August 2007
- *CRTC Interconnection Steering Committee - Consensus items*, Telecom Decision CRTC 2002-39, 10 July 2002