



Telecom Order CRTC 2005-68

Ottawa, 23 February 2005

NorthernTel, Limited Partnership

Reference: Tariff Notices 211 and 212

Ethernet Access and Ethernet Transport

1. The Commission received applications by NorthernTel, Limited Partnership (NorthernTel), dated 15 October 2004, proposing revisions to its General Tariff Section N900 and proposing an Ethernet Access Agreement in order to introduce item 16, Ethernet Access, and item 17, Ethernet CO Connecting Link Arrangements; and to General Tariff Section N630, to introduce items 9 to 13, Ethernet Transport Services.

NorthernTel's application

2. NorthernTel stated that Ethernet Access service would provide for the transmission of information between an end-user's premises and NorthernTel's serving central office (CO), and that the access provided would consist of transmission facilities, equipment, and management to support connectivity between the serving CO and the terminating equipment on the end-user's premises. NorthernTel added that the CO link arrangements would provide transmission paths from the interconnecting carrier or digital subscriber line service provider's co-located CO building space to NorthernTel's patch panel within the CO for the purpose of transmitting at 10 Base-T and 100 Base-T speeds.
3. NorthernTel indicated that Ethernet Transport service would provide transport for Ethernet traffic, from a NorthernTel wire centre in which an Ethernet access terminated, to, and including, a carrier-to-carrier interface (CCI).
4. NorthernTel proposed to assign these services to the fourth basket established by the Commission in *Regulatory framework for the small incumbent telephone companies*, Decision CRTC 2001-756, 14 December 2001.
5. NorthernTel noted that it had not provided economic studies in support of these new offerings since it proposed to implement, as an interim measure, the rates already approved for Bell Canada in *Ethernet services*, Telecom Decision CRTC 2004-5, 27 January 2004, as amended by Telecom Decision CRTC 2004-5-1, dated 6 February 2004 (Decision 2004-5); and *Ethernet transport service*, Telecom Order CRTC 2004-180, 2 June 2004 (Order 2004-180) and *Ethernet transport service*, Telecom Order CRTC 2004-237, 16 July 2004 (Order 2004-237). NorthernTel stated that it would file its final rates by the end of the first quarter of 2005.
6. NorthernTel also filed a proposed Ethernet Access Agreement, stating that it reflected the Commission's directives in *Measures with respect to incumbent telephone company regulatory compliance*, Telecom Public Notice CRTC 2003-4, 10 April 2003, *Follow-up to Decision 2002-34 – Automatic renewal of contracts with a minimum contract period*, Telecom Decision CRTC 2003-85, 22 December 2003 (Decision 2003-85), and Decision 2004-5.

7. NorthernTel indicated that its applications were filed pursuant to the Commission's determinations in *NorthernTel, Limited Partnership and O.N.Telcom – Forbearance from regulation of wide area networking services*, Telecom Decision CRTC 2004-57, 31 August 2004 (Decision 2004-57).
8. The Commission received comments from Ontera dated 5 November 2004 and reply comments from NorthernTel dated 15 November 2004.

Ontera's comments

9. Ontera noted that:
 - Decision 2004-57 required that tariffs for Ethernet services be filed in accordance with the terms and conditions established for other incumbent local exchange carriers (ILECs) in Decision 2004-5;
 - Decision 2004-5 approved interim terms and conditions (including, in part, interim rates) for Ethernet services offered by the large ILECs. Ontera also noted that interim approvals were granted in order to mitigate potential harm to the competitive marketplace while the Commission continued to investigate a number of issues;
 - NorthernTel's Tariff Notices 211 and 212, respectively, did not contain provisions for offering Ethernet Access at a rate of 1,000 Mbps or Ethernet Connecting Link arrangements at the 1,000 Base-T speed, which were contained in the Bell Canada tariffs upon which NorthernTel's proposed tariffs were modelled; and
 - NorthernTel's Tariff Notice 212 did not make available the configuration for Ethernet Transport service contained in Bell Canada Access Tariff item 123.2(f)1. Ontera also noted, more specifically, that Bell Canada carrier to carrier interfaces provided for interconnection "from a designated Company wire centre over broadband facilities to a competitor POP [point of presence]." Ontera further noted that NorthernTel had not filed this configuration, but had instead required, in the proposed item 12.05, that all interconnections take place in Timmins.
10. Ontera further noted that it had facilities throughout NorthernTel's operating territory and was currently interconnected with NorthernTel at all of its wire centres.
11. Ontera argued that given the vast distances between NorthernTel's wire centres and Timmins, and Ontera's presence throughout the territory, it was critical that Ontera be permitted to interconnect at NorthernTel's wire centres. Ontera submitted that interconnection at wire centres would be efficient financially and from a network perspective because it would avoid the need for Ontera to use NorthernTel's facilities to carry traffic to Timmins, when in many cases the traffic would need to be backhauled to a wire centre. Ontera requested, therefore, that the Commission require that NorthernTel include interconnection at NorthernTel's wire centres in its tariff offering.

12. Ontera proposed several changes to NorthernTel's proposed Agreement, requesting that the Commission:

- confirm that the provision in the NorthernTel Agreement regarding the prohibition of resale of all or any portion of the Ethernet Access was not operative in light of the Commission's determinations in Decision 2004-5; and
- require that NorthernTel delete item 16.03(j) (rights of termination) from its proposed tariff and amend its Agreement to reflect the provisions of Decision 2003-85.

NorthernTel's reply comments

13. NorthernTel noted that it had simply provided the same text in its General Tariff pages and in the Ethernet Access Agreement that the Commission had approved for Bell Canada in Decision 2004-5.

14. NorthernTel also noted that even if a customer failed to renew a contract that was within the provisions of the General Tariff and the Ethernet Access Agreement, the minimum service offering was no less than a one-year contract. NorthernTel further noted that should the Commission determine that the language was incorrect, NorthernTel would comply with its directives at that time.

15. NorthernTel clarified that there were two distinct options contemplated in the General Tariff pages:

- First, as proposed in Tariff Notice 211, a wide area network (WAN) service provider could co-locate in a NorthernTel CO that provided WAN service. NorthernTel noted that this configuration required the access tariff component and the associated CO link component for each connection to the WAN service provider co-located equipment in that same CO; and
- Second, as proposed in Tariff Notice 212, a WAN service provider could purchase transport service between a serving WAN CO and the CCI located in the Timmins CO. NorthernTel noted that this alternate configuration required the access tariff component, plus the associated transport service component and the CCI component.

16. NorthernTel stated that it did not file its Ethernet Access tariff with speeds at 1,000 Mbps because it did not foresee an immediate requirement for such speed. It also stated that in the event that such a request was made, it would file a tariff revision.

Commission's analysis and determinations

17. The Commission notes that NorthernTel's proposed terms and conditions are similar to those filed by Bell Canada for the same services that were approved on an interim basis in Decision 2004-5.

18. However, in Bell Canada's tariff, two configurations are available for the interconnection between a competitor's and Bell Canada's networks, as follows:
 - 1) From a designated Company wire centre over broadband facilities to a competitor point of presence (POP); and
 - 2) From the Company's fibre management system within a designated Company wire centre to a competitor's co-location space within the same Company wire centre (Canadian Carriers and Digital Subscriber Line Service Providers).
19. The Commission notes that only the second configuration is available in NorthernTel's proposed tariff, and that Ontera objected to this.
20. The Commission considers that NorthernTel's proposal would force competitors to co-locate and would make it uneconomic for the competitors to serve a small number of customers. The Commission considers that competitors should have the choice to interconnect at any appropriately equipped NorthernTel wire centre. The Commission also considers that Ethernet Transport service should be made available from NorthernTel's wire centres over broadband facilities to the competitors' POPs.
21. In addition, the Commission finds that the proposed Ethernet Access Agreement contains provisions regarding termination and migration that are not included in NorthernTel's proposed tariffs. The Commission considers that all terms and conditions associated with the provision of a service under a General Tariff item should be included in that tariff. Accordingly, the Commission is of the view that NorthernTel should include in its tariff the applicable termination provisions set out in Section 12 of the proposed agreement.
22. In regard to Ontera's concern about the availability of Ethernet Access at 1,000 Mbps and Ethernet Connecting Link Arrangements for 1,000 Base-T, the Commission finds NorthernTel's proposal to file a tariff revision to that effect only when it has received a client's request for either service to be reasonable.
23. The Commission notes that Ontera opposed including a provision in NorthernTel's proposed tariffs that would restrict resale of Ethernet Access. In this regard, the Commission notes that in *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002 (Decision 2002-34), it prohibited simple resale of Competitor Digital Network Access (CDNA) service in order to avoid distortions in the digital network access retail market.
24. The Commission finds that Ethernet access and Ethernet transport services are provided for the purpose of connecting an end-customer to the competitor's Ethernet network services. The Commission considers that simple resale of these services could also have an impact on the emerging market for Ethernet access services. Accordingly, the Commission considers that the provision in NorthernTel's tariff that would prohibit simple resale is consistent with its determination in Decision 2002-34 to prohibit the simple resale of CDNA service.

25. The Commission notes NorthernTel's proposal to use, on an interim basis, the rates recently approved for the same Bell Canada services in Decision 2004-5.
26. In light of the above, the Commission **approves on an interim basis**, effective the date of this Order, NorthernTel's application, but directs the company to include in its tariff:
 - a) a configuration that would provide for Ethernet Transport service between any appropriately equipped NorthernTel wire centre over broadband facilities to a competitor's POP at the rate approved for Bell Canada; and
 - b) the applicable termination provisions set out in Section 12 of its Ethernet Access Agreement.

Secretary General

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