



Telecom Order CRTC 2012-5

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Ottawa, 6 January 2012

Bell Aliant Regional Communications, Limited Partnership – Digital Transmission Facilities

File number: Tariff Notice 381

Introduction

1. The Commission received an application by Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), dated 6 October 2011, in which the company proposed revisions to its Special Facilities Tariff (SFT), Item D77 – Digital Transmission Facilities. Specifically, Bell Aliant proposed to introduce a rate for two DS-3 facilities between the customer’s premises and Bell Aliant’s central office in the exchange of Huntsville, Ontario.
2. The Commission received comments opposing Bell Aliant’s application from MTS Allstream Inc. (MTS Allstream).
3. In response to MTS Allstream’s comments, Bell Aliant submitted that it has been leasing two DS-3 facilities to MTS Allstream in the Huntsville exchange under its Access Services Tariff, Item 130 – Competitor Digital Network Services (referred to in this order as the CDN tariff) in error and that these facilities should be leased under an SFT.¹ As a result, Bell Aliant requested that the Commission ratify the current rates being charged to MTS Allstream for the period from 13 July 1999 to the effective date of approval of the proposed tariff. Bell Aliant submitted that it was making this request since it has been providing DS-3 services to MTS Allstream in the Huntsville exchange without a Commission-approved tariff.
4. The public record of this proceeding, which closed on 10 November 2011 with supplemental comments from Bell Aliant, is available on the Commission’s website at www.crtc.gc.ca under “Public Proceedings” or by using the file number provided above.

Should the Commission approve Bell Aliant’s application?

5. Bell Aliant submitted that an SFT is required because Huntsville is a non-serving exchange for DS-3 service under the National Services Tariff, Item 301 – Digital

¹ MTS Allstream submitted that, concurrent with Bell Aliant’s tariff filing, it was notified that the two DS-3 facilities it was leasing in the Huntsville exchange would be terminated unless it agreed to migrate from the existing CDN rates to the proposed SFT rates.

Network Access (DNA) [i.e. retail DNA DS-3 service is not offered in the Huntsville exchange].

6. Bell Aliant also submitted that it is not required to provide wholesale CDN service where retail DNA service is not provided, based on paragraphs 167 and 168 of *Competitor Digital Network Services*, Telecom Decision CRTC 2005-6, 3 February 2005, as amended by Telecom Decision CRTC 2005-6-1, 28 April 2006. The company submitted that, in that decision, the Commission deemed it appropriate for the incumbent local exchange carriers (ILECs) to provide wholesale CDN service where they provide retail DNA service to their own retail customers. Bell Aliant concluded that, because retail DNA DS-3 service is not available in the Huntsville exchange, this exchange should be considered a non-serving exchange for CDN DS-3 service.
7. MTS Allstream disagreed with Bell Aliant's submission that the Huntsville exchange should be considered a non-serving exchange for CDN DS-3 service. MTS Allstream noted that it currently leases two DS-3 facilities under the CDN tariff, and that one of the facilities has been in place for over 10 years.²
8. MTS Allstream further submitted that the CDN tariff states that service is provided within exchanges or serving wire centres depending on the availability of suitable facilities and equipment. The company argued that, in light of this, and given that it currently receives CDN DS-3 service in the Huntsville exchange, that exchange should be considered a CDN serving area. MTS Allstream therefore submitted that Bell Aliant's application should be denied and that MTS Allstream should continue to be eligible for the lower CDN service rate.

Commission's analysis and determinations

9. The Commission notes that the CDN tariff specifies that service is provided within exchanges or serving wire centres depending on the availability of suitable facilities and equipment.
10. The Commission finds that two DS-3 facilities exist in the Huntsville exchange, as evidenced by the two CDN DS-3 services that Bell Aliant is currently providing to MTS Allstream. Accordingly, the Commission considers that suitable facilities and equipment are available and that Bell Aliant can offer CDN DS-3 service in the Huntsville exchange.

² Originally, this facility was leased under Bell Canada's National Services Tariff, CRTC 7400, Item 301 – Digital Network Access. MTS Allstream noted that with the introduction of CDN services, this facility was converted to the CDN tariff, and that the second facility was installed in 2008 under the CDN tariff.

11. Regarding Bell Aliant's submission that the company is not required to provide wholesale CDN service where retail DNA service is not provided, the Commission notes that paragraph 168 of Telecom Decision 2005-6 sets out the following:

Based on the circumstances of this case, the Commission finds that these CDN services are necessary and appropriate to, among other things, prevent the ILECs from subjecting competitors to an undue or unreasonable competitive disadvantage, and from conferring upon themselves an undue or unreasonable preference by providing retail DNA services and IX metropolitan services to competitors, at the same rates and on the same terms and conditions as to their retail customers. This requirement is also necessary and appropriate to prevent ILECs from conferring upon themselves an undue preference and unreasonable competitive advantage by providing to their own customers retail DNA services and other retail services and by requiring competitors to obtain these facilities pursuant to the ILECs' retail tariffs. Further, the Commission finds that this requirement is also necessary and appropriate to ensure that rates charged to competitors for these services and facilities are just and reasonable.

12. The Commission notes that one of the reasons for introducing CDN services was to ensure that competitors were not disadvantaged when the ILECs were providing services to their own customers at retail rates. However, the Commission notes that it did not, in Telecom Decision 2005-6, make the availability of retail DNA service in a given exchange a prerequisite to making wholesale CDN service available in that exchange.
13. In light of the above, the Commission **denies** Bell Aliant's application.
14. Regarding Bell Aliant's request for rate ratification, the Commission considers that, as a result of its determination above, the rates for the two DS-3 facilities have been charged in accordance with a Commission-approved tariff and that therefore, the request is moot.

Secretary General