Telecom Order CRTC 2005-241

Ottawa, 22 June 2005

Call-Net Communications Inc.

Reference: Tariff Notices 23 and 23A

Diagnostic Maintenance Charge

The Commission ***denies*** *Call-Net Communications Inc.'s proposal to introduce Diagnostic Maintenance Charge, applicable when the company performs a diagnostic test on an unbundled local loop, that tests as non-functional, following a completion notice by the incumbent local exchange carrier.*

The application

1. The Commission received an application by Call-Net Communications Inc. (CNCI), dated 15 March 2005 and amended on 25 April 2005, proposing revisions to its General Tariff, to introduce Item 602, Diagnostic Maintenance Charge (DMC).

2. CNCI noted that the incumbent local exchange carrier (ILEC) was responsible for the complete installation and repair of an unbundled local loop service order, including the completion notice. CNCI further noted that when an unbundled loop was tested by the company and found to be incomplete or otherwise non-functional after the completion notice was received, the company would contact the ILEC to correct the trouble.

3. CNCI proposed to apply the DMC for each diagnostic test made in response to a completion notice when the facility would test as non-functional. CNCI added that "if the trouble is proven to the Company, no charge will apply."

4. CNCI proposed the following DMC: $65.95 for the first 15 minutes or fraction thereof, and $16.75 for each additional 15 minutes or fraction thereof. In its amended application, CNCI proposed that the above rates would apply for multi-line services and that a flat rate of $65.95 would apply for single line services.

Process

5. On 15 April 2005, Bell Canada filed comments, opposing the approval of CNCI's application. CNCI filed reply comments, along with an amended application, on 25 April 2005. On 11 May 2005, Bell Canada filed comments on CNCI's amended application.

Positions of parties

Bell Canada's comments

6. Bell Canada noted that CNCI's General Tariff Item 601, Service Charge for Trouble Identification on ILEC Unbundled Local Loops, already applied service charges of $65.95 for the first 15 minutes (or fraction thereof) and $16.75 for each additional 15 minutes (or fraction

thereof) for cases where CNCI dispatched a technician to perform a co-operative test on an ILEC unbundled loop after confirmation from the ILEC that the loop was functional and the trouble was found to be in the ILEC's facilities. Bell Canada submitted that CNCI's proposed Item 602 sought to establish rates for the same activities already covered by Item 601 and that the proposed tariff was therefore redundant.

7. Bell Canada noted that the proposed tariff stated that the DMC would apply when a facility tested as "non-functional," and argued that this was not a standard term in the industry, and was not defined in the proposed tariff.

8. Bell Canada further noted that the proposed tariff stated that if the trouble was proven to CNCI, no charge would apply. Bell Canada submitted that this contrasted with wording in CNCI's existing Item 601, which stated that no charge would apply if the co-operative test indicated no trouble in the ILEC's facilities. Bell Canada submitted that CNCI's proposed tariff was poorly worded and would give rise to disputes, and argued that it would leave the ILECs vulnerable when the trouble was not with their facilities, but with CNCI's end-customer equipment or inside wire.

9. Finally, Bell Canada submitted that CNCI's proposed rates were punitively high for single line customers, since CNCI had not differentiated between troubles for single line residence and business customers versus multi-line customers. Bell Canada noted that its own DMC reflected a flat rate fee of $65.95 for single line residence and business customers, with charges based on 15-minute increments only applying in instances of multi-line customers.

CNCI's reply comments

10. CNCI refuted Bell Canada's submission that the proposed tariff was redundant, noting that the charge in Item 601 was for situations involving a co-operative test and that the proposed Item 602 was to apply to situations where co-operative tests were not performed. CNCI noted that the DMC (Item 602) would largely apply to loop transfers involving residential customers where co-operative tests were typically not employed. CNCI stated that charge was meant to apply where CNCI found trouble on the loop after the ILEC provided a completion notice, which indicated that a functioning loop had been transferred.

11. With respect to Bell Canada's objection regarding CNCI's use of the term "non-functional," CNCI stated that it was using the term in its plain English meaning, i.e., the loop was not working and could not be used in its current condition.

12. In response to Bell Canada's submission that the proposed charges were excessive and did not differentiate between single and multi-line customers, CNCI submitted an amended application, which proposed a flat rate of $65.95 for single line services.

Bell Canada's additional comments

13. Bell Canada restated its view regarding the use of the term "non-functional," submitting that CNCI's claim that it was using the term "in its plain English meaning" added no clarity. Bell Canada also reiterated its similar concerns with respect to the wording "if the trouble is proven to [CNCI], no charge will apply."

Commission's analysis and determination

14. The Commission notes that CNCI's existing General Tariff Item 601, Service Charge for Trouble Identification on ILEC Unbundled Local Loops, applies when the company dispatches a service technician to perform a co-operative test on an ILEC's unbundled local loop after confirmation from the ILEC that the loop is functional. The Commission notes that, by contrast, the DMC would largely apply to loop transfers involving residential customers, when the loop is not functional after the receipt of the completion notice.

15. In *Finalization of quality of service rate rebate plan for competitors*, Telecom Decision CRTC 2005-20, 31 March 2005 (Decision 2005-20), the Commission finalized a quality of service (Q of S) rate rebate plan (RRP) whereby rebates are provided to a competitor by an ILEC, when the ILEC fails to meet a Q of S performance standard. In that Decision, the Commission established competition-related Q of S indicator 2.12 to monitor service failures and/or degradation within the first 30 days of delivery for competitor services, including unbundled loops. The Commission stated that it would monitor indicator 2.12 for a period of one year, beginning from the quarterly filing that commences the final RRP, in order to assess the effectiveness of and the continued need for the indicator.

16. The Commission notes that if Q of S indicator 2.12 is, after the one-year monitoring period, included in the RRP for competitors, CNCI could receive a rebate in the case of service failures and/or degradation within the first 30 days of delivery of ILEC unbundled loops. The Commission is concerned that if CNCI's application were approved and if Q of S indicator 2.12 were included in the RRP, the company may receive double compensation (i.e., under the DMC tariff provision and under Q of S indicator 2.12) for non-functional loops.

17. The Commission therefore considers that it would be premature to approve CNCI's application before making a determination, following the one-year monitoring period, on whether or not Q of S indicator 2.12 warrants inclusion in the RRP for competitors.

18. Accordingly, the Commission **denies** CNCI's application.

Secretary General