



Telecom Decision CRTC 2006-6

Ottawa, 31 January 2006

Aliant Telecom Inc. - Application with respect to Competitor Digital Network Access service

Reference: 8661-A53-200510570

*In order that Aliant Telecom Inc. (Aliant Telecom) and MTS Allstream Inc. (MTS Allstream) may resolve a dispute regarding the implementation of the Competitor Digital Network Access service, the Commission defines a switch based on Aliant Telecom's proposed definition, and **denies** Aliant Telecom's request that MTS Allstream be required to provide Aliant Telecom with an affidavit related to its use of the disputed accesses.*

Introduction

1. The Commission introduced the Competitor Digital Network Access (CDNA) service on an interim basis in *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002 (Decision 2002-34). The CDNA service was available to competitors from 1 June 2002 to 2 February 2005 (the interim period), when the Commission approved the Competitor Digital Network (CDN) service on a final basis in *Competitor Digital Network Services*, Telecom Decision CRTC 2005-6, 3 February 2005 (Decision 2005-6). The Commission also made determinations relevant to the CDNA service in *Interim Competitor Digital Network Access service*, Telecom Decision CRTC 2002-78, 23 December 2002 (Decision 2002-78) and *Part VII application by Call-Net Enterprises Inc. with respect to the Interim Competitor Digital Network Access service*, Telecom Decision CRTC 2003-60, 29 August 2003 (Decision 2003-60).
2. The CDNA service tariff of Aliant Telecom Inc. (Aliant Telecom) made digital network accesses available to competitors during the interim period "between the competitor's end customer premises served by a Company wire centre and the competitor's switch located in a Company wire centre area ..." (Aliant Telecom CDNA service tariff Item 612.1).

Application

3. On 7 September 2005, Aliant Telecom made an application pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure* in which it requested certain Commission directions to permit Aliant Telecom and MTS Allstream Inc. (MTS Allstream) to resolve a dispute regarding the eligibility for CDNA rates of certain accesses leased by MTS Allstream from Aliant Telecom during the interim period (disputed accesses). Aliant Telecom submitted that resolution of this dispute would permit it to finalize its deferral account draw down estimates as required by Decision 2005-6.

4. Aliant Telecom requested that the Commission: (i) confirm Aliant Telecom's definition of a switch; (ii) direct MTS Allstream to provide Aliant Telecom with an affidavit attesting that all devices on which the disputed accesses terminated met Aliant Telecom's definition of a switch and also attesting that these devices were in Aliant Telecom's territory during the interim period; and (iii) direct MTS Allstream to pay Aliant Telecom in full for all arrears.
5. Aliant Telecom defined a switch as a "mechanical, electro-mechanical, electronic or photonic device which provides call control, connection control, and switching fabric functionality within one physical system. The switch establishes a communications path between two or more circuits, services or communications systems. This path provides a transmission conduit for communications or customer payload information and/or signaling. The (switching) device must be able to transmit (originate) and/or receive (terminate) an address/addressed signal. Switching equipment routes communications traffic among transmission paths connected to that equipment. Switching equipment must have the ability to intelligently select or control the communication path in real time or near-real time".
6. Aliant Telecom submitted that it had requested information from MTS Allstream to confirm that the disputed accesses terminated on an MTS Allstream switch located in Aliant Telecom's territory, and that the MTS Allstream device was a switch as defined by Aliant Telecom. Aliant Telecom submitted further that it had requested such information in order to apply its CDNA tariff correctly. Aliant Telecom also submitted that MTS Allstream had not provided Aliant Telecom with sufficient information to permit Aliant Telecom to verify MTS Allstream's claim that the disputed accesses were eligible for CDNA rates.
7. Aliant Telecom submitted that it had provided MTS Allstream with its definition of a switch in May 2003. Aliant Telecom indicated that it had provided credit to MTS Allstream in March 2004 in respect of certain CDNA-eligible accesses, but not for other accesses for which Aliant Telecom continued to bill MTS Allstream at retail rates because MTS Allstream had not provided it with the information requested.

Process

8. MTS Allstream filed its comments on 7 October 2005. Aliant Telecom filed its reply comments on 17 October 2005.

MTS Allstream's position

9. MTS Allstream asserted that all the arrangements provided to Aliant Telecom for CDNA eligibility under the interim regime fully met the terms and conditions of the interim CDNA service pursuant to Decisions 2002-34, 2002-78, and 2003-60. MTS Allstream asserted further that the access arrangements it submitted to Aliant Telecom met all the terms and conditions for the CDN service during the interim period, including the requirement that these access facilities were used to provide a transmission facility between an end-customer and an MTS Allstream switch located within Aliant Telecom's territory.

10. MTS Allstream noted that, in May 2003, Aliant Telecom had requested that MTS Allstream provide it with an affidavit attesting that MTS Allstream's switches met Aliant Telecom's definition of a switch. MTS Allstream submitted that its refusal to provide Aliant Telecom with an affidavit attesting that the disputed accesses terminated on a switch that met Aliant Telecom's definition and its refusal to provide Aliant Telecom with details of its switch locations, as Aliant Telecom requested, did not mean the disputed accesses were not CDNA-eligible. MTS Allstream submitted further that it had not complied with Aliant Telecom's request, and that Aliant Telecom's application should be denied, because an affidavit was not required by Aliant Telecom's CDNA service tariff or a Commission decision. MTS Allstream also submitted that it had not provided other incumbent local exchange carriers (ILECs) with such an affidavit.
11. MTS Allstream characterized Aliant Telecom's request to have MTS Allstream adhere to Aliant Telecom's definition of a switch as inappropriate and contrary to the Commission's determination in this regard. MTS Allstream submitted further that the Commission had not limited the type of switch on which accesses must have terminated to be CDNA-eligible. In this connection, MTS Allstream referred to the Commission's statement in Decision 2003-60 that "in Decision 2002-34 it did not restrict or limit the type of switch on which the circuit must terminate. Accordingly, the Commission confirms that end-customer access circuits remain eligible for the CDNA service tariff whether they terminate on voice or data switches."
12. MTS Allstream indicated that, from 16 October 2003, it decided to short-pay Aliant Telecom for accesses that in MTS Allstream's view were CDNA-eligible because of what MTS Allstream characterized as the lack of progress in discussions with Aliant Telecom's Carrier Services Group.

Aliant Telecom's reply

13. Aliant Telecom argued that eligibility for CDNA rates was conditional on the accesses leased by the competitor terminating on the competitor's voice or data switch located in Aliant Telecom's serving territory, and reiterated its definition of a switch for this purpose.

Commission's analysis and determinations

"Switch" for the purpose of the CDNA service

14. The Commission notes that the disputed accesses were CDNA-eligible if they ultimately terminated on an MTS Allstream switch in Aliant Telecom's serving territory. With respect to MTS Allstream's submission that the Commission had not limited the type of switch on which CDNA-eligible circuits must terminate, the Commission notes MTS Allstream's reliance on the Commission's statement in Decision 2003-60 that "in Decision 2002-34 it did not restrict or limit the type of switch on which the circuit must terminate." The Commission also notes, however, that this statement was followed by the Commission's conclusion in the next sentence in that paragraph that "Accordingly, the Commission confirms that end-customer access circuits remain eligible for the CDNA service tariff whether they terminate on voice or

data switches." In this connection, the Commission further notes Aliant Telecom's statement in its reply comments that it "was of the view that the 'switch' could be either a voice or a data switch." The Commission therefore considers that MTS Allstream's submission on this point is not relevant to this proceeding as the issue is not, as in Decision 2003-60, whether the device was a voice or data switch. Rather, the issue in this proceeding is what characteristics a device must possess to be considered as a switch for the purpose of implementing the CDNA service.

15. With respect to MTS Allstream's submission that Aliant Telecom's request to have MTS Allstream adhere to Aliant Telecom's definition of a switch was inappropriate, the Commission notes that MTS Allstream did not explain why it considered this to be the case. The Commission further notes that MTS Allstream did not disagree with Aliant Telecom's definition of a switch.
16. The Commission considers it appropriate to set out a definition of a switch in order that Aliant Telecom and MTS Allstream may resolve this dispute. In the circumstances of this case, the Commission considers that the following definition of a switch, which is based on Aliant Telecom's definition, should be used by Aliant Telecom and MTS Allstream: a device that established a communications path between two or more circuits, services or communications systems, routed communications traffic among transmission paths connected to it, and had the ability to intelligently select or control the communication path in real time or near-real time.

Affidavit

17. With respect to Aliant Telecom's request that the Commission direct MTS Allstream to provide Aliant Telecom with an affidavit in order to apply Aliant Telecom's tariffs correctly, the Commission notes that ILECs typically do not require customers, including customers that are competitors, to provide an affidavit attesting that tariff requirements are met. The Commission is not persuaded that MTS Allstream should be required to provide Aliant Telecom with an affidavit.
18. The Commission also notes MTS Allstream's assertion that all the arrangements provided to Aliant Telecom for CDNA eligibility fully met the terms and conditions of the interim CDNA service pursuant to Decisions 2002-34, 2002-78, and 2003-60. The Commission also notes MTS Allstream's further statement that the arrangements MTS Allstream submitted to Aliant Telecom met all the terms and conditions for the CDN service during the interim period, including the requirement that these access facilities were used to provide a transmission facility between an end-customer and an "MTS Allstream switch located within Aliant's territory." However, the Commission notes that MTS Allstream did not provide the definition of a switch it relied on in making these statements.

19. The Commission therefore directs (a) MTS Allstream to identify to Aliant Telecom, within 15 days of the date of this Decision, accesses leased by MTS Allstream, by Aliant Telecom rate band, during the interim period that terminated at an MTS Allstream switch, as defined in this Decision, in Aliant Telecom's territory, providing a copy to the Commission and (b) Aliant Telecom and MTS Allstream to settle, within 45 days of the date of this Decision, all amounts outstanding with respect to CDNA-eligible accesses and to advise the Commission accordingly. The Commission **denies** Aliant Telecom's request that MTS Allstream be required to provide Aliant Telecom with an affidavit.

Secretary General

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