



Telecom Order CRTC 2005-271

Ottawa, 20 July 2005

Bell Canada

Reference: Tariff Notice 831 (National Services Tariff)

Customer specific arrangement

1. The Commission received an application by Bell Canada, dated 8 October 2004, requesting approval of Tariff Notice 831 (TN 831) under National Services Tariff item 727.5, related to services provided under Customer Specific Arrangement (CSA) contract number P3-177. TN 831 replaced Tariff Notice 770 (TN 770), which had been filed pursuant to *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).
2. The CSA filed under TN 831 is a Type 2 CSA consisting of a bundle of the following General Tariff services: Business Primary Exchange, Centrex III, Megalink/Primary Rate Interface, Microlink/Basic Rate Interface, Digital Exchange Access, Follow-me Phone, Voice Grade Analog Channels, Digital Channel, Digital Network Access, Digital Private Line, Asymmetric Digital Subscriber Line, and Installation, Moves, Additions, Changes and Discontinuations and the following forborne services: Audio Conferencing, Toll-Free Service Features and Access Arrangements, Packet, Equipment Rentals, Frame Relay, Large Capacity Digital Network, Business Internet Dedicated, Internet Protocol Virtual Private Network Enterprise, Ethernet Internetworking, Internet Data Centre, Virtual Private Network Secure Access, Infrastructure, Escort, Installation, Moves, Additions, Changes and Discontinuations, Professional, Maintenance and Management. The minimum contract period for this CSA is seven years.
3. On 8 December 2004, MTS Allstream Inc. (MTS Allstream) filed comments with respect to Bell Canada Tariff Notices 817 to 843 and requested, among other things, that the Commission deny these Tariff Notices.
4. MTS Allstream submitted that Bell Canada's Tariff Notices related to arrangements (or renegotiated versions thereof) that were subject to a pending application, filed by Allstream Corp.¹ (Allstream) and Call-Net Enterprises Inc. (Call-Net) on 23 January 2004. MTS Allstream submitted that, absent a ruling on the Part VII application that sought, among other things, denial of the backlog of the Bell Nexxia Inc.'s (Bell Nexxia's) Type 2 CSAs, these Tariff Notices should not be approved.
5. MTS Allstream submitted that many of the proposed rates and terms and conditions were either inconsistent with the Commission's criteria for just and reasonable rates, or were otherwise unjustly discriminatory or granted Bell Canada an undue preference.

¹ Allstream Corp. is now a division of MTS Allstream Inc.

6. MTS Allstream noted that Bell Canada's appeal 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) was dismissed by the Federal Court of Appeal, and the stay previously granted by the Court was lifted. MTS Allstream submitted that, despite those developments, the company had not disclosed the full rates and terms and conditions of a large number of the Bell Nexxia CSAs on the public record, contrary to the requirements of Decision 2003-63. MTS Allstream claimed that this allowed Bell Canada to continue to conceal the details of those arrangements until it had renegotiated them to the company's satisfaction.
7. MTS Allstream submitted that allowing Bell Canada to renegotiate such arrangements while they were subject to the Commission's consideration prevented a new supplier from competing for the customer's business.
8. With respect to TN 831, MTS Allstream submitted that the services provided in TN 770 appeared to be changed in TN 831 and that some of the services were not offered under the same MCP. MTS Allstream further submitted that service level agreements (SLAs), credits and volume discounts appeared to have been added in TN 831. MTS Allstream submitted, in addition, that TN 831 stipulates that the customer would be reimbursed for changes to the terms of the arrangement as a result of Decision 2002-76 or any CRTC order made pursuant to that Decision. MTS Allstream also submitted that Bell Canada appeared to have relied on the imputation test filed with TN 770 rather than filing a new imputation test for TN 831.
9. In reply on 20 December 2004, Bell Canada stated that no services had changed and the services listed in TN 831 were consistent with the services included in the imputation test.
10. With respect to MTS Allstream's comments on varying MCPs, Bell Canada submitted that, consistent with other CSAs, the individual services under this CSA did not have the same contract term. Bell Canada further submitted that a customer could commit to different contract periods for different services.
11. With regard to MTS Allstream's comment regarding the addition of SLAs, credits, and volume discounts, Bell Canada submitted that while none of these were specified in the original tariff, they had been provided throughout the term of the arrangement.
12. With respect to MTS Allstream's comments regarding reimbursement for changes, Bell Canada submitted that in the event that changes to the terms of this arrangement are made as a result of a decision or an order made by the Commission as a consequence of Decision 2002-76, Bell Canada would reimburse the customer for any reasonable cost incurred associated with implementing system changes (such as changes to charge back systems) to the extent that such system changes are required, and the incurred costs are solely as a result of the aforementioned changes to the terms of this arrangement.
13. With respect to the imputation test, Bell Canada replied that a revised imputation test was filed at the request of the Commission on 7 November 2003.

Commission's analysis and determinations

14. The Commission notes that in *Part VII application by Allstream Corp. and Call-Net Enterprises Inc. regarding Bell Canada Type 2 CSAs*, Telecom Decision CRTC 2005-22, 7 April 2005 (Decision 2005-22), it denied the Part VII application filed by Allstream and Call-Net on the basis that a blanket denial of all the Bell Nexxia CSAs would not be appropriate, and that each CSA should be considered individually to determine whether Bell Canada had complied with the requirements set out in Decision 2003-63. In Decision 2005-22, the Commission also noted that since the dismissal of its appeal of Decision 2003-63 by the Federal Court of Appeal, Bell Canada had refiled proposed tariff pages for the Bell Nexxia CSAs under new TN numbers, consistent with the tariff requirements set out in Decision 2003-63.
15. The Commission notes that there have been no changes with respect to the services contemplated in this tariff application. The Commission is satisfied that the services, rates, terms and conditions provided are properly identified in the proposed tariff pages and meet the requirements specified in Decision 2003-63. The Commission is also of the view that MTS Allstream's concerns with respect to the level of public disclosure of the rates and terms and conditions applicable to TN 831 have been adequately addressed.
16. With respect to MTS Allstream's comment regarding varying MCPs, the Commission notes that the revenues and costs reflected in the imputation test take into account the varying MCPs within the bundle. Accordingly, the Commission is satisfied that the imputation test costs accurately reflect each service's MCP, as identified in the contract.
17. With respect to MTS Allstream's comment that SLA terms and conditions, credits, and volume discounts had been added in TN 831, the Commission is satisfied that SLAs, credits and volume discounts had been provided throughout the term of the arrangement.
18. With respect to MTS Allstream's comment regarding reimbursement for changes, the Commission is satisfied with Bell Canada's response.
19. The Commission notes that Bell Canada filed a revised imputation test on 7 November 2003. The Commission has reviewed the revised imputation test results and is satisfied that the costing directives specified in Decision 2003-63 have been properly applied. The Commission notes, however, that the imputation test revenues identified by Bell Canada are less than Bell Canada's costs. Accordingly the Commission considers that this CSA fails the imputation test.
20. The Commission further considers that the arrangement subject to TN 831 contains provisions that confer a preference on the customer. An example of such provisions is the customer not being required to pay termination charges and service charges in certain circumstances. If Bell Canada chooses, consistent with the direction set out below, to file a new tariff, the Commission considers that all costs associated with these preferential provisions should be identified separately in the revised imputation test.

21. In light of the above, the Commission **denies** the application by Bell Canada, and directs Bell Canada within 90 days to:

- file an application for a new tariff for this CSA, accompanied by an imputation test that: (1) includes all costs associated with preferential terms and conditions, and (2) demonstrates that the revised arrangement passes the imputation test; or
- advise the Commission that it has discontinued providing the arrangement identified in TN 831.

Secretary General

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>