



## Telecom Decision CRTC 2005-22

Ottawa, 7 April 2005

### Part VII application by Allstream Corp. and Call-Net Enterprises Inc. regarding Bell Canada Type 2 CSAs

Reference: 8622-A74-200400557

*In this Decision, the Commission **denies** a Part VII application by Allstream Corp. and Call-Net Enterprises Inc. requesting that the Commission deny approval to the backlog of Type 2 customer-specific arrangements that were the subject of Review of Bell Canada's customer-specific arrangements filed pursuant to Telecom Decision 2002-76, Telecom Decision CRTC 2003-63, 23 September 2003, and order Bell Canada to discontinue service under these contracts.*

#### Introduction

1. On 23 January 2004, Allstream Corp. (Allstream)<sup>1</sup> and Call-Net Enterprises Inc. (Call-Net) filed an application pursuant to sections 24, 25, 27, 32, and 51 of the *Telecommunications Act* (the Act) and Part VII of the *CRTC Telecommunications Rules of Procedure* (the Rules), requesting that the Commission deny all of Bell Nexxia Inc.'s (Bell Nexxia's) customer-specific service arrangements (CSAs) that were the subject of *Review of Bell Canada's customer-specific arrangements filed pursuant to Telecom Decision 2002-76*, Telecom Decision CRTC 2003-63, 23 September 2003 (Decision 2003-63). Allstream and Call-Net also requested that the Commission order Bell Canada to discontinue service under these contracts, and provide the services in accordance with the company's general tariffs, as applicable.

#### Background

2. In *Bundling framework developed for customer-specific arrangements*, Order CRTC 2000-425, 19 May 2000 (Order 2000-425), the Commission established specific rules for CSAs proposed by incumbent local exchange carriers (ILECs) that bundled tariffed telecommunications services with non-tariffed and/or non-telecommunications services. The Commission also required that proposed CSA tariffs be subject to the provision of detailed information with respect to rates, revenues, costs, terms, and conditions.
3. 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), the Commission directed Bell Canada, among other things, to file proposed tariffs, supported by an imputation test analysis using the framework set out in Order 2000-425, for every contract identified in Appendix A of that Decision.

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<sup>1</sup> Allstream Corp. is now a division of MTS Allstream Inc.

4. In Decision 2002-76, the Commission also directed Bell Canada to file proposed tariffs and to provide the Commission with information regarding all contracts for single source and packaged arrangements involving Bell Canada tariffed service elements, whether offered directly by Bell Canada or through Bell Nexxia, or any other Bell Canada affiliate under common control of Bell Canada.
5. In Decision 2003-63, the Commission found, among other things, that the tariffs applicable to the CSAs filed by Bell Canada pursuant to Decision 2002-76 did not meet the Commission's requirements regarding rates, terms, and conditions that should be publicly available in the tariffs. The Commission directed Bell Canada to resubmit the proposed tariffs for approval, consistent with the tariff requirements set out in Decision 2003-63.
6. On 23 October 2003, Bell Canada sought leave from the Federal Court of Appeal to appeal Decision 2003-63 and to stay the implementation of the tariff filing requirements of paragraph 66 of Decision 2003-63.
7. On 5 November 2003, Bell Canada filed an application with the Commission pursuant to section 62 of the Act and Part VII of the Rules, requesting that the Commission review and vary certain aspects of Decision 2003-63. Bell Canada also filed an application to stay the implementation of paragraph 66 of Decision 2003-63, pending disposition of its review and vary application.
8. By order of the Federal Court of Appeal, dated 21 November 2003, Bell Canada was granted a stay with respect to paragraph 66 of Decision 2003-63, pending the disposition of its application for leave to appeal, and, if leave were granted, the outcome of the appeal itself.
9. On 18 December 2003, by order of the Federal Court of Appeal, Bell Canada was granted leave to appeal Decision 2003-63, with respect to the issue of whether the Commission had failed to comply with subsection 39(4) of the Act by failing to consider the issue of interested persons directly affected by the disclosure of information, and by failing to provide any reasonable means to obtain their views prior to exercising its authority pursuant to subsection 39(4) of the Act and, if so, whether the Commission had made an error of law or jurisdiction.

### **The application**

10. Allstream and Call-Net requested that the Commission deny all of Bell Nexxia's CSAs that were the subject of Decision 2003-63. Allstream and Call-Net also requested that the Commission order Bell Canada to discontinue service under these contracts, and provide the services in accordance with the company's general tariffs, as applicable.
11. Allstream and Call-Net further requested that the Commission place a moratorium on the approval of any new Type 2 CSAs entered into by the large ILECs, at least until the disposition of Bell Canada's appeal of Decision 2003-63 to the Federal Court of Appeal. In the case of Bell Canada, Allstream and Call-Net requested that the moratorium also apply to any modifications to the Bell Nexxia CSAs.

12. Allstream and Call-Net submitted that the large ILECs employed targeted, discriminatory, anti-competitive, and in many cases, illegal pricing practices, which continued to have a detrimental effect on competition. Allstream and Call-Net further submitted that Bell Canada had employed Type 2 CSAs to leverage its dominance in the market for local access in order to tie up the business of large customers.
13. Allstream and Call-Net noted that Bell Canada had appealed Decision 2003-63 to the Federal Court of Appeal. Allstream and Call-Net stated that, in correspondence to the Commission, Bell Canada had submitted that the Commission ought to consider tariff notices applicable to CSAs notwithstanding that their relevant terms and conditions could not be disclosed because of the stay. Allstream and Call-Net submitted that the position taken by Bell Canada with respect to the stay of Decision 2003-63 granted by the Federal Court of Appeal compromised the Commission's effectiveness in regulating the ILECs' market power because the requirements set out in the Act and Commission determinations with respect to the public availability of the rates, terms and conditions of CSA contracts would not be respected.
14. Allstream and Call-Net submitted that by the time the appeal to the Federal Court of Appeal was disposed of, Bell Canada would have operated illegally with respect to the Bell Nexxia CSAs for two years since the issuance of Decision 2002-76.

### **Process**

15. Comments were filed by Bell Canada, dated 11 February 2004; Saskatchewan Telecommunications (SaskTel), dated 20 February 2004; and TELUS Communications Inc. (TCI) and TELUS Communications (Québec) Inc.<sup>2</sup> (hereinafter referred to as TELUS), dated 11 February 2004. These companies generally urged the Commission to deny the application.
16. Allstream and Call-Net filed reply comments, dated 23 February 2004, with respect to Bell Canada's comments, and reply comments, dated 11 March 2004, with respect to the comments of SaskTel and TELUS.

### **Subsequent developments**

17. On 14 September 2004, Bell Canada's appeal of Decision 2003-63 to the Federal Court of Appeal was dismissed. The Commission notes that with the Federal Court of Appeal's dismissal of Bell Canada's appeal, the stay previously granted by the Federal Court of Appeal was lifted.
18. In a letter to the Commission dated 11 March 2005, Bell Canada requested the withdrawal of its application for the Commission to review and vary Decision 2003-63, as well as the withdrawal of its application to stay the implementation of paragraph 66 of that Decision.
19. In a letter dated 15 March 2005, the Commission informed Bell Canada that it accepted the company's request to withdraw its stay and review and vary applications.

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<sup>2</sup> Effective 1 July 2004, TCI has assumed all rights, entitlements, liabilities, and obligations relating to the provision of telecommunications services in the territories previously served by TELUS Communications (Québec) Inc.

## Commission's analysis and determinations

20. The Commission notes that as a result of the Federal Court of Appeal's dismissal of Bell Canada's appeal of Decision 2003-63, and the consequent lifting of the stay, Allstream and Call-Net's request that the Commission place a moratorium on the approval of any new Type 2 CSAs entered into by the large ILECs is now moot. The Commission further notes that since the disposition of the appeal by the Federal Court of Appeal, Bell Canada has filed revised proposed tariff pages with respect to its CSAs that are consistent with the tariff requirements set out in Decision 2003-63. In the Commission's view, Bell Canada's revised proposed tariff pages adequately address Allstream and Call-Net's concerns with respect to the public availability of the proposed rates, terms, and conditions applicable to those CSAs.
21. With respect to Allstream and Call-Net's request that the Commission deny all of the Bell Nexxia CSAs, the Commission considers that such a blanket outcome is not appropriate, since it would prevent the Commission from considering the particular circumstances associated with each proposed CSA. In this regard, the Commission considers that each CSA should be individually assessed to determine whether Bell Canada has complied with Decision 2003-63, including the rate specificity, imputation test criteria, and other tariff requirements set out in that Decision.
22. In light of the above, the Commission **denies** Allstream and Call-Net's Part VII application.

Secretary General

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