



Telecom Decision CRTC 2005-57

Ottawa, 5 October 2005

Part VII application by YP Corp. against Bell Canada

Reference: 8622-Y2-200508731

*The Commission finds that billing and collection for directory advertising is not a telecommunications service. YP Corp.'s application is therefore **denied**.*

The application

1. The Commission received an application from YP Corp. and its wholly owned affiliates, YPcom.ca, Inc. and Telco of Canada Inc. (collectively YP Corp.), dated 22 July 2005, filed pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure* (the Rules), and sections 24, 25, 27, 32 and 47 of the *Telecommunications Act* (the Act) seeking an order pursuant to section 32 of the Act requiring Bell Canada to extend to YP Corp. a billing and collection service for directory advertising on terms that are in all material respects substantially the same as the terms of the billing and collection arrangement between Bell Canada and Yellow Pages Group Co. (YPG).
2. YP Corp. also requested the Commission to consider using its expedited process described in *Expedited procedure for resolving competitive issues*, Telecom Circular CRTC 2004-2, 10 February 2004 (Circular 2004-2), to resolve the dispute.
3. On 8 August 2005, the Commission advised the parties that it would adjudicate this matter pursuant to Part VII of the Rules on an expedited basis, in accordance with the expedited process established in Circular 2004-2.
4. A panel of three Commissioners heard the matter on 23 September 2005. In addition to the oral component of the proceeding and the 22 July 2005 application, the Commission considered the written submissions and interrogatory responses from Bell Canada and YP Corp. filed on 22 August 2005.

Regulatory framework

5. Section 2 of the Act defines "telecommunications service" as follows:

telecommunications service means a service provided by means of telecommunications facilities and includes the provision in whole or in part of telecommunications facilities and any related equipment, whether by sale, lease or otherwise; and

telecommunications facility means any facility, apparatus or other thing that is used or is capable of being used for telecommunications or for any operation directly connected with telecommunications, and includes a transmission facility.

Section 23 of the Act defines "telecommunications service" as follows:

For the purposes of this Part and Part IV, *telecommunications service* has the same meaning as in section 2 and includes any service that is incidental to the business of providing telecommunications services.

Subsection 27(2) of the Act states that:

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 advantage.

6. In *Directory publisher billing and collection service*, Order CRTC 2001-575, 25 July 2001, the Commission approved TELUS Communications Inc.'s (TCI) tariff filing to provide billing and collection of telephone directory advertising charges on behalf of third party directory publishers (General Tariff item 401).
7. In *Directory publisher billing and collection service*, Order CRTC 2001-576, 25 July 2001, the Commission approved TELUS Communications (Québec) Inc.'s tariff filing to provide billing and collection of telephone directory advertising charges on behalf of third party directory publishers (Access Services Tariff section 1.03).

Issue

8. Whether billing and collection for directory advertising is a telecommunications service as defined in the Act and if so, should be provided by Bell Canada pursuant to an approved tariff.

Position of parties

YP Corp.

9. YP Corp. submitted that when Bell Canada used its billing and collection system to render and collect accounts for telecommunications-related activities provided by third parties, Bell Canada was providing a service by means of a facility, apparatus or other thing that is used or is capable of being used for an operation directly connected with telecommunications thereby making the provision of billing and collection services a telecommunications service under section 2 of the Act.
10. Alternatively, YP Corp. submitted that the billing and collection service provided by Bell Canada to YPG is a service incidental to the business of providing telecommunications services and in accordance with section 23 of the Act is a telecommunications service.
11. YP Corp. argued that the regulation of Bell Canada's provisioning of billing and collection services for certain types of long distance services, 900 information services, 976 information and chat line services was evidence that the Commission considered billing and collection

services to be a telecommunications service within the meaning of section 2 or section 23 of the Act.

12. YP Corp. further submitted that the Commission's approval of TCI's General Tariff item 401 indicated that the Commission believed that billing and collection of directory advertising was a telecommunications service.
13. YP Corp. argued that Bell Canada's provision of a billing and collection arrangement solely to YPG constituted an undue or unreasonable preference toward YPG and unjust discrimination against YP Corp., as well as an undue or unreasonable disadvantage to YP Corp., in contravention of subsection 27(2) of the Act.

Bell Canada

14. Bell Canada submitted that its billing and collection service is not a telecommunications service, as defined in section 2 of the Act because it is not a service provided by means of telecommunications facilities.
15. Bell Canada further submitted that the billing and collection services regulated by the Commission, and relied upon by YP Corp. to support its view that billing and collection was a telecommunications service, demonstrated that the determination of the billing and collection service as a telecommunications service was wholly dependent on the context in which the billing and collection was provided. In Bell Canada's view, there must be a fundamental link between the billing and collection service under review and a section 2 telecommunications service. Absent this necessary connection, Bell Canada argued, billing and collection could not be properly characterized as a telecommunications service.
16. Bell Canada also argued that the Commission's approval of a tariff for billing and collection for directory advertising in TCI's territories cannot be used to establish the Commission's jurisdiction over these services because the Commission's jurisdiction is established by statute and not by a prior Commission decision.

Commission analysis and determination

17. The Commission notes that its jurisdiction is in respect of telecommunications services as defined in sections 2 and 23 of the Act. The threshold issue in this proceeding is whether billing and collection service for directory advertising is a telecommunications service under the Act.
18. The Commission's determination as to whether Bell Canada is in contravention of subsection 27(2) of the Act, by providing a billing and collection service for directory advertising exclusively to YPG, can only be made once the Commission determines that billing and collection service for directory advertising is a telecommunications service.
19. The Commission notes that section 2 of the Act defines a telecommunications service as one provided by means of telecommunications facilities and defines telecommunications facilities as a facility, apparatus or other thing that is used for telecommunications or an operation directly connected with telecommunications.

20. The Commission notes that Bell Canada argued that its billing and collection system does not involve the use of a telecommunication facility and therefore is not a section 2 telecommunications service. At the oral hearing, YP Corp. conceded that Bell Canada's billing and collection service fits more properly within section 23 of the Act rather than section 2 of the Act.
21. The Commission considers that Bell Canada's billing and collection service for directory advertising does not involve the use of telecommunications facilities and is therefore not a telecommunications service pursuant to section 2 of the Act.
22. The Commission notes that section 23 of the Act defines telecommunications service more broadly than section 2 of the Act. Rather than being defined in terms of facilities or apparatus used for telecommunications, the definition in section 23 focuses on any service that is incidental to the business of providing telecommunications services.
23. The Commission notes that YP Corp. argued that Bell Canada's billing and collection service was in and of itself a telecommunications service regardless of the service being billed. The Commission also notes that Bell Canada argued that its billing and collection service can only be characterized as a telecommunications service when the billing and collection service is provided for a telecommunications service as defined in section 2 of the Act.
24. The Commission is of the view that the parties have presented the two ends of a continuum and that YP Corp.'s definition is too broad and Bell Canada's definition is too narrow. The Commission considers that billing and collection is a telecommunications service so long as it is provided in respect of a telecommunications service as defined in either section 2 or 23 of the Act.
25. In this case, Bell Canada is providing billing and collection service for directory advertising. The Commission considers that directory advertising is not a section 2 telecommunications service as it is not provided by means of telecommunications facilities as required by section 2.
26. The Commission further notes that the provision of basic subscriber directory listing (name, address and telephone number) for both residential and business customers is a telecommunications service and forms part of basic local telephone service.
27. The Commission is of the view that directory advertising is but one form of advertising that many businesses use to promote their products and services to the public, which is located in the telephone directory with basic subscriber directory listing information. When viewed objectively, the Commission considers that directory advertising is more in the nature of an advertising service, than it is in the nature of a telecommunications service. In light of the above, the Commission considers that directory advertising is not incidental to the business of providing telecommunications services, as required to meet the definition in section 23 of the Act.
28. The Commission considers therefore that billing and collection for directory advertising is not a telecommunications service under the Act because directory advertising is not a telecommunications service under sections 2 or 23 of the Act.

29. The Commission confirms that there is a public interest in keeping the telephone bill as clear and as comprehensible as possible. The Commission is of the view that the telephone bill has special significance for residential and business subscribers because subscribers generally consider their telephone service to be essential to their everyday lives. The Commission would be concerned if the inclusion of too many disparate services on the telephone bill or any other telephone company billing practices rendered the bill confusing to subscribers. The Commission notes that it will address Billing Content issues in an upcoming process.
30. The Commission finds that Bell Canada has not breached subsection 27(2) in respect of YP Corp. because billing and collection for directory advertising is not a telecommunications service under the Act. Similarly, Bell Canada is not required to file a tariff pursuant to section 25 of the Act.
31. Accordingly, YP Corp.'s application is **denied**.

Secretary General

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