



Telecom Decision CRTC 2010-884

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Ottawa, 26 November 2010

Bell Canada – 9-1-1 network access services dispute with TELUS Communications Company

File number: 8622-B2-201009720

In this decision, the Commission finds that TCC's Terms of Service apply to overbilled 9-1-1 network access service (NAS) charges paid by Bell Canada in Alberta and British Columbia. Further, the Commission finds that Bell Canada made its claim for a refund of overbilled 9-1-1 NAS charges in May 2008. With respect to Alberta, the Commission considers that it is necessary to determine when Bell Canada knew, or ought to have known, about the overbilling within the meaning of the Alberta Limitations Act, and that this issue would more appropriately be resolved by a civil court. With respect to British Columbia, the Commission finds that Bell Canada's claim is not limited by the applicable limitation period, and directs TCC to refund Bell Canada for any overbilled 9-1-1 NAS charges in accordance with its Terms of Service.

Introduction

1. The Commission received an application by Bell Canada, dated 11 June 2010, requesting that the Commission direct TELUS Communications Company (TCC) to credit Bell Canada for overbilled 9-1-1 network access services (NAS) charges it paid to TCC from 2003 to 2009 in Alberta and British Columbia, pursuant to TCC's Terms of Service.
2. The public record of this proceeding, which closed on 27 August 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.
3. The Commission has identified the following issues to be addressed in this decision:
 - I. Do TCC's Terms of Service regarding overbilled charges apply to the 9-1-1 NAS charges paid by Bell Canada?
 - II. Do the applicable limitation periods in British Columbia and Alberta limit Bell Canada's claim for a credit for the overbilled 9-1-1 NAS charges?
- 1. Do TCC's Terms of Service regarding overbilled charges apply to 9-1-1 NAS charges paid by Bell Canada?**
4. Pursuant to the Interconnection Agreement for the Provision of 9-1-1 Service to a competitive local exchange carrier (CLEC), a CLEC is required to submit to an

incumbent local exchange carrier (ILEC), on a monthly basis, either an updated count of its NAS or an updated count of working telephone numbers entered into the 9-1-1 management system. The ILEC uses the count to bill the CLEC for access to 9-1-1 service at the rate set out in the ILEC's 9-1-1 tariff.

5. Bell Canada, acting as a CLEC in British Columbia and Alberta, submitted that it had overstated its 9-1-1 NAS counts to TCC between 2006 and 2009 in Alberta, and between 2003 and 2009 in British Columbia. Bell Canada also submitted that it had made TCC aware of the issue in May 2008, had undertaken an audit of its 9-1-1 NAS counts, and, as a result of the audit, had submitted revised 9-1-1 NAS counts to TCC in February 2009.
6. Bell Canada further submitted that TCC has been billing it since March 2009 based on the revised 9-1-1 NAS counts, which are significantly lower than what had previously been submitted to TCC, but that TCC has refused to provide Bell Canada with a credit for past overbilled charges as it was required to do pursuant TCC's Terms of Service.¹
7. TCC was of the view that there are no overbilled amounts to correct in the present case because the alleged error was made by Bell Canada (the CLEC), not by TCC (the ILEC), and that it correctly charged Bell Canada for 9-1-1 services provided to Bell Canada in British Columbia and Alberta based on the number counts Bell Canada provided. TCC submitted that, accordingly, its Terms of Service are not applicable.
8. TCC further submitted that allowing CLECs to correct past number counts exposes the ILEC to considerable uncertainty because it would never be assured that its past billed amounts were correct.
9. Bell Canada replied that TCC's Terms of Service apply equally to errors made by a CLEC since the invoice relies in part upon the CLEC's input.

Commission's analysis and determinations

10. The Commission notes that TCC's Terms of Service provide that, in the case of a recurring charge that should not have been billed, or was overbilled, a customer must be credited with the excess amount back to the date of the error, subject to the applicable limitation periods provided by law.
11. The Commission notes that this provision makes no distinction as to who caused the error. Furthermore, the Commission notes that item 120.3 of TCC's Terms of Service stipulates that prior to the company crediting the customer's account, the company must determine, either on the basis of its own records or on the basis of the customer's records, that the customer was overbilled. The Commission considers that the wording of these provisions make clear that item 120 applies equally to overbilling that results from incorrect information provided by a CLEC.

¹ Item 120 of TCC's Terms of Service addresses overbilled charges.

12. The Commission also considers that TCC's position regarding the uncertainty associated with allowing CLECs to correct past billing is unfounded, as there is no incentive for CLECs to overstate their 9-1-1 NAS counts and thereby be overbilled.

13. In light of the above, the Commission considers that item 120 of TCC's Terms of Service applies to overbilled 9-1-1 NAS charges paid by Bell Canada.

II. Do the applicable limitation periods in British Columbia and Alberta limit Bell Canada's claim for a credit for the overbilled 9-1-1 NAS charges?

14. TCC's Terms of Service require that overbilled recurring charges be credited back to the date of the error, subject to applicable limitation periods provided by law.

15. In British Columbia, the *Limitation Act* provides for one applicable limitation period of six years.²

16. The Alberta *Limitations Act*, in contrast, has two applicable limitation periods within which a claimant must bring a claim: (1) a two-year limitation period that starts on the date the claimant knew, or in the circumstances, ought to have known, about the specific facts set out in paragraph 3(1)(a)³ of the Act regarding the existence of the claim; and (2) a 10-year limitation period that starts when the claim first arises, regardless of when the claim is discovered.⁴

17. Bell Canada submitted that it is seeking a refund or credit for overbilled charges between March 2003 and February 2009 in accordance with British Columbia's statute of limitations of six years. With respect to Alberta, Bell Canada submitted that it satisfies both limitation periods in the Alberta *Limitations Act* and therefore should be entitled to a credit for overbilled 9-1-1 NAS charges between January 2006 and February 2009.

² *Limitation Act*, R.S.B.C. 1996, c. 266, ss. 3(5).

³ Subsection 3(1) provides as follows:

Subject to section 11, if a claimant does not seek a remedial order within

- (a) 2 years after the date on which the claimant first knew, or in the circumstances ought to have known,
 - i. that the injury for which the claimant seeks a remedial order had occurred,
 - ii. that the injury was attributable to conduct of the defendant, and
 - iii. that the injury, assuming liability on the part of the defendant, warrants bringing a proceeding,

or

- (b) 10 years after the claim arose,
 - whichever period expires first, the defendant, on pleading this Act as a defence, is entitled to immunity from liability in respect of the claim.

⁴ *Limitations Act*, R.S.A. 2000, c. L-12, ss. 3(1).

18. Bell Canada submitted that the date it brought its claim should be May 2008, when it properly notified TCC of the dispute regarding its overstated 9-1-1 NAS counts. Bell Canada submitted that such an approach was entirely consistent with past Commission decisions and TCC's Terms of Service. Bell Canada also submitted that it only became aware that it had been overstating its 9-1-1 NAS counts in May 2008, and therefore rejected TCC's claims that the two-year limitation period in the Alberta *Limitations Act* had expired by the time it brought its claim.
19. TCC submitted that Bell Canada's claim for purported overbilling in Alberta is barred as a result of the applicable limitation periods in the Alberta *Limitations Act*. According to TCC, Bell Canada knew or ought to have known about potential overbilling as early as March 2003 or, alternatively, January 2006, when Bell Canada started to submit its 9-1-1 NAS counts in British Columbia and Alberta, respectively.
20. In TCC's view, the question of when a party ought to have known about a potential error is a fact-finding exercise, which would normally be within the domain of the courts, not the Commission. TCC submitted, however, that it is clear that Bell Canada ought to have known about its own errors throughout the entire time it was submitting its 9-1-1 NAS counts.
21. TCC submitted that, in any event, Bell Canada definitely knew of the potential overbilling in May 2008, the date it notified TCC of the potential overstatement of the 9-1-1 NAS counts.
22. TCC submitted that, as a result, Bell Canada was required to bring its claim for purported overbilling within two years from May 2008, or May 2010. Because Bell Canada submitted its application on 11 June 2010, TCC submitted that Bell Canada has missed the limitation period as provided in item 120.1 of TCC's Terms of Service to seek a credit for purported overbilled amounts in Alberta.
23. TCC was of the view that the Commission should only use the date of formal filings to determine whether a claim was brought within the applicable limitation periods. TCC submitted that this is the same principle that applies in the Alberta *Limitations Act*, which requires a claimant to formally seek relief in the Alberta courts, and the Commission's determination in Telecom Decision 2010-462.

Commission's analysis and determinations

24. The Commission notes that in order to determine whether any applicable limitation periods operate to limit a customer's claim for a refund for overbilled recurring charges in accordance with TCC's Terms of Service, it is necessary to determine two dates: (i) the date the limitation periods began, and (ii) the date the claim was brought.
25. With respect to the date the claim was brought, the Commission considers that using the date of first notification by a customer of a dispute to the ILEC is consistent with TCC's Terms of Service. In this regard, the Commission notes that TCC's Terms of Service only require that a customer "dispute" an overbilled charge within a certain period of time. Furthermore, item 121, which sets out the procedure for disputing a charge, does not contemplate a formal application to the Commission.

26. The Commission further considers that such an approach is consistent with Telecom Decision 2007-10, where the Commission directed the ILECs to use the date of notification by a customer of a dispute or the date of the decision, whichever was earlier, for the purpose of determining applicable customer credits for overbilling. In Telecom Decision 2010-462, the Commission noted that the date that MTS Allstream Inc. notified TCC of a dispute was, in the circumstances, the date of its first intervention in the proceeding that led to Telecom Decision 2007-10. However, the Commission considers that this is consistent with its direction in Telecom Decision 2007-10 and does not mean that the only method of notifying an ILEC of a dispute is to make a formal submission to the Commission.
27. The Commission therefore considers that the date the claim was made by Bell Canada should be the date in May 2008 when it notified TCC that its 9-1-1 NAS counts were overstated.
28. With regard to the date the applicable limitation periods began, the Commission notes that, for British Columbia, none of the overbilled charges disputed by Bell Canada arose before March 2003. The Commission therefore considers, and the parties have not suggested otherwise, that the applicable limitation period in British Columbia (that is, six years) had not expired with respect to these charges by the time Bell Canada notified TCC of the error in May 2008.
29. Regarding Alberta, the Commission considers that, in order to determine when the two-year limitation period in the Alberta *Limitations Act* began and, therefore, whether Bell Canada disputed the charges within that period, it is necessary to determine when Bell Canada knew or ought to have known about the overbilling within the meaning of subparagraph 3(1)(a) of the Alberta *Limitations Act*. In this regard, the Commission notes that TCC has advanced at least two dates – March 2003 and January 2006 – for when Bell Canada knew or ought to have known about the overbilling, which, if correct, would mean that Bell Canada’s claim for a credit in Alberta would be limited by operation of the two-year limitation period.
30. The Commission considers, however, that the question of when Bell Canada knew or ought to have known about the overbilling is a question of mixed fact and law arising under a provincial statute of limitations, and, as such, it would be more appropriately resolved by a civil court than by the Commission. The Commission therefore considers that it is not in a position to determine whether the applicable limitation periods in Alberta limit Bell Canada’s claim for a credit for overbilled 9-1-1 charges in that province.

Conclusion

31. In light of the above, the Commission **directs** TCC to credit Bell Canada for any overbilled 9-1-1 charges in British Columbia from March 2003 to February 2009, in accordance with TCC’s Terms of Service.

Secretary General

Related documents

- *MTS Allstream Inc. – Clarification of the phrase “subject to the applicable limitation periods provided by law” in TELUS Communications Company’s Terms of Service, Telecom Decision CRTC 2010-462, 8 July 2010*
- *AT&T Global Services Canada Co. – Application seeking relief with respect to the application of Basic Service Extension Feature charges to configurations involving Competitor Digital Network DS-1 to DS-0 channelization service, Telecom Decision CRTC 2007-10, 15 February 2007*