



Telecom Order CRTC 2007-330

Ottawa, 7 September 2007

Bell Aliant Regional Communications, Limited Partnership

Reference: Tariff Notices 230 and 230A (Aliant Telecom)

Central Office Located Customer Provided Equipment

In this Order the Commission approves on a final basis Bell Aliant Regional Communications, Limited Partnership's application to introduce a new customer-specific arrangement for the placement of customer-provided equipment in its central offices.

Introduction

1. The Commission received an application by Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), dated 16 March 2007, proposing revisions to the former Aliant Telecom Inc.'s General Tariff to introduce a special facilities service under item 750 – Central Office Located Customer Provided Equipment (item 750). On 23 March 2007, Bell Aliant filed an amendment to its application, proposing revisions to the former Aliant Telecom Inc.'s General Tariff item 628 – Co-location Arrangements for Interconnecting Canadian Carriers and Digital Subscriber Line Service Providers (DSLSPs) (item 628) to correct an error in the numbering of rates and charges of an existing tariff page. Bell Aliant indicated that this page was specifically referenced in item 750.
2. With its application, Bell Aliant also filed a Licence Agreement for Central Office Located Customer Provided Equipment in confidence and an abridged copy for the public record. In support of its claim for confidentiality, Bell Aliant indicated that this Licence Agreement contained customer-specific information that the company consistently treated in a confidential manner.
3. Bell Aliant indicated that the customer had agreed to the proposed rates, terms, and conditions for the Central Office Located Customer Provided Equipment (CO Located CPE) service.
4. The Commission approved the above-noted application on an interim basis effective 29 March 2007 in Telecom Order 2007-98.
5. The Commission received comments from Bragg Communications Inc., carrying on business as EastLink (EastLink). The record of this proceeding closed with Bell Aliant's reply comments dated 20 April 2007.

Issues

6. The Commission considers that the parties' submissions raise the following issues:

- I. Is the proposed tariff for CO Located CPE service in compliance with all the Commission's rulings applicable to customer-specific tariffs?
 - II. Should Bell Aliant be allowed to prohibit customers who had the CO Located CPE service from interconnecting with other carriers?
- I. Is the proposed tariff for CO Located CPE service in compliance with all the Commission's rulings applicable to customer-specific tariffs?**

Position of parties

7. Bell Aliant noted that in Telecom Decision 94-19, the Commission had specified the conditions under which Type 2 customer-specific tariffs would be permitted. Bell Aliant added that in Telecom Decision 2003-63, the Commission had listed specific information that the proposed special facility tariff must contain. Bell Aliant submitted that the proposed special facility tariff met the conditions established by the Commission in Telecom Decision 94-19, as amended by Order 2000-425 and Telecom Decision 2003-63, for customer-specific tariffs.
8. Bell Aliant also submitted that, consistent with the Commission's determinations in Telecom Order 98-121, the rates and charges for all rate elements in its proposed special facility tariff were identical to the equivalent unit rates of a similar service, namely, item 628.
9. EastLink did not comment on this issue.

Commission's analysis

10. The Commission notes that CO Located CPE service is a bundle of services tailored to a particular customer's needs, primarily involving elements available from the general tariff and hence it qualifies as a Type 2 customer-specific arrangement (CSA).
11. The Commission notes that the incumbent local exchange carriers (ILECs) are currently subject to the following requirements with respect to Type 2 CSAs:¹
 - a. Type 2 CSAs tariffs and the associated agreement must be filed for Commission approval;
 - b. Type 2 CSAs must satisfy a pricing rule in the form of a price floor (imputation test);
 - c. The ILEC must demonstrate that there is not sufficient demand to offer any customer specific elements of the service through the general tariff;

¹ The Commission set out these requirements in Telecom Decision 94-19; expanded the rules to allow for the inclusion of forborne and non-telecommunications services in Order 2000-425; and modified the imputation test in Telecom Decision 2005-27.

- d. In order that there be no unjust discrimination or undue preference, the service package and the associated rates, terms, and conditions provided under the CSA must be generally available to other customers; and
 - e. Resale must be permitted.
12. In Telecom Decision 2003-63, the Commission set out the criteria in regard to the level of detail that the ILECs must provide in the tariffs accompanying Type 2 CSAs.
 13. After reviewing Bell Aliant's application in detail, the Commission is satisfied that it meets all the requirements established for Type 2 CSAs.

II. Should Bell Aliant be allowed to prohibit customers who had the CO Located CPE service from interconnecting with other carriers?

EastLink's comments

14. EastLink submitted that it was concerned with the language of proposed item 750.2 h), which states that "in placing its equipment in the Company premises, the Customer shall ensure that the sole purpose is to interconnect with the Company's facilities."
15. EastLink argued that this provision could be interpreted as granting Bell Aliant the right to prohibit customers who had the CO Located CPE service from interconnecting with other carriers for the duration of the contract. EastLink submitted that this would limit these customers' abilities to interconnect their equipment with other carriers co-located in Bell Aliant's central office (CO).
16. EastLink submitted that, although the Commission had in the past determined that an interconnecting carrier in an ILEC CO could connect with another interconnecting carrier in the CO, the question of whether a customer located in an ILEC CO could interconnect with another carrier in that CO had not been specifically addressed by the Commission. EastLink added that granting approval to Bell Aliant's application in its current form might preclude an ILEC's customer from also obtaining services from another interconnecting carrier, before the Commission had considered the merits of whether a customer should have such a right.
17. EastLink indicated that removing the reference to "sole purpose" would still permit the customer to place its equipment in Bell Aliant's CO in order to interconnect with Bell Aliant. EastLink submitted that this application should be denied unless it was amended to remove the limiting language.

Bell Aliant's reply comments

18. Bell Aliant replied that what EastLink was referring to were co-location services that permitted interconnection between interconnecting Canadian carriers and DSLSPs under a tariffed provision known as the primary purpose test found in item 628 referred to above. Bell Aliant submitted that EastLink had incorrectly concluded that the requirements for mandated co-location arrangements also applied to non-mandated co-location arrangements for parties other than interconnecting Canadian carriers and DSLSPs.

19. Bell Aliant noted that its CO Located CPE service was a different service than the service offered by item 628, which the Commission had found to be a Category 1 competitor service. The company submitted that CO Located CPE service was a retail service and therefore was not subject to the same requirements that applied to the mandated co-location arrangements found in item 628.
20. Bell Aliant submitted that customers who might not find that the company's CO Located CPE service met their needs had the option of placing their equipment in facilities of other service providers or establishing an appropriate connection at the customer's premises and not in a Bell Aliant CO.
21. Bell Aliant noted that, in Telecom Order 2004-294, the Commission had approved a proposal by TELUS Communications Inc., now TELUS Communications Company (TCC), to introduce a non-mandated co-location service for customers other than interconnecting Canadian carriers and DSLSPs. Bell Aliant also noted that, in that Order, the Commission stated that non-mandated co-location arrangements could be implemented differently from the mandated co-location arrangements and that the associated tariff could reflect different rates, terms and conditions.
22. Bell Aliant submitted that, contrary to EastLink's submission, the Commission, in Telecom Order 2004-294, had examined the issue of non-mandated customer co-location arrangements that permit connection of CPE in the CO only to services provided by the ILEC. The Commission found that such arrangements are appropriate.

Commission's analysis

23. The Commission notes EastLink's submission that, in addition to obtaining services from Bell Aliant, Bell Aliant's CO located CPE customer should also be allowed to obtain services from any other interconnecting carrier co-located in those COs.
24. The Commission notes that CO located CPE is effectively a non-mandated co-location service, and is therefore a retail service. The Commission considers that the space in an ILEC's CO which has not been assigned to mandated co-location is the ILEC's to administer as it sees fit. The Commission finds that it would not be appropriate for Bell Aliant's retail customer to transact business with Bell Aliant's competitors in a Bell Aliant CO.
25. In addition, the Commission notes that in Telecom Decision 2004-294, it approved a provision to the effect that TCC's Non-mandated Co-location, a retail service, was to be used by the customer for the sole purpose of accessing TCC's services.

Conclusion

26. In light of the above, the Commission **approves** Bell Aliant's application on a final basis.

Secretary General

Related documents

- Telecom Order CRTC 2007-98, 29 March 2007
- *Review of price floor safeguards for retail tariffed services and related issues*, Telecom Decision 2005-27, 29 April 2005
- *TELUS Communications Inc. – Introduction of a non-mandated co-location service in Alberta and British Columbia*, Telecom Order CRTC 2004-294, 30 August 2004
- *Review of Bell Canada's customer-specific arrangements filed pursuant to Telecom Decision 2002-76*, Telecom Decision CRTC 2003-63, 23 September 2003
- *Bundling framework developed for customer-specific arrangements*, Order CRTC 2000-425, 19 May 2000
- Telecom Order CRTC 98-121, 9 February 1998
- *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994

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