



Telecom Decision CRTC 2015-398

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Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Request for ratification of port-out cancellation charges

Introduction

1. The Commission received an application from Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies), dated 1 April 2015, in which they requested that the Commission ratify the charging of rates without an approved tariff for port-out cancellation charges (cancellation charges) for the period of 3 March 2011 to 18 April 2013.

Background

2. In Telecom Decision 2008-17, the Commission set out, among other things, a restructured regulatory framework for wholesale services. The Commission assigned certain wholesale local number portability (LNP) database services provided by the Bell companies to the “non-essential subject to phase-out” category. The Commission determined that services in this category would be forborne from rate regulation following a phase-out period of three or five years, depending on the service. The Commission granted prospective forbearance for these services effective 3 March 2011.
3. During the proceeding leading to Telecom Decision 2008-17, the Bell companies filed proposed tariffs for cancellation charges, which they grouped under the same tariff numbers used for wholesale LNP database services and which were subsequently approved by the Commission. The Bell companies later withdrew their cancellation charge tariffs, together with other wholesale tariffs, under the assumption that the associated services had been assigned to the same category as wholesale LNP database services and could therefore be provided without prior Commission rate approval as of 3 March 2011.
4. In Telecom Decision 2013-166, the Commission determined that the cancellation charges were not forborne from rate regulation, and considered that the Bell companies had mistakenly withdrawn their cancellation charge tariffs.
5. On 18 April 2013, in accordance with the determination in Telecom Decision 2013-166, the Bell companies reissued tariffs for the cancellation charges. The Bell companies also requested that the rates charged during the period when the

tariffs were not in place be ratified. However, due to an oversight, this request was not addressed.

Application

6. The Bell companies stated in their application that since the withdrawal of the port-out cancellation tariffs in error, they continued to apply the same terms and conditions as those previously approved in the tariffs.
7. In addition, the Bell companies noted that when Videotron G.P. (Videotron) proposed in April 2013 to reintroduce tariff pages related to its cancellation charges, which had also been withdrawn in error, it had also requested that the Commission ratify the rates it had charged when it did not have an approved tariff in place. The Commission approved Videotron's application and ratified the charging of the rates in Telecom Order 2013-332.
8. The Bell companies submitted that their circumstances were similar to those of Videotron, and therefore requested a determination regarding rate ratification similar to the one set out in Telecom Order 2013-332.
9. The Commission received interventions regarding the Bell companies' application from Bragg Communications Incorporated, operating as Eastlink (Eastlink) and from an individual intervener. The public record of this proceeding, which closed on 19 May 2015, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Should the Commission approve the Bell companies' request to ratify rates that were charged otherwise than in accordance with a Commission-approved tariff?

10. Eastlink submitted that because the Bell companies did not have valid cancellation charge tariffs in place for the period between 3 March 2011 and 18 April 2013, any cancellation charges applied by the Bell companies during that period were invalid. It submitted that a determination now that such charges were valid would impose burdensome charges on Eastlink that are inconsistent with the purpose of the cancellation charge.
11. Eastlink indicated that it had disputed all cancellation charges that the Bell companies applied between 3 March 2011 and 18 April 2013 because the Commission had not yet made a determination, and because it did not believe that the Bell companies have the authority to apply such charges. Eastlink submitted that this was a valid dispute and, in the event that the Commission determines that the charges are valid, Eastlink should not be subject to late fees related to disputed cancellation charges.
12. The individual intervener requested that the Commission deny the Bell companies' request for ratification because they are putting unwarranted pressure on wholesale third-party providers with the cancellation charge, and making changing providers more difficult in a very restricted marketplace.

13. In reply, the Bell companies reiterated that ratification of the charges is appropriate given that their circumstances are similar to those of Videotron, for which a request for ratification was approved. The Bell companies also indicated that the rates, terms, and conditions in their reintroduced tariff pages were identical to those that had previously been approved and were now in effect, and that the same terms and conditions would apply to the ratified charges for the period of 3 March 2011 to 18 April 2013.

Commission's analysis and determinations

14. Paragraph 25(4)(a) of the *Telecommunications Act* allows the Commission to ratify the charging of a rate by a Canadian carrier otherwise than in accordance with a tariff approved by the Commission, if the Commission is satisfied that the rate was charged because of an error or other circumstance that warrants the ratification.
15. The Commission is satisfied that the Bell companies applied the cancellation charges during the period in question because they believed that the charges were forborne from Commission regulation. Moreover, since the rates, terms, and conditions are identical to those approved by the Commission before the related tariffs were mistakenly withdrawn, and after they were reinstated, the Bell companies' request for ratification is reasonable.
16. Further, the Bell companies' withdrawal of their cancellation charge tariffs, and the reinstatement of these tariffs, is similar to Videotron's situation regarding the cancellation charge.
17. With regard to the application of late fees to the charges that Eastlink has disputed, the Bell companies did not specifically address any such fees in their application or reply comments. The Commission considers that wholesale customers should not be subject to late fees for cancellation charges that were applied during the period in question and that were disputed.
18. In light of all the above, the Commission **approves** the Bell companies' request for ratification of the cancellation charges they applied between 3 March 2011 and 18 April 2013. For additional clarity, late fees may not be applied to any cancellation charges incurred during this period, if the wholesale customer disputed the charges pending the outcome of this proceeding.

Secretary General

Related documents

- *Videotron G.P. – Tariff modifications to reflect determinations made in Telecom Decision 2013-166*, Telecom Order CRTC 2013-332, 10 July 2013
- *Forbearance from the regulation of certain wholesale local number portability services and associated matters*, Telecom Decision CRTC 2013-166, 28 March 2013

- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008