



Telecom Decision CRTC 2005-8

Ottawa, 28 February 2005

Part VII application by Vidéotron Télécom ltée against Bell Canada and BCE Nexxia Inc. relating to the provision of fibre optic private network

Reference: 8690-V22-01/02

*In this Decision, the Commission **denies** Vidéotron Télécom ltée's application. The Commission finds that Bell Canada provided support structure and maintenance services to BCE Nexxia Inc. (Bell Nexxia) consistent with approved tariffs and did not give an undue preference to Bell Nexxia, contrary to subsection 27(2) of the Telecommunications Act. The Commission also finds that neither Bell Nexxia, nor Bell Canada was required to satisfy an imputation test with regard to the provision of services to the Commission scolaire des Patriotes.*

In light of Bell Canada's ongoing provision of maintenance and support structure service to the Commission scolaire des Patriotes, the Commission directs Bell Canada, within 10 days, to file proposed tariffs for these services, or to demonstrate that such services are being provided pursuant to approved tariffs.

The application

1. On 6 March 2002, Vidéotron Télécom ltée (VTL) filed an application with the Commission pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure* and sections 48, 55, 60 and 70 of the *Telecommunications Act* (the Act) against Bell Canada and BCE Nexxia Inc. (Bell Nexxia) relative to the tender bids by Bell Nexxia in response to Requests for Proposals (RFPs) for the construction and operation of two fibre optic networks for Ville de Saguenay and the Commission scolaire des Patriotes, respectively. In its application, VTL submitted that there was a reasonable doubt that Bell Nexxia's proposed rates recovered their underlying costs. In VTL's submission, either:
 - a) Bell Canada enabled its affiliate, Bell Nexxia, to access Bell Canada's support structure service at rates lower than those set out in Item 901 of the National Services Tariff, thereby giving an undue preference to Bell Nexxia, contrary to subsection 27(2) of the Act; or
 - b) Bell Nexxia offered support structure and certain other services at below cost, i.e., at anti-competitive prices.
2. VTL requested that the Commission order:
 - a) Bell Canada to demonstrate that it had complied with its tariffs when it provided support structure service to its affiliate, Bell Nexxia;

- b) Bell Nexxia to show that the rates offered were not anti-competitive; and
 - c) The extension of the bundling rules' imputation test requirements in *Bundling framework developed for customer-specific arrangements*, Order CRTC 2000-425, 19 May 2000 (Order 2000-425), to all incumbent local exchange carrier (ILEC) affiliates.
3. In the event that the Commission determined that Bell Canada provided support structure service at preferential rates or that Bell Nexxia engaged in anti-competitive pricing as defined above, VTL also requested the Commission to order additional filing and reporting requirements including: (i) the submission of new tenders by Bell Nexxia to the Commission scolaire des Patriotes; (ii) the requirement that Bell Nexxia prove, in all instances where Bell Nexxia answered an RFP for the provision of a fibre optic network involving Bell Canada support structures, that Bell Nexxia did not offer anti-competitive prices nor benefit from preferential prices from Bell Canada; and (iii) the requirement of Bell Nexxia, in instances where the Commission concluded there was anti-competitive pricing, to advise all involved parties that a new tender from Bell Nexxia should be considered.
 4. Subsequent to cancellation of the RFP by Ville de Saguenay on 1 May 2002, VTL informed the Commission on 25 October 2002 that the remedies sought in the application relative to Ville de Saguenay no longer had a factual basis since a business relationship no longer existed between Bell Nexxia and Ville de Saguenay. VTL also indicated that it would maintain the application in the case of the Commission scolaire des Patriotes.
 5. In its comments of 4 February 2003, VTL submitted that in light of the record of the proceeding and the Commission's findings in *Regulatory safeguards with respect to incumbent affiliates, bundling by Bell Canada and related matters*, Telecom Decision CRTC 2002-76, 12 December 2002 (Decision 2002-76), a reformulation of VTL's requests as set out in the application was necessary.
 6. VTL submitted the following reformulation of its requests:
 - a) The Commission should, pursuant to sections 32(d) and (g) of the Act, suspend and disallow all or Part of the agreement between Bell Nexxia and the Commission scolaire des Patriotes. Such a measure, VTL submitted, was necessary and would make it possible to retroactively create the desired effect of the directive announced by the Commission in paragraph 76 of Decision 2002-76 where it stated, "...the Commission considers it important to ensure that customers be given notice of the requirement for regulatory approval of bundles...the Commission directs....that all contracts for bundles include a clause specifying that the provision of the bundle is subject to prior Commission approval and the rates, terms and conditions set out in the contract are not final until given final approval by the Commission....";
 - b) The Commission should impose a fine on Bell Canada for breach of section 25 of the Act;

- c) The Commission should order Bell Canada or Bell Nexxia to submit all its contracts related to providing fibre optic private network services and, for each contract, a tariff proposal accompanied by a financial analysis based on the imputation test set out in Order 2000-425;
 - d) The Commission should order that all services of a company affiliated with a major incumbent telephone company must be tarified and filed with the Commission and shown to meet imputation test requirements prescribed by the Commission in Order 2000-425.
7. Interventions were received from CBF Télécom ltée on 15 March 2002 and from TELUS Communications Inc. (TELUS) on 5 April 2002. Bell Canada and Bell Nexxia filed an answer to the application on 5 April 2002.
 8. VTL filed reply comments on 15 April 2002 and 25 April 2002. Additional comments were received from Bell Canada and Bell Nexxia on 3 May 2002 and from VTL on 13 May 2002.
 9. On 25 October 2002, VTL filed updated information relating to the RFP for the Commission scolaire des Patriotes.
 10. On 2 December 2002, Bell Canada and Bell Nexxia responded to Commission interrogatories dated 6 November 2002. Requests for disclosure of information filed under claim of confidence by Bell Canada and Bell Nexxia were received from VTL on 6 December 2002 and from Xit Télécom (Xit) on 13 December 2002. On 10 January 2003, pursuant to the Commission's letter of 23 December 2002, Bell Canada and Bell Nexxia filed additional interrogatory responses and placed additional information on the public record.
 11. A request for disclosure of information filed under claim of confidence by Bell Canada and Bell Nexxia was received from VTL on 13 January 2003. Comments were received from Mr. François Ménard on behalf of Xit on 13 January 2003. On 28 January 2003, pursuant to the Commission's letter of 23 January 2003, Bell Canada and Bell Nexxia placed additional information on the public record.
 12. Comments were received from VTL on 4 February 2003. Comments were received from Bell Canada and Bell Nexxia on 20 February 2003.
 13. Final reply comments were received from VTL on 28 February 2003.
 14. On 1 April 2003, Bell Canada responded to the Commission's interrogatory dated 28 March 2003.
 15. On 11 June 2003, Bell Canada responded to the Commission's interrogatories dated 5 June 2003.
 16. Mr. François Ménard provided comments on 11 June 2003.
 17. On 19 June 2003, Bell Canada responded to the Commission's interrogatory dated 18 June 2003.

Compliance with section 25 of the Act and imputation test requirements

Position of parties

i) Support structure service and maintenance

18. VTL indicated that on 11 December 2001, the Commission scolaire des Patriotes issued an RFP associated with implementing and maintaining a fibre optic network within its serving territory. On 6 February 2002, the Commission scolaire des Patriotes opened the tenders and publicly disclosed the prices. The lowest tender was from Bell Nexxia.
19. VTL submitted that there was reasonable doubt that the prices proposed by Bell Nexxia recovered the costs of accessing Bell Canada's support structures. VTL provided its estimates of the costs Bell Nexxia would have had to incur in order to access the required support structures associated with the network in question. VTL submitted that there was reasonable doubt whether the rates proposed by Bell Nexxia were compensatory, because these estimates were higher than the monthly maintenance rates proposed by Bell Nexxia. These rates, according to VTL, had included costs for support structure service, network surveillance and network maintenance.
20. VTL noted that the request for tenders required each bidder to respond to broad price categories. For example, each bidder was to indicate: (i) the price to acquire the right to use fibre optics in accordance with the technical requirements of the RFP; and (ii) the monthly 20-year maintenance rate (which included the recurring costs for support structure access, network surveillance, network maintenance, and repair).
21. VTL submitted that the arrangements between Bell Nexxia and Bell Canada had no other purpose but to allow Bell Canada to do indirectly what it could not do directly. VTL submitted that by offering customer specific arrangements (CSAs) through Bell Nexxia without any constraints, Bell Canada was in fact circumventing the regulatory framework adopted by the Commission in *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994 (Decision 94-19), *Joint marketing and bundling*, Telecom Decision CRTC 98-4, 24 March 1998 (Decision 98-4), and Order 2000-425.
22. VTL further submitted that if Bell Nexxia was not offering Bell Canada's support structure service at rates lower than those set out in the National Services Tariff, then Bell Nexxia may have offered a fibre optic network at a price that contravened the regulatory framework established in Order 2000-425 with respect to imputation test requirements for CSAs.
23. VTL, in addition to the specific relief requested in respect of Bell Canada and Bell Nexxia, requested general relief involving the extension of the imputation test requirements in Order 2000-425, to all ILEC affiliates.
24. In its answer to the application, Bell Nexxia stated that its tenders were consistent with Bell Canada's National Services Tariff. Bell Canada and Bell Nexxia submitted that VTL's calculations of support structure service costs incurred by Bell Nexxia were incorrect and that Bell Nexxia's use of support structures was in compliance with the tariff. Bell Canada and Bell Nexxia also submitted that VTL did not provide any evidence that Bell Canada would not recover its support structure service costs.

25. Bell Nexxia submitted that when designing its tenders, Bell Nexxia attempted to maximize opportunities for competitive pricing by leveraging underlying location specific economies of scale. Bell Nexxia maintained that the territory served by the Commission scolaire des Patriotes offered the potential for provisioning to other customers who had both significant and expanding telecommunications requirements. Accordingly, Bell Nexxia stated that its network designs employed facilities with a capacity greater than would be required to meet only the needs set out in the RFP. Since costs associated with cable acquisition, installation and maintenance do not increase based on the number of fibres within a sheath, Bell Nexxia submitted that by planning to use additional fibres in the installed cables to meet the needs of other customers, it was able to realize economies that could be passed on in the form of competitive pricing.
26. Bell Nexxia submitted that VTL had incorrectly assumed that all costs of accessing support structures must be recovered from the prices proposed to the Commission scolaire des Patriotes. Bell Nexxia noted that its proposed network for the Commission scolaire des Patriotes would have been partly assembled via elements of a larger network that Bell Nexxia had already constructed for other customers. Bell Nexxia maintained that when constructing these other networks, it had anticipated the needs of other potential customers, including neighbouring school boards, thereby allowing savings to be passed on to customers and prospective customers.
27. With respect to VTL's allegation that Bell Nexxia was offering a fibre optic network at tariffs that would not meet the imputation test requirements established in Order 2000-425, Bell Canada submitted that the evidence before the Commission in this proceeding demonstrated clearly that VTL's thesis that Bell Nexxia was not recovering its support structure service costs was entirely unfounded.
28. Bell Canada and Bell Nexxia maintained that VTL was requesting the Commission to implement a wide range of reporting and filing requirements and measures aimed at creating an administrative burden and restricting Bell Nexxia's participation in the private fibre optic network market.
29. TELUS provided comments and stated that if the Commission determined that there were sufficient facts and evidence to infer or raise a serious question as to Bell Canada's failure to comply with its support structure service tariff and/or Bell Canada's conferral of an undue preference on its affiliate, the Commission could impose sanctions on Bell Canada under Part V of the Act or take other measures it deemed necessary.
30. TELUS also submitted that the Commission should exercise restraint and caution in launching any investigations based solely on allegations of below-cost pricing by forborne carriers. According to TELUS, the Commission should defer to the Competition Bureau in respect of the allegations of predatory pricing.
31. In its reply comments, VTL noted that nowhere in its application had VTL stated that Bell Canada granted access to its support structures on terms other than the terms provided for in Bell Canada's tariff, nor that Bell Nexxia offered private fibre optic networks at anti-competitive prices. Rather, VTL submitted that there was reasonable doubt that

Bell Canada complied with its tariff. VTL stated that its reasonable doubt was based on the difference between VTL's estimate of support structure service costs that would have to be covered by Bell Nexxia and the maintenance rates submitted by Bell Nexxia. VTL further noted that it was not arguing that Bell Nexxia was engaging in predatory pricing but that Bell Nexxia was contravening the regulatory framework established in Order 2000-425 relative to CSAs. VTL also noted that its application challenged only the maintenance rates, covering support structure service and maintenance and monitoring services submitted in response to the RFP.

32. In response to Commission interrogatories dated 6 November 2002, Bell Canada identified and described the services provided by Bell Canada to Bell Nexxia associated with the Commission scolaire des Patriotes RFP, including those services associated with Bell Canada's National Services Tariff. Bell Canada submitted that: (i) Bell Nexxia was the provider of service to the customer; (ii) the customer was required to make payment to Bell Nexxia; and (iii) Bell Nexxia was not acting as an agent or reseller for Bell Canada. Bell Canada submitted that Bell Nexxia acted as the main contractor and, like its competitors, had recourse to a wide range of suppliers to complete the construction of the private data transmission network. Bell Canada submitted that Bell Nexxia used Bell Canada's support structure service in the same way that VTL and other competitors could.
33. In their comments dated 20 February 2003, Bell Canada and Bell Nexxia noted that the telecommunications services provided by Bell Canada were access to support structure service and related maintenance.
34. VTL, in its comments dated 4 February 2003, submitted that if the Commission was to conclude that Bell Nexxia was acting as a reseller, or an agent for Bell Canada, the prices submitted by Bell Nexxia, in response to the RFP, must meet the imputation test prescribed by the Commission when service bundles are involved. In the alternative, VTL submitted that if the Commission was to conclude that Bell Nexxia was acting as a Canadian telecommunications company, Bell Nexxia should meet the imputation test set out in Order 2000-425. VTL further submitted that information provided in the documents labelled Attachment B and Attachment C and included in the Attachment to Bell(CRTC)2nov02-2S corresponded to the notion of bundling for the purposes of applying the Commission's bundling rules.
35. VTL submitted that, based on information filed by Bell Canada, as well as VTL's own calculations, the combined annual rate for the support structure service, including maintenance charges, offered to the Commission scolaire des Patriotes, by Bell Nexxia, assuming a 50 m strand span, was too low by 63% (\$220/km compared to VTL's estimate of \$585/km).
36. VTL further submitted that, for purposes of cost allocations, the Commission must refuse to allow Bell Canada or Bell Nexxia to consider the synergies of other potential customers as well as Bell Canada's or Bell Nexxia's own expansion plans.
37. VTL submitted that many of the required services identified in the RFP can be provided by Bell Canada. VTL further submitted that Bell Canada was acting as the principal contractor in providing the fibre optic private network requested by the Commission scolaire des Patriotes and that Bell Nexxia was acting as either a reseller of the services that were being provided by Bell Canada or as an agent of Bell Canada.

38. Bell Canada submitted that the documents labelled Attachment B and Attachment C and included in the Attachment to Bell(CRTC)2nov02-2S were sample documents used to confirm work done for each phase of a project and did not specifically concern the Commission scolaire des Patriotes project.
39. Bell Nexxia submitted that it would be completely unreasonable to recover from a single client all network expansion costs incurred when Bell Nexxia decides to have higher capacity cables installed and integrate a project within its plans for network expansion.
40. Bell Canada submitted that at the time of the RFP, Bell Nexxia was not subject to the requirements set out by the Commission in Order 2000-425 or in Decision 2002-76 and was not obligated to file the results of an imputation test or file rates.
41. In response to Commission interrogatories dated 5 June 2003, requesting why Bell Canada had not filed a proposed tariff pertaining to the provision of the fibre optic private network for the Commission scolaire des Patriotes, Bell Canada submitted that Bell Nexxia, not Bell Canada, responded to the Commission scolaire des Patriotes' RFP and supplied the network in question. Bell Canada further submitted that the fibre cable was provided to the customer by way of an indefeasible right of use (IRU) and that the capital costs of the facility were recovered through a one-time payment from the customer.
42. In response to a Commission interrogatory dated 18 June 2003, requesting further details with respect to services being provided by Bell Canada to the Commission scolaire des Patriotes, Bell Canada noted that the RFP issued by the customer had called for the acquisition by the customer of ownership of a fibre-based data transmission network through an IRU for a minimum period of 20 years. Bell Canada submitted that Bell Nexxia had responded with a proposal for the outright sale of the network and that it was that proposal which won the RFP process. Bell Canada submitted that all capital costs associated with the establishment of the customer's fibre-based network had been billed on an up front basis and that the customer was responsible for the operation and management of its facilities, including the management, maintenance and repair of the electronic equipment used to light the fibre strands and deliver services over the network in question. Bell Canada argued that no fibre optic network service was being provided to the customer by Bell Canada or Bell Nexxia. Bell Canada submitted that limited ongoing maintenance services were being provided on the cable in which the customer owned fibres were located and that the cable sheath was attached to or located in support structures provided by Bell Canada and Hydro-Québec. Bell Canada submitted that it was providing maintenance on facilities which were forborne and that the transaction was now complete. As a result, no tariffs were required to be filed for such incidental maintenance.

ii) Other services

43. Based on information submitted by Bell Canada, VTL identified a number of services provided, or that could be provided, to Bell Nexxia by Bell Canada. VTL submitted that, according to section 25 of the Act, all such services were telecommunications services.

44. VTL submitted that, as indicated by the Commission in Decision 2002-76, the engineering and technical support, and the back-office services provided by Bell Canada to Bell Nexxia to support the provisioning of telecommunications services, may qualify as telecommunications services.
45. VTL submitted that except for Item 5.5 of the Construction and Maintenance Contract, which referred to the support structures agreement signed between Bell Canada and Bell Nexxia, the Construction and Maintenance Contract submitted by Bell Canada in Bell(CRTC)6nov02-2S contained no reference to tariffs approved by the Commission for the services offered by Bell Canada to Bell Nexxia.
46. VTL submitted that by providing Bell Nexxia with telecommunications services otherwise than in accordance with approved tariffs, Bell Canada was contravening section 25 of the Act.
47. Bell Canada and Bell Nexxia noted that Decision 2002-76 was issued almost one year after the Commission scolaire des Patriotes issued its RFP and several months after the construction of a computer network for that client.
48. Bell Canada and Bell Nexxia submitted that VTL's allegation that Bell Nexxia or Bell Canada had contravened the Commission's directives set out in Decision 2002-76 was based on the assumption that the decision was effective retroactively, and that Bell Nexxia should have had to comply in January 2002 with directives issued by the Commission in December 2002. Bell Canada and Bell Nexxia submitted that this was unfounded.
49. Bell Canada and Bell Nexxia submitted that Bell Canada could provide engineering, plan preparation and supervision and material procurement services without such services constituting telecommunications services within the meaning of the Act. Bell Canada and Bell Nexxia submitted that these services were not services that were incidental to Bell Canada's business of providing telecommunications services given that the only telecommunications services that Bell Canada provided for this project were access to support structures and maintenance.
50. Bell Canada and Bell Nexxia submitted that Bell Nexxia's decision to obtain some professional and technical services from Bell Canada did not mean that those services were regulated telecommunications services.
51. Bell Canada and Bell Nexxia submitted that preparation and supervision and material procurement services were professional services that Bell Nexxia could have obtained from any number of engineering firms and competent technical consultants and that such professional services were not telecommunications services. Bell Canada and Bell Nexxia further submitted that Bell Nexxia's competitors for this type of project, typically construction companies, engineering firms acting alone or in partnership with other companies, or telecommunications carriers such as VTL, acting alone or in partnership with others, had access to the same types of professional resources.
52. Bell Canada noted that professional services that do not constitute telecommunications services, for example, engineering services, materials procurement and the preparation and supervision of plans, were accounted for in Bell Nexxia's response to the RFP and billed by

Bell Canada at hourly rates set for comparable functions in Bell Canada tariffs. Bell Canada further noted that whether or not these services were services subject to pricing identified in Bell Canada tariffs approved by the Commission, the result would not in any way change Bell Nexxia's response to the RFP issued by the Commission scolaire des Patriotes.

53. Bell Canada and Bell Nexxia submitted that the contract referenced by VTL did not specifically concern the Commission scolaire des Patriotes project and that VTL incorrectly assumed that all services listed in the service contract were provided by Bell Canada.

iii) Extension of bundling rules' imputation test requirements to all ILEC affiliates

54. In its application, VTL, in addition to the specific relief requested in respect of Bell Canada and Bell Nexxia, requested general relief involving the extension of the imputation test requirements in Order 2000-425, to all ILEC affiliates.
55. In their answer, Bell Canada and Bell Nexxia maintained that VTL was requesting the Commission to implement a wide range of reporting and filing requirements and measures aimed at creating an administrative burden and restricting Bell Nexxia's participation in the private fibre optic network market.
56. TELUS, in its intervention, noted that VTL's application concerned the behaviour of a single ILEC affiliate in respect of a single service sub-market and submitted that there was no justification for changing the rules in respect of all ILEC affiliates, in all sub-markets, in all regions of the country. TELUS submitted that the imposition of detailed regulatory costing requirements on all ILEC affiliates would destroy one of the primary benefits of *Forbearance – Services provided by non-dominant Canadian carriers*, Telecom Decision CRTC 95-19, 8 September 1995, and that the Commission would have to rescind the relevant forbearance rulings in whole or in part.

Commission's analysis and determinations

57. The Commission notes that the fibre optic network was sold outright to the Commission scolaire des Patriotes by Bell Nexxia for an up front, one-time, payment. The Commission scolaire des Patriotes was to be responsible for the operation and management of the purchased facilities, including the management, maintenance and repairs of the electronic equipment used to light the fibre strands and deliver services over the network in question. Bell Nexxia, on the other hand, was to be responsible for the engineering, plan preparation and supervision and material procurement services related to the installation of the fibre, as well as support structure and maintenance services. For purposes of completing these tasks, Bell Nexxia retained Bell Canada. The Commission scolaire des Patriotes was to make recurring payments over 20 years for support structure and maintenance services.
58. With respect to VTL's submission that Bell Canada may have provided support structure and maintenance services to Bell Nexxia otherwise than in accordance with approved tariffs, thereby contravening subsection 27(2) of the Act, the Commission notes that Bell Canada provided details, including units of demand and tariff references, as well as underlying assumptions. Based on this information, the Commission considers that Bell Canada

did provide support structure and maintenance services to Bell Nexxia in compliance with approved tariffs. Accordingly, the Commission finds that Bell Canada, in providing such services to Bell Nexxia, did not give an undue preference in contravention of subsection 27(2) of the Act.

59. With respect to VTL's submission regarding the provision of other services, including engineering and technical support services, by Bell Canada to Bell Nexxia, the Commission notes that in *Follow-up to Telecom Decision CRTC 2002-76 – Location of the CSG and regulatory safeguards for affiliated carriers*, Telecom Decision CRTC 2004-50, 22 July 2004 (Decision 2004-50), it confirmed its preliminary view set out in Decision 2002-76 that with respect to new, renewed or renegotiated agreements or arrangements, an affiliated carrier will be required to comply with section 25 and other applicable provisions of the Act, whenever the affiliated ILEC is required to do so. In the Commission's view, that decision establishes appropriate safeguards with respect to, among other things, the provision of ILEC services to carriers under common control with an ILEC.
60. With respect to VTL's submission that Bell Nexxia may have offered services at anti-competitive prices as measured by the imputation test requirements set out in Order 2000-425, the Commission notes that the bundling rules referred to in that Order did not apply, prior to Decision 2004-50, to the provision of services by carriers under common control with an ILEC. Moreover, the evidence suggests that in this instance, Bell Nexxia was acting in its own right, rather than as an agent of Bell Canada. Accordingly, the Commission considers that there was no requirement for Bell Nexxia or Bell Canada to file an imputation test in accordance with Order 2004-425.
61. The Commission notes that as a result of the 2003 amalgamation of Bell Nexxia and Bell Canada, telecommunications services provided by Bell Nexxia are, as of the date of the amalgamation, provided by Bell Canada.
62. In response to a Commission interrogatory, Bell Canada indicated that limited ongoing maintenance services were being provided on the cable in which the customer-owned fibres were located and that the cable sheath was attached to or located in support structures provided by Bell Canada and Hydro-Québec. Based on the record of this proceeding, the Commission considers that Bell Canada is, on an ongoing basis, providing the Commission scolaire des Patriotes with maintenance and support structure services.
63. The Commission considers that maintenance and support structure services are telecommunications services and that, absent forbearance, pursuant to section 25 of the Act, such services must be provided pursuant to approved tariffs.
64. In response to a Commission interrogatory, Bell Canada submitted that the maintenance services in question provided by the company did not require tariff approval because they are forborne services. In Bell Canada's view, this conclusion necessarily followed because the services are being performed on facilities which, when provided by Bell Nexxia, were forborne.

65. The Commission is not persuaded that merely because the facilities were provided to the customer on a forborne basis by Bell Nexxia, maintenance services with respect to such facilities, when provided by Bell Canada, are also forborne. Accordingly, the Commission considers that the provision by Bell Canada of such maintenance services, as well as the provision of support structure services, must be in accordance with approved tariffs.
66. Accordingly, the Commission directs Bell Canada, within 10 days, to file proposed tariffs pertaining to the ongoing provision of support structure service and maintenance to the Commission scolaire des Patriotes, or to demonstrate that the provision of such services is in accordance with approved tariffs.
67. With respect to VTL's submission that the imputation test requirements in Order 2000-425 be extended to all Canadian carriers in common control with an ILEC affiliates, the Commission considers that Decision 2004-50, previously noted, has adequately addressed VTL's concerns.
68. In light of the above, VTL's application is **denied**.

Secretary General

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