



Telecom Order CRTC 2006-161

Ottawa, 23 June 2006

Bell Canada

Reference: Bell Communications Tariff Notices 1, 1A, 1B, 2, 2A, 3, 4, 4A, 4B, 4C, 4D, 5, 5A, 6, 6A, and 7, and related agreements, Bell Canada Tariff Notices 6935, 6944, 6944A, and 6952, Bell Canada (National Services Tariff) Tariff Notice 873 and Master Interconnection Agreement

Introduction of Bell Communications' General Tariff, Exchange Services Tariff, Access Services Tariff, and Special Facilities Tariff, and revisions to Bell Canada's General Tariff and National Services Tariff

Background

1. On 1 February 2006, BCE Inc. (BCE) announced its intention to form a new regional income trust¹ that would offer wireline, legacy data, and Internet services over approximately 1.6 million local access lines in parts of Bell Canada's territory in Ontario and Quebec (the Regional Territory). BCE indicated that it was expected that Bell Canada would retain an approximately 50 percent interest in the regional income trust following the planned distribution of trust units to BCE shareholders. BCE also indicated that there would be no changes to the services offered to Bell Canada's customers or to the terms and rates applicable to those services, as a result of this corporate restructuring.

The applications

2. The Commission received several applications by Bell Canada, filed between 14 March and 26 May 2006, under cover of Bell Communications Tariff Notices 1 to 7, including amendments. In these applications, Bell Canada proposed, among other things, the introduction of a General Tariff, an Exchange Services Tariff, an Access Services Tariff, and a Special Facilities Tariff for a proposed entity, to be established as a consolidated income trust.² Bell Canada submitted that these tariff notices essentially replicated the Bell Canada tariffs for use by the new entity.
3. Bell Canada noted that the name for the new entity had not yet been finalized but that the interim name was "Bell Communications". Bell Canada further noted that it would notify the Commission if and when a different name was chosen, and proposed to amend any approved tariff pages at that time, as required. Bell Canada indicated that it expected to have

¹ On 7 March 2006, BCE and Aliant Inc. announced their intention to create a large regional income trust combining Bell Canada's wireline operations in the Regional Territory, with the wireline operations of Aliant Telecom Inc. and Bell Canada's interest in the Bell Nordiq Income Fund. BCE's stake in the new income trust would be about 45 percent.

² In its applications, Bell Canada proposed the introduction of Bell Communications Tariff CRTC 21560 – General Tariff, Bell Communications Tariff CRTC 21561 – Exchange Services Tariff, Bell Communications Tariff CRTC 21562 – Access Services Tariff, and Bell Communications Tariff CRTC 21563 – Special Facilities Tariff.

Bell Communications operating in early July 2006, having obtained by that date all necessary approvals from the Commission and the Canada Revenue Agency. Bell Canada requested approval of its applications effective 1 July 2006.

4. Bell Canada submitted that approval of its applications would ensure that Bell Canada's customers would not experience any changes as a result of their transition to Bell Communications.
5. Bell Canada also sought Commission approval of the Master Agreement for CLEC [competitive local exchange carriers] – IXC [interexchange carrier] Interconnection as well as of the following agreements associated with one or more of the above captioned tariff notices:
 - Billing and Collection Services Agreement;
 - Central Office License Agreement;
 - Basic Listing Interchange File Agreement; and
 - Agreement for the Provision of Zero-Dialed Emergency Call Routing Service.
6. Bell Canada submitted that the proposed inclusion of aggregation provisions, in both Bell Canada's and Bell Communications' proposed tariffs for certain services, including High Speed Access service, Gateway Access service, Managed Internet Protocol Telephony service and Centrex III service, would allow customers to benefit from rates based on the aggregation of volumes for services purchased in both of their operating territories. Bell Canada submitted that these proposed revisions were necessary to allow Bell Canada and Bell Communications to offer such services to their customers under the same rates, terms, and conditions that were available to them prior to the establishment of Bell Communications.
7. The Commission also received applications by Bell Canada, filed between 21 March and 26 May 2006, under cover of Tariff Notices 6935, 6944, 6944A, and 6952, proposing revisions to its General Tariff and under cover of Tariff Notice 873, proposing revisions to the National Services Tariff, to reflect the proposed formation of Bell Communications.

Process

8. The Commission received comments from Rogers Telecom Holdings Inc. (Rogers Telecom) dated 30 May 2006 and reply comments from Bell Canada dated 1 June 2006.

Rogers Telecom's comments

9. Rogers Telecom submitted that the formation of Bell Communications would have a significant impact on the cost of the existing services that Rogers Telecom purchases from Bell Canada and Aliant Telecom Inc. (Aliant Telecom).
10. Rogers Telecom requested Bell Communications to identify any deviations between Bell Communications' tariffs and the associated Bell Canada tariffs. Rogers Telecom further requested that the Commission not approve Bell Communications' tariffs until

Bell Communications had addressed its concerns with the respect to the impact on the following matters as a result of the creation of Bell Communications:

- a) the volume discounts which customers were currently eligible for under the Customer Volume Pricing Plan set out in item 306 of the National Services Tariff;
- b) the areas currently served by interconnection trunks used by IXCs to originate and/or terminate their long distance traffic;
- c) interconnection arrangements with competitors for the exchange of local traffic;
- d) the rates and functionality of competitor services;
- e) existing contracts and agreements between Rogers Telecom and Bell Canada; and
- f) the existing services and agreements that Rogers Telecom has with Aliant Telecom.

Bell Canada's reply comments

- 11. Bell Canada noted that it had proposed to extend the volume discounts in the Customer Volume Pricing Plan in item 306 of the National Services Tariff to include Bell Communications. Bell Canada submitted that, as a result, its customers' effective rates would not change.
- 12. Bell Canada submitted that the existing IXC points of interconnection would remain in place as would their reach, and therefore, that there would be no impact on IXC interconnection areas.
- 13. Bell Canada submitted that the existing local points of interconnection would remain in place as would their current reach, and therefore, that there would be no impact on local interconnection arrangements.
- 14. Bell Canada submitted that the functionality of competitor services currently offered by Bell Canada and which will, at such time that the income trust begins operations, be offered by the income trust would not change as a result of the formation of the income trust.
- 15. Bell Canada submitted that customers with interconnection agreements that would be assigned, in whole or in part, to the income trust were being contacted by Bell Canada's Carrier Services Group (CSG). Bell Canada indicated that where consent was required for the assignment of an agreement, in whole or in part, the customer would be contacted by letter from Bell Canada in order to obtain that consent.
- 16. Bell Canada submitted that Aliant Telecom's existing tariffs would continue to apply and the services would continue to be provided under the Aliant Telecom brand. Bell Canada further submitted that there would be no impact on the existing regulated services and agreements that Rogers Telecom has with Aliant Telecom.

17. Bell Canada submitted that all of the issues raised by Rogers Telecom, including any follow-up questions, would be better addressed through dialogue between Rogers Telecom and Bell Canada and Aliant Telecom CSG sales teams and executives. To this end, Bell Canada indicated that company representatives had contacted and would be meeting shortly with Rogers Telecom and other affected customers to discuss the operational implications of the transition to the income trust.

Commission's analysis and determinations

18. The Commission notes that the applications that are the subject of this Order relate to the territories proposed to be served respectively by Bell Canada and an income trust in Ontario and Quebec. The applications do not relate to the provision of service in the Atlantic provinces.

Customer impact

19. The Commission notes that Bell Communications' tariffs essentially replicate Bell Canada's tariffs. In addition, there are provisions, in both Bell Canada's and Bell Communications' proposed tariffs, which would allow customers to benefit from the aggregation of volumes for services purchased in both operating territories. The Commission finds that pursuant to the proposed tariffs, customers of Bell Canada and Bell Communications are to be provided with services at the same rates, terms, and conditions that were available to them prior to the establishment of Bell Communications. The Commission also notes Bell Canada's statement that the company will work with Rogers Telecom and other affected customers to discuss the operational implications of the transition to the income trust.
20. The Commission considers that Bell Canada has adequately addressed the concerns expressed by Rogers Telecom. The Commission notes that if operational issues arise that cannot be satisfactorily resolved by the parties, they can be brought to the Commission's attention.

Regulatory framework implications

21. The Commission considers that it would be appropriate to continue to apply the existing price cap regime to the services transitioned from Bell Canada to Bell Communications for the remainder of the current price cap period.
22. In *Review of price cap framework*, Telecom Public Notice CRTC 2006-5, 9 May 2006 (Public Notice 2006-5), the Commission initiated a proceeding to establish the price cap regime that would go into effect in 2007, in the operating territories of Aliant Telecom, Bell Canada, MTS Allstream Inc., Saskatchewan Telecommunications, and TELUS Communications Company (TCC). In Public Notice 2006-5, the Commission noted that reorganizations such as the proposed formation of Bell Communications would have an impact on the price cap regime under consideration in that proceeding. Aliant Telecom, Bell Canada, and TCC were requested to propose any changes necessary to the existing price cap regime to reflect these reorganizations.

Impact of income tax as an exogenous factor

23. The Commission notes that as an income trust, Bell Communications will be subject to a different tax status than Bell Canada, which is a corporation. A corporation generally pays tax on all of its net income, regardless of whether a portion of that income is distributed to shareholders. By contrast, an income trust pays no tax on the income distributed to its unit holders. An issue in this case is whether the establishment of Bell Communications with a different tax status than Bell Canada, should be treated as an exogenous factor.
24. In *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002, as amended by Telecom Decision CRTC 2002-34-1, dated 15 July 2002 (Decision 2002-34), the Commission determined that an exogenous factor adjustment would be considered for inclusion in the price cap formula for events or initiatives which satisfied the following:
 - a) they are legislative, judicial, or administrative actions which were beyond the control of the company;
 - b) they are addressed specifically to the telecommunications industry; and
 - c) they have a material impact on the company.
25. In Decision 2002-34, the Commission indicated that:

... each exogenous adjustment proposed in the next price cap regime will be reviewed on an individual basis, taking into consideration the particular circumstances of each event ...
26. The Commission notes that the creation of Bell Communications was initiated by BCE, and was not imposed by legislative, judicial, or administrative actions beyond the control of BCE. The Commission is therefore of the view that the first criterion for considering whether to allow inclusion of an exogenous factor has not been met.
27. The Commission further notes that the creation of an income trust is not exclusive to the telecommunications industry. Income trusts exist in other industries such as energy and real estate. Therefore, the Commission is of the view that the second criterion has not been met.
28. The Commission concludes, in this particular case, that the establishment of Bell Communications with a different tax status than Bell Canada is not an exogenous event as it does not satisfy the definition set out above.

Financial parameters

29. The Commission notes that new services or existing services for which rate reductions are proposed are required to satisfy the imputation test as set out in *Review of price floor safeguards for retail tariffed services and related issues*, Telecom Decision CRTC 2005-27, 29 April 2005. The Commission further notes that the imputation test uses cost factors that are

dependent on the financial parameters of a telephone company. The Commission intends to review these parameters as they relate to Bell Canada and Bell Communications after the income trust is established.

Bell Canada's request for approval of Bell Communications' tariffs

30. The Commission notes that, pursuant to the *Telecommunications Act*, Bell Communications, once established, will be required to provide non-forborne services to its customers pursuant to approved tariffs. Given this, the Commission considers it appropriate for Bell Canada to have filed, and for the Commission to dispose of, the tariff applications, notwithstanding that the establishment of the income trust has not yet been fully completed.
31. In light of the above, subject to paragraph 32, the Commission considers that granting interim approval to Bell Canada's applications, conditional on Bell Canada confirming to the Commission the completion of Bell Communication's formation as an income trust, would be appropriate.

Master Agreement for CLEC – IXC Interconnection

32. The Commission notes that the Master Agreement for CLEC – IXC Interconnection for which Bell Canada sought approval is a template agreement based upon the most recent template agreement approved by the Commission in *CRTC Interconnection Steering Committee – Consensus items*, Telecom Decision CRTC 2003-35, 4 June 2003. Further, the Commission notes that the requirement to file agreements for approval does not apply to template agreements but rather to specific agreements that have been signed between CLECs and IXCs. Accordingly, the Commission finds that it is not necessary to approve the Master Agreement for CLEC – IXC Interconnection as submitted.

Disposition of applications

33. In light of the above, the Commission **approves on an interim basis** Bell Canada's applications, with the exception of the Master Agreement for CLEC – IXC Interconnection, conditional on Bell Canada confirming to the Commission in writing that the establishment of the income trust has been completed, effective on the date of such confirmation.
34. The Commission notes that if "Bell Communications" is not the name selected for the income trust, the tariff pages would need to be amended accordingly.
35. The dissenting opinion of Commissioner Langford is attached.

Secretary General

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Dissenting opinion of Commissioner Stuart Langford

Section 25(1) of the *Telecommunications Act* (the Act) states that no Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission. Accordingly, I am compelled to agree with the majority's decision to grant interim approval as stated in paragraph 33 of its decision. Given BCE Inc.'s (BCE's) determination to proceed with its corporate reorganization plans, for the Commission not to grant interim approval might be to leave millions of Canadians without legally provided service.

I disagree, however, with the remainder of the majority decision. It both understates the scope of the changes encompassed by BCE's plans and provides no comfort for subscribers, in the new Bell Communications territory in Ontario and Quebec who may find themselves disadvantaged as a result of the changes underlying these tariff applications.

The Bell plan

Underlying the tariff applications given interim approval today is a plan to divide Bell Canada's existing territory between two local exchange carriers (LECs), one serving Ontario and Quebec's heavily populated regions, such as along Lake Ontario and the Saint Lawrence River and the other serving the more remote northern areas of Quebec and Ontario. Added to this second territory will be the present Aliant Telecom territories in Atlantic Canada. In all, the subscribers to 12.5 million telephone lines will be affected. The new southern territory will be served by Bell Canada. The new northern and Atlantic territory will be served by a new commercial entity, Bell Communications. The applications that are the subject of the majority decision apply only to the territory that will be served by Bell Canada and Bell Communications in Ontario and Quebec.

A big deal

The scope of the changes at issue here is both monumental and unprecedented. In a single stroke, BCE plans to completely redraw Canada's geographic and competitive telecommunications landscapes. Bell Canada's serving territory will be significantly changed. The subscribers to 10.7 million telephone lines will find themselves served by a new or a much altered LEC. Subscribers to 1.6 million lines to be served by Bell Communications in areas previously served by Bell Canada will, in my opinion, no longer be certain that their local services will be fairly priced. This is a big deal.

A regrettable lapse

The new northern territory is unlikely to see competitive forces pushing prices down in the foreseeable future. The vast majority of this newly created territory may simply be too remote and under-populated to attract competitors. Consequently, in the foreseeable future, consumers in Bell Communications' territory in Ontario and Quebec will likely have no alternative but to rely on regulatory oversight to ensure that the rates they pay are just and reasonable. Having said this, it seems to me that in this matter, in its very first opportunity to exercise that regulatory oversight, the majority has failed to act. Before long it may regret its lapse. Almost certainly consumers will.

A little background

In territories where competitive forces are insufficient to discipline prices, the Commission has a duty to ensure that consumers are protected. This was done in most markets across Canada when rate-base rate-of-return regulation was replaced by the current price cap system in 1998 and later as other territories made the transition. Following the analytical process leading up to the establishment of the price cap regime "going-in" prices were set for existing LECs in their existing territories. In setting those prices the Commission took into consideration every aspect of revenue and expense, both historic and foreseeable, pertinent to determining a fair rate of return for LECs generated by just and reasonable prices. Since then, with one formal review of the system in 2002, the price cap system of regulation has continued with the "going-in" prices established in 1998 serving as a base point.

An unforeseeable event

The creation of a new LEC, Bell Communications, as an income trust was an unforeseeable event. It casts doubt on the reliability of the going-in prices established in the areas Bell Communications will serve in Ontario and Quebec. The reason for this is that income trusts pay no income taxes on the income distributed to their unit holders, and the burden of paying income taxes was one of the major elements considered when going-in prices were established. There can be no doubt that if Bell Canada in Ontario and Quebec had not been liable to pay income taxes, the going-in prices in its territories would have been considerably lower.

Two pertinent cases

In *MTS Communications Inc. – Final rate increase to recover income tax expense*, Decision CRTC 2001-202, 30 March 2001 (Decision 2001-202), the Commission approved an application by MTS Communications Inc. (MTS) to increase its rates so as to recover income tax expenses. Prior to 1997, MTS had been a Crown, non-taxable, corporation. When it was privatized, that changed; it applied to the Commission for permission to raise its rates because its going-in rates had been set without factoring in income tax liabilities. In the summary to Decision 2001-202, the Commission noted that "[i]n assessing MTS's income tax expense, the Commission has treated the company in the same manner as the other telecommunications companies regulated under price caps. The other companies were taxable at the beginning of price caps and their income tax expense was ... used in setting rates at the start of the price cap regime".

In *Bell Canada's savings from gross receipts tax reductions*, Order CRTC 2001-100, 2 February 2001, the Commission directed Bell Canada to make a downward adjustment to its price cap formula in recognition of the fact that the Ontario government had reduced a gross receipts tax levied on incumbent telephone companies operating in Ontario. Clearly, even in a price cap regime, changes in tax burdens are viewed by the Commission as relevant to the process of evaluating the fairness of rates charged.

A too narrow view

The majority decision in this case, in paragraphs 23 to 28, erroneously in my opinion, takes the position that tax status is relevant solely in situations where it changes as the result of an exogenous

event, generally speaking, an event beyond the control of the carrier.¹ Presumably, the majority would have considered Bell Communications' income tax burden, or lack thereof, relevant if it were the result of "legislative, judicial or administrative actions beyond the control of BCE" (paragraph 26) that "was exclusive to the telecommunications industry" (paragraph 27). Because BCE chose to establish Bell Communications as an income trust, however, as opposed to being forced to do so by "legislative, judicial or administrative action" that "was exclusive to the telecommunications industry", the majority relieves the new income trust from what I would consider a solemn obligation: to pass the savings it will realize from the change in its income tax status on to consumers in the form of lower prices.

Timing is not everything

The majority decision results in a situation where so long as a regulated LEC devises its own scheme to lower expenses, it has no duty to share its windfall with its subscribers even in areas where a lack of competition leaves consumer protection squarely in the hands of the Commission. Imagine this scenario: MTS, as it was, is privatized. It appeals to the Commission for permission to raise rates so as to offset this new expense, saying that its going-in prices are no longer correct. The Commission, as it did, agrees. A short time later, MTS converts itself into an income trust. Surely no one would allow consumers to be gouged in such a way on the grounds that a true exogenous event had not triggered the transition of MTS back to a non taxpayer. Canadians would rise up in protest against a regulator that allowed such a strategy to succeed. Yet that is what is being allowed here. The only difference is timing.

In my view, timing is not everything. Section 27 of the Act states: "Every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable." Fulfilling that charge is a sacred trust for the Commission; it is its fundamental mandate. All other pricing considerations flow from it. If by this reorganization of its corporate structure and serving territories BCE has left most of the subscribers to 1.6 million lines exclusively dependent on regulation for protection, the Commission must protect them. In my opinion, it has failed to do so in this case. For this reason, I would have granted interim approval but done so on the condition that Bell Communications participates in a process designed to test the appropriateness of the rates it seeks to apply in its new territory.

¹ In *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002, as amended by Telecom Decision CRTC 2002-34-1, 15 July 2002, the Commission determined that an exogenous factor adjustment would be considered for inclusion in the price cap formula for events or initiatives which satisfied the following: a) they are legislative, judicial, or administrative actions which were beyond the control of the company; b) they are addressed specifically to the telecommunications industry; and c) they have a material impact on the company.