



Telecom Order CRTC 2006-103

Ottawa, 3 May 2006

Bell Canada

Reference: Tariff Notice 6913

Bell Digital Voice

1. The Commission received an application by Bell Canada, dated 17 November 2005, proposing to waive the service connection charge for existing Bell Digital Voice (BDV) customers who wish to migrate back to residential primary exchange service (PES).
2. Bell Canada proposed to remove a barrier for customers who migrate their services to BDV. Bell Canada indicated that some customers were resisting moving to BDV due to concerns that service charges would apply should they decide to return to PES. Bell Canada submitted that with this proposed service charge waiver, customers would be more likely to migrate to BDV service.
3. Bell Canada added that it was confident that few customers would opt to abandon BDV service in favour of returning to PES. Bell Canada submitted that in light of the limited expected demand for this service charge waiver, the economic impact of this proposed tariff change was immaterial and, accordingly, no imputation test was provided.
4. On 1 December 2005, Quebecor Media Inc. (QMI) filed comments, and on 16 December 2005, Bell Canada filed reply comments.
5. QMI argued that if Bell Canada believed that BDV and PES were distinct services, then a waiver of service charges for customers migrating from BDV to PES amounted to a promotional activity in favour of PES subscription. In QMI's view, Tariff Notice 6913 (TN 6913) must be regarded as a local service promotion and must be considered in accordance with the framework established by the Commission in *Promotions of local wireline services*, Telecom Decision CRTC 2005-25, 27 April 2005 (Decision 2005-25), which requires that promotions involving local wireline services must:
 - a) be available and equally promoted across one or more entire rate bands;
 - b) not be limited to competitors' customers;
 - c) pass an imputation test for the service, including the impacts of the promotion; and
 - d) have a combined enrolment and benefit period that does not exceed six consecutive months, have no customer lock-in requirement beyond the promotion period, and have a minimum six-month waiting period after the expiry of the most recent previous promotion before offering a new promotion involving the same local wireline service.

6. QMI submitted that TN 6913 failed the first, third and fourth criteria: BDV service was not currently available across entire rate bands, no imputation test had been submitted, and there was no enrolment or benefit period.
7. QMI requested that the Commission reject TN 6913 and direct Bell Canada to re-file its proposal in a manner consistent with Decision 2005-25.
8. In response to QMI's position that TN 6913 was a promotion, Bell Canada submitted that the proposed service charge waiver was not a promotion and therefore was not subject to the promotions rules as defined in Decision 2005-25. Bell Canada argued that the Commission's restrictions on incumbent local exchange carrier (ILEC) promotions are and have always been focused on promotions of limited duration. Bell Canada noted, for example, that in the era when tariff filings for promotions did not require an imputation test, the Commission had noted the following in *Tariff filings relating to promotions*, Telecom Decision CRTC 96-7, 18 September 1996 (Decision 96-7):

To date, the Commission has evaluated whether promotions are legitimate and of a limited duration on a case-by-base basis...

The Commission considers that the primary consideration in assessing whether a promotion is a legitimate promotion not requiring an imputation test is the duration of the promotion...

9. Bell Canada submitted that in TN 6913, it was proposing a permanent service charge waiver, which would be a permanent element of the General Tariff and not a promotion of limited duration. Bell Canada argued that, accordingly, this was not in the nature of a promotion and therefore not subject to the promotion criteria set by the Commission in Decision 96-7, or more recently in Decision 2005-25. Bell Canada submitted that the Commission had approved this type of tariff condition on many occasions. Bell Canada noted, for example, that its BDV service proposed in Tariff Notice 6900 (TN 6900) was given interim approval in *Bell Canada proposal for VoIP service pricing in Ontario and Quebec*, Telecom Decision CRTC 2005-62, 20 October 2005 (Decision 2005-62). TN 6900 provided, in General Tariff item 7031.6(d) Note, that:

The Service Connection fee applies to the establishment of a new service or change to the customer's physical location. No Service Connection fee applies when migrating from Bell Digital Voice Lite service or Bell Canada Primary Exchange (Local) service to Bell Digital Voice at the same service location.

10. Bell Canada also noted that Decision 2005-62 was issued after the release of Decision 2005-25 without invoking the promotions restrictions.
11. Bell Canada reiterated that in light of the limited expected demand for this service charge waiver, the economic impact of this proposed tariff change would be immaterial and, accordingly, no imputation test was provided. Bell Canada submitted that an imputation test would normally be required for tariff proposals of this nature but, in this instance, the change in imputation provided in support of TN 6900 would be immaterial.
12. On 14 February 2006, Bell Canada filed an imputation test at Commission staff's request.

Commission's analysis and determinations

13. The Commission notes that QMI provided no support for its contention that Bell Canada's application is for a promotion. The Commission notes that different rules apply to promotions and to permanent service offerings. The Commission, in Decision 2005-62, gave interim approval to, among other things, a permanent service offering by Bell Canada that provides that no service connection charge applies when a customer migrates from Bell Digital Voice Lite service or Bell Canada PES to BDV at the same service location. The Commission notes that Bell Canada's application for the waiver of the service connection charge when a customer returns from BDV to Bell Canada PES at the same service location is also a permanent service offering. In light of the above, the Commission does not consider that Bell Canada's application is for a promotion.
14. The Commission considers that Bell Canada's proposal satisfies the imputation test. In this regard, the Commission expects that few customers would opt to abandon BDV service in favour of returning to PES, and that the proposal would therefore have an insignificant impact on Bell Canada's costs and revenues associated with connecting PES service.
15. The Commission considers, however, that the wording of the proposed tariff does not provide sufficient clarity that the residence service connection charge would not apply to those BDV customers who, immediately prior to migrating to BDV, were residential PES customers.
16. In light of the above and the fact that all other proceedings on VoIP are still ongoing, the Commission **approves on an interim basis** Bell Canada's application, with the following change:
 - modify the wording in item 100.3(13) to read:

The Residence Service Connection charge does not apply when migrating from Bell Digital Voice (BDV) to Primary Exchange (Local) Residence Service (PES), where the customer was a residential PES customer immediately prior to migrating to BDV at the same service location.
17. The dissenting opinion of Commissioner Langford is attached.

Secretary General

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Dissenting opinion of Commissioner Stuart Langford

I disagree with the majority decision in this matter and would have denied Bell Canada's (Bell's) application. To allow it is to enhance the ability of former monopoly telephone service providers in Canada to frustrate Parliament and the Commission's efforts "to enhance the ... competitiveness ... of Canadian telecommunications."¹ I reject the majority decision, as well, because it is likely to encourage the dominant telephone companies in Canada to develop strategies designed to circumvent the clear intent of the Commission's competitive initiatives and policies. This cannot be in the public interest.

What's it all about?

For some time now Quebecor Media Inc. (Quebecor), through its cable company, Vidéotron, has been offering residents in parts of Bell's Quebec territory residential telephone service supplied over its cable network, utilizing a voice over internet protocol (VoIP). Clearly, consumer interest in this product is high; Vidéotron has signed up thousands of former Bell subscribers.

Equally clearly, Bell cannot be happy about Vidéotron's successes; it has been trying different marketing strategies designed to reverse them. One such strategy, embodied in the application underlying today's majority decision and this dissent, appears to be to induce residential subscribers seeking a cheaper alternative to Bell Canada's traditional primary exchange service (PES) not to turn to Vidéotron but to switch instead to Bell's present version of VoIP, Bell Digital Voice.

The inducement takes the form of a freebie worth \$55, the price Bell charges new customers to hook up or activate their telephones when they subscribe to Bell's PES. The following quotation from a November 17th, 2005 letter to the Commission from David Palmer, Bell's Director of Regulatory Affairs, explains why:

The purpose of this proposed tariff change is to remove a barrier to customers migrating their services to Bell Digital Voice. Specifically, some customers are resisting moving to Bell Digital Voice due to concerns that service charges will apply should they decide they wish to return to Primary Exchange Service (PES). With this proposed service charge waiver, customers will be more likely to migrate to Bell Digital Voice service.

No doubt, Mr. Palmer is correct in his assessment. After all, if you take the risk out of something, more people will be willing to try it. "Satisfaction or your money back" beats "buyer beware," every time. But is it fair? Quebecor says no, and I agree with that assessment.

Check the rules

There are rules governing the acceptability of what the former monopoly telephone companies charge for residential goods and services. Arguably, Bell's strategy to waive a \$55 hook-up fee for select customers violates every one of them.

¹ *Telecommunications Act* [S.C. 1993, c. 38] section 7(c).

Subsection 27(1) of the *Telecommunications Act* (the Act) stipulates that "Every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable." As of today, some Quebec residents wishing to become Bell PES customers will have to pay a \$55 hook-up fee. Others will pay nothing. How precisely both charges can be "just and reasonable" is an interesting question.

Subsection 27(2) of the Act reads as follows: "No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage."

It seems patently obvious that Bell's strategy to favour one set of customers over another is to give that select group preferential treatment while at the same time subjecting those who must pay \$55 (anyone else wishing to subscribe to Bell's PES) to a disadvantage. Also subjected to a disadvantage is Quebecor, which cannot offer Bell customers a similar freebie should they be unhappy with Vidéotron's VoIP product. Whether such preferences and disadvantages are "undue" was not argued on the record. In my opinion, they are.

Finally, we come to the rules governing promotions. There is no need to repeat these here; they are set out in paragraph 5 of the majority decision. In my view, Bell's free hook-up offer fails to meet the rules governing promotions on all four counts: (1) It is not offered equally to everyone across one or more rate bands. (2) It is targeted at those who are most likely to become a competitor's customers. (3) It is priced below cost, free versus \$55. (4) It will almost certainly be offered for more than six months.

What's in a word?

Bell's response to Quebecor's accusation that its offer violates the rules governing promotions is semantically grounded. Promotions, it says, are temporary; this freebie offer to select customers is permanent. Really! That is like Elizabeth Taylor describing marriage as permanent. What does "permanent" mean in terms of tariff rates? Bell could change its mind on this freebie strategy tomorrow and file another tariff application to change the rate back to \$55. There is no such thing as permanent in the world of pricing.

What this Bell tariff application amounts to is precisely what it appears to be: a transparent attempt to avoid the rules. It is an attempt to finesse, an end run, a blatant effort to circumvent both the letter and the spirit of the Act and the Commission's pricing rules by finding a tiny loophole and then trying to squeeze through it. If such a loophole has been inadvertently overlooked in the past, the Commission's duty is to close it, not throw up its hands, as I would argue the majority has, and say "clever you, you beat the system."

The big picture

By approving Bell's application, the majority has fallen victim to a sophism, a clever but fallacious argument. Bell's strategy is clear; it is spelled out on the record. Bell has run into difficulties trying to market its internet-delivered service. Customers sensitive to price prefer Vidéotron's VoIP product. To sweeten its offer, Bell has proposed an incentive worth \$55 to those Quebec residents likely to try VoIP and only to those people. That is either preferential treatment designed to frustrate competition or a promotion. Either way it cannot and must not be allowed.

By focusing on a red herring, the argument that calling something permanent makes it so, the majority has forgotten the big picture. Parliament has directed the Commission "to enhance ... competitiveness." Its long struggle to do so by nurturing facilities-based competition in Canada is just now beginning to succeed. Competitors are winning customers away from most of the former monopoly service providers.

According to the CRTC's 2005 *Monitoring Report*, at the end of 2004, the former monopolies still controlled 96.8% of Canada's residential lines. Even if we assume a further erosion in market share since then of, say, 3 or 4%, that still leaves the former monopolies in an unquestionably dominant position. If we serve notice today, as in my opinion the majority decision does, that these powerful companies can circumvent the rules established to see fair play until such a time as market forces can be given free rein, we risk throwing away over ten years of hard work. That is a chance I am not prepared to take. Accordingly, I would deny Bell's application.