Canadian Radio-television and Telecommunications Commission | Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2003-63

Ottawa, 23 September 2003

Review of Bell Canada's customer-specific arrangements filed pursuant to Telecom Decision 2002-76

Reference: Tariff Notices 751, 752, 754, 754A, 755, 755A, 756, 757, 758, 758A, 759, 760, 762, 762A, 764, 765, 767, 769, 769A, 770, 771, 772, 774, 780, 781, 786, 787, 788, 789, 6732, 6733, 6734, 6735, 6736, 6736A, 6740, 6740A and 8638-C12-80/02

The Commission finds that the tariffs accompanying the customer-specific arrangements (CSAs) filed by Bell Canada pursuant to the Commission's direction in Regulatory safeguards with respect to incumbent affiliates, bundling by Bell Canada and related matters*, Telecom Decision CRTC 2002-76, 12 December 2002, do not meet the Commission's requirements in regard to the rates, terms and conditions that should be publicly available in the tariffs.*

The Commission sets out the criteria in regard to the level of detail that Bell Canada must provide in the tariffs accompanying CSAs and directs Bell Canada to resubmit the proposed tariffs for approval.

The Commission finds that Bell Canada has understated the Phase II cost components of the imputation tests filed in support of the CSAs. In five instances the Commission finds that, based on adjusted costs calculated by the Commission, projected revenues do not recover the adjusted costs. Bell Canada is directed to file, within 90 days of the date of this decision, proposed tariffs establishing rates that will assure the recovery of the revenues set out in the decision for each of the five CSAs, or notify the Commission that it has discontinued provision of service under the contract in question or that it will discontinue such service within a further 90 days of the date of this decision.

The Commission considers that Aliant Telecom Inc., MTS Communications Inc., Saskatchewan Telecommunications, Société en commandite Télébec, TELUS Communications Inc. and TELUS Communications (Québec) Inc. (collectively, the large incumbent local exchange carriers or large ILECs) should adhere to the CSA tariff filing requirements outlined in this decision and that the large ILECs should file with the Commission any associated contract(s) at the same time as filing a proposed CSA.

The applications

1. As of 7 May 2003, the Commission had received 164 tariff applications under the above referenced Bell Canada Tariff Notices, some filed on an *ex parte* basis, pursuant to the Commission directive contained 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 applicant sought approval of tariffs for customer-specific arrangements (CSAs) currently being offered by it.

2. Bell Canada stated that each proposed tariff included a generic description of the terms and conditions associated with each CSA as well as a short description of the arrangements provided to the individual customers.

3. Bell Canada provided an imputation test for each CSA and submitted that certain information related to the costs and revenues contained in the imputation tests was confidential, pursuant to section 39 of the *Telecommunications Act* (the Act). Bell Canada stated that, since the non-confidential information included with the imputation test was already provided for the public record, it had not provided abridged copies of the imputation test results.

4. Bell Canada stated that for each CSA it was submitting a copy of the customer contract, as directed by the Commission in Decision 2002-76. Bell Canada indicated that pursuant to section 39 of the Act the contracts were being submitted to the Commission entirely in confidence.

5. Bell Canada further stated that the CSAs being filed for approval were already in place. Bell Canada submitted that, in addition to the requirement to obtain approval for these arrangements pursuant to the Commission's determination in Decision 2002-76, it was seeking Commission ratification, pursuant to subsection 25(4) of the Act, for the charging of the rates for these services prior to the date of the Commission's approval.

6. By letter dated 28 January 2003 further information was requested. Bell Canada filed its reply on 10 February 2003.

7. Comments were filed by AT&T Canada Corp., now Allstream Corp., on behalf of itself, AT&T Canada Telecom Services Company, Call-Net Enterprises Inc. and Sprint Canada Inc. (collectively, Allstream et al.) on 21 February 2002, 3 March 2003 and 27 March 2003 and by Mr. François Ménard on 27 February 2002. Reply comments were filed by Bell Canada on 10 March 2003.

8. By letter dated 12 May 2003 further questions were addressed to Bell Canada. The responses were filed in confidence on 26 May 2003.

Background

9. In *Bundling framework developed for customer-specific arrangements*, Order CRTC 2000-425, 19 May 2000 (Order 2000-425), the Commission permitted CSA bundles to include tariffed services with forborne services, services of affiliated and non-affiliated companies and non-telecommunications services.

10. The Commission also determined in Order 2000-425 that it was appropriate to extend the competitive safeguards developed for Type 2 CSAs in *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994 (Decision 94-19) to CSA bundles

which included non-tariffed services[1]. Since Type 2 CSAs involve customized bundles typically provided to large customers through long-term service contracts, the Commission considered that the more stringent imputation of costs was necessary to ensure appropriate protection against unjust discrimination and undue preference, and to avoid any potentially adverse impact of CSAs on the evolution of telecommunications competition.

11. The Commission indicated in Order 2000-425 that a proposed CSA tariff must provide sufficient information with respect to the rates, terms and conditions of the CSA contract to enable a potential customer to assess whether its service requirements might reasonably be expected to qualify for similar rates, terms and conditions. Accordingly and consistent with Decision 94-19 and *Joint marketing and bundling*, Telecom Decision CRTC 98-4, 24 March 1998, the Commission directed that any tariff proposed by a major incumbent telephone company for a CSA involving tariffed services bundled with forborne services, services of affiliated and non-affiliated companies or non-telecommunications services offered in-house be subject to the following:

    a) provision of a study demonstrating that the present worth of revenues under the customer-specific contract equals or exceeds the sum of:

        i) the present worth of revenues under general tariff rates for those service components available under the general tariff over the duration of the customer-specific contract;

        ii) the present worth of causal costs for those components not covered by the general tariff rates; and

        iii) the acquisition costs of any service elements in the bundle acquired from an affiliated or non-affiliated company;

    b) the telephone company demonstrating in its tariff application that there is not sufficient demand to offer any customer-specific elements of the service through the general tariff;

    c) in order that there be no unjust discrimination or undue preference, the service package and the associated rates, terms and conditions provided under the customer-specific arrangement being generally available to other customers; and

    d) resale be permitted.

12. In the proceeding initiated by *Price cap review and related issues*, Public Notice CRTC 2001-37, 13 March 2001 (the Public Notice 2001-37 proceeding) the relationship between Bell Canada and Bell Nexxia Inc. (Bell Nexxia) was reviewed.

[1] In Decision 94-19 the Commission identified two general types of customer-specific tariffs: Type 1, providing via a special facilities or special assembly tariff, a service that involves service features or technology that differ from those covered by the general tariff; and Type 2, providing a bundle of services tailored to a particular customer's needs, primarily involving elements available from the general tariff, where the purpose is to customize the offering in terms of rate structure or levels (for example, distance sensitive/insensitive, usage sensitive/insensitive, one-time charges, etc.).

In The Companies Exhibit #85, filed as part of the Public Notice 2001-37 proceeding, Bell Canada identified 203 contracts where Bell Nexxia included Bell Canada tariffed services in packaged or single-source arrangements.

13. On 31 January 2002, GT Group Telecom Services Corp. (Group Telecom), now LondonConnect Inc., filed an application pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure* (the Rules) requesting that the Commission investigate the activities of Bell Canada's subsidiary, Bell Nexxia, and institute additional safeguards for the affiliates of incumbent local exchange carriers (ILECs) operating within the serving territory of the ILEC.

14. The Commission disposed of Group Telecom's Part VII application in Decision 2002-76.

15. The Commission noted in Decision 2002-76 that tariffs had not been filed by Bell Canada with respect to any of the 203 contracts that were identified by Bell Canada in The Companies Exhibit #85. The Commission found that at least 111 of these contracts involved bundling of tariffed services by Bell Canada and that Bell Canada was non-compliant for each such bundle.

16. The Commission accordingly directed Bell Canada, at paragraph 74 of Decision 2002-76, to file the following:

    a) for every contract identified in Appendix A to Decision 2002-76 [contracts identified where Bell Nexxia acted as Bell Canada's agent when providing a customer with Bell Canada tariffed services together with other services] that was in force on the date of the decision, either under its original term or pursuant to a renewal or modification of the contract:

        - a proposed tariff, together with an imputation test analysis using the Commission's imputation test framework as set out in Order 2000-425; and

        - a copy of the contract(s).

    b) for every contract identified in Appendix B to Decision 2002-76 [contracts identified where Bell Nexxia may be acting as Bell Canada's agent in the provision to a customer of Bell Canada tariffed services together with other services] that was in force on the date of this decision, either under its original term or pursuant to a renewal or modification of the contract:

        - a proposed tariff, together with an imputation test analysis using the Commission's imputation test framework as set out in Order 2000-425, or an explanation as to why a tariff was not required; and

        - a copy of the contract(s).

c) for every single source and packaged arrangement that had been concluded since the preparation of The Companies Exhibit #85, that were in force as of the date of Decision 2002-76, either under its original term or pursuant to a renewal or modification of the contract, and that involved one or more Bell Canada tariffed service elements and one or more other services, provided pursuant to a single contract or set of related contracts, and offered directly by Bell Canada or through Bell Nexxia or a successor to Bell Nexxia or any other entity that controlled or was controlled by Bell Canada or was controlled by a person who controlled Bell Canada:

- a proposed tariff, together with an imputation test analysis using the Commission's imputation test framework as set out in Order 2000-425, or an explanation as to why a tariff was not required; and

- a copy of the contract(s).

17. On a forward going basis, the Commission also directed Bell Canada to comply with all Commission decisions in respect of the bundling of tariffed services, including any bundling by Bell Nexxia acting as an agent of Bell Canada. The Commission indicated that, in accordance with Decision 94-19 and *Price cap regulation and related issues*, Telecom Decision CRTC 97-9, 1 May 1997, it was prepared to consider tariff applications on an *ex parte* basis.

Part I – Confidentiality Issues

18. Bell Canada stated that the proposed tariffs included a generic description of the terms and conditions associated with the CSAs as well as a short description of each arrangement provided to the individual customers. Invoking section 39 of the Act, Bell Canada filed the associated imputation test results and customer contracts entirely in confidence. In an attachment to Tariff Notice 751, Bell Canada provided its supporting rationale for its claim of confidentiality.

19. Bell Canada stated that the Commission had long recognized and supported the principle that customer-specific information should not be released on the public record, and submitted that Article 11 of the Terms of Service represented the Commission's codification of this principle. Bell Canada argued that customers had developed a reasonable and legitimate expectation that information about their business use of telecommunication services would not be put on the public record, and that this expectation was reflected in industry practice, in express contractual provision for confidentiality and in the Commission's imposition of Article 11 of the Terms of Service, or its equivalent, on all carriers.

20. Bell Canada submitted that a customer's confidentiality requirements cannot be met simply by removing the name of the customer and disclosing all remaining information. Bell Canada stated that disclosure of the configuration, location, term, volume or usage of services including non-telecommunications services, where applicable, would lead to the likelihood of disclosure of the customer's identity and its business operations. Bell Canada submitted

that disclosure of the information in question would harm its business customers because it would disclose their internal business operations, decisions or costs to their competitors and would prejudice them in their negotiations with other telecommunications suppliers.

21. Bell Canada submitted that the disclosure of key terms and conditions, including pricing information, would materially harm Bell Canada by providing important information to its competitors, prejudicing its ability to bid successfully on future business opportunities. Bell Canada argued that the release of pricing information would provide pricing benchmarks which would become the ceiling for competitors' rates.

22. Bell Canada further submitted that, as a result of the sophistication and expertise in negotiations of customers in this market segment, any public interest that would be served through publication of details of the arrangements between itself and any of its customers would be outweighed by the harm to the customer, to Bell Canada and to the effective operation of the competitive marketplace.

23. Bell Canada argued that there would be no positive value in publishing detailed descriptions of the service arrangements, the associated pricing or other contractual provisions, as it was unlikely that any other customer would require the same arrangement. Bell Canada also argued that the competitive bidding process for such business, coupled with the expertise of the customers, ensured that the regulated telecommunications carriers that chose to compete in this marketplace were unable to unjustly discriminate among customers. Bell Canada submitted that market forces were sufficient to discipline the actions of regulated carriers, rendering the public scrutiny of their serving arrangements and the terms and conditions under which they were provided, unnecessary.

Parties' disclosure request

24. Allstream et al. submitted that the proposed tariffs were not in conformity with the Act or the *CRTC Tariff Regulations* (the Regulations). Allstream et al. requested that the Commission direct Bell Canada to provide the specific rates associated with each service component of the CSA on the public record in the proposed tariff pages.

25. Allstream et al. stated that Bell Canada had provided nothing beyond a very general description of the proposed CSA and that many if not all of the proposed tariffs did not include a complete list of service components.

26. Allstream et al. further submitted that Bell Canada's proposed tariffs did not meet the requirements of Order 2000-425. Allstream et al. argued that Bell Canada's proposed tariffs would not permit a potential customer to assess whether it would qualify for the CSA, and would not permit a reseller to assess whether it could resell the service.

27. Allstream et al. noted that Bell Canada had filed the imputation tests entirely in confidence. Allstream et al. submitted that, at a minimum, Bell Canada should be ordered to file for each of the CSAs a template of the imputation test so as to provide competitors with at least an outline of how the imputation test was applied.

28. Allstream et al. argued that Bell Canada's submission that disclosure would provide a ceiling for competitors' rates reflected the reality that Bell Canada in fact set prices, relying on its dominance. Allstream et al. argued that Bell Canada's resistance to disclosure should be understood as a concern that greater regulatory scrutiny of its arrangements might threaten its continued market dominance.

29. Allstream et al. noted Bell Canada's concerns regarding the identification of its customers and stated that it was not asking that these customers be identified, nor was it requesting the disclosure of details with respect to specific network and service configurations. Allstream et al. stated that, even if a customer could be identified through certain information filed on the record, which Allstream et al. denied, it disagreed with Bell Canada's submission that disclosing this information would violate the customer's expectation of confidentiality. Allstream et al. further stated that the customer contracts at issue are with sophisticated corporate and government users of telecommunications services and that these parties can be expected to be aware of the fact that the telecommunications industry is regulated and that their arrangements may come under regulatory scrutiny.

30. Allstream et al. requested that Bell Canada be ordered to file amended tariffs containing the following:

For each tariffed service:

- specific reference to the service including the service name, the specific tariff item number and rate elements for each service and/or components thereof contained in the contract;
- a clear indication of all volume commitments;
- a clear indication of the time and volume commitments in the customer contract and whether these matched the provisions of the tariff or were governed by the Customer Agreement; and
- a clear indication of whether termination provisions in the customer-specific arrangement were as per the contract or as per the tariff.

For each forborne service:

- a list of all services provided in the bundle and the specific rate for each of these services;
- the specific terms and conditions associated with the rates charged;
- an indication of the contract period and volume commitments associated with each service; and
- a clear indication of whether the termination provisions matched those in the tariffs for the tariffed services and, if not, an indication of the termination provision and contract renewal provisions.

31. Mr. Ménard referenced and supported Allstream et al.'s comments that the proposed tariffs were not in conformity with the Regulations.

32. Mr. Ménard disputed Bell Canada's claim of confidentiality and requested that, when Bell Canada or Bell Nexxia provided services to a customer as a result of a public tender, the Commission should place the customer's name and the relevant public tender number on the public record to permit competitors to assess whether there is a level competitive playing field and whether they have suffered damages. Mr. Ménard also considered that Bell Canada should be required to place information associated with request for proposals (RFP) on the public record.

Bell Canada's reply

33. Bell Canada submitted that the tariffs filed to date had complied with the requirements of Decision 2002-76 and provided sufficient detail for the Commission to grant final approval.

34. Bell Canada further submitted that the Commission itself could ensure that the prices, terms and conditions of the arrangements were just and reasonable, without destroying the confidentiality protection that customers expected and that was appropriate in a competitive environment.

35. Bell Canada disagreed with Allstream et al.'s submissions that the filing of tariffs that did not contain specific details of rates, terms and conditions violated the Act and the Regulations. Bell Canada submitted that its proposed tariffs had not violated the requirements of the Act, the Regulations or the Rules.

36. Bell Canada stated that the term "tariff" was defined in the Rules as:

> …any publication containing rates, charges, rules, regulations, conditions, specifications or requirements relating in any way to the furnishing by a regulated company of telecommunications services or facilities to any person.

37. Bell Canada submitted that this definition did not prescribe that tariffs must contain any and all of the items delineated but that it merely provided a description of the types of information that could be contained in a document referred to as a tariff. Bell Canada stated that the tariffs it had proposed incorporated by reference the customer contracts and therefore contained all material rates, terms and conditions. Bell Canada further submitted that the fact that the contracts had been submitted in confidence did not alter this fact.

38. Bell Canada referenced subsection 25(3) of the Act which states:

> A tariff shall be filed and published or otherwise made available for public inspection by a Canadian carrier in the form and manner specified by the Commission and shall include any information required by the Commission to be included.

39. Bell Canada submitted that it had fully complied with this requirement with its proposed tariffs. Bell Canada stated that subsection 25(3) of the Act did not require that any and all elements of a tariff be made publicly available and that tariff requirements must be read in conjunction with subsection 39(1) of the Act, which provides as follows:

> For the purpose of this section, a person who submits any of the following information to the Commission may designate it as confidential:
>
> a) information that is a trade secret;
>
> b) financial, commercial, scientific or technical information that is confidential and that is treated consistently in a confidential manner by the person who submitted it; or
>
> c) information the disclosure of which could reasonably be expected
>
> i) to result in material financial loss or gain to any person,
>
> ii) to prejudice the competitive position of any person, or
>
> iii) to affect contractual or other negotiations of any person.

40. Bell Canada submitted that it had filed certain of the information included by reference in its proposed tariffs in confidence, pursuant to section 39 of the Act, which was entirely consistent with the Commission's rules and directives, and with the statutory requirements of the Act.

41. In response to Allstream et al.'s request that it file an imputation test template for each CSA, Bell Canada stated that the results for each of the imputation tests filed were provided using the same template. Bell Canada stated that it had not filed an abridged version of the imputation test template since the non-confidential information therein had been disclosed in Attachment 2 to Tariff Notice 751 and that the blank template would be essentially meaningless. Bell Canada provided, as Attachment 2 to its reply comments, the template it stated it had used for each of the imputation tests submitted.

42. In reply to Mr. Ménard, Bell Canada submitted that the suggested requirement for competitors to assess whether it had complied with the terms of the customer's RFP was of no regulatory interest. Bell Canada stated that it was the rates and terms of the final contract that would be of interest to the Commission. Bell Canada further stated that Mr. Ménard's comments appeared to be aimed at obtaining details regarding CSAs that would be of competitive value but of little or no value to the Commission in its deliberations.

43. Bell Canada submitted that the Commission should find sufficient the level of detail provided in the proposed tariffs and reiterated its argument that the public interest in further disclosure of information was outweighed by the harm that such disclosure would cause to the competitive position of the company and of its customers, and to the highly competitive marketplace for these service arrangements.

Commission analysis and determination

44. The Commission notes that the adequacy of the information disclosed by Bell Canada in the proposed CSA tariffs has been challenged by interested parties. Normally, requests for disclosure of confidential information concern the information provided in support of the rates, terms and conditions contained in a tariff filing. In this instance, the request for disclosure relates to the absence of those very rates, terms and conditions in the CSA tariffs filed.

45. In each of the tariff notices under review, Bell Canada has provided an estimate of the annualized revenues and a generic description of the terms and conditions associated with each CSA. The Commission considers that this gives rise to two issues related to the appropriateness of the filings.

46. The first issue is whether providing an estimated annualized revenue figure is sufficient for a proposed tariff to qualify as a tariff. The second issue is whether the rates, terms and conditions associated with the CSAs in question should be disclosed.

47. With respect to the first issue, subsection 25(1) of the Act states the following:

> No Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission that specifies the rate or the maximum or minimum rate, or both, to be charged for the service.

48. Section 2 of the Act states that:

> "rate" means an amount of money or other consideration and includes zero consideration.

49. Based on the above, the Commission considers that a rate contained in a tariff must identify the specific amount of money or other consideration to be charged for a service. In the Commission's view, the estimated annualized revenues filed by Bell Canada in the proposed CSA tariffs do not identify such specific consideration. The Commission does not, therefore, consider that they constitute a rate, as defined in section 2 of the Act.

50. With respect to Bell Canada's argument that the definition of the term "tariff" in the Rules does not require a tariff to contain a rate, the Commission notes that regulations must be interpreted in light of their governing legislation. In the present case, this requires that the definition of "tariff" in the Rules be interpreted in light of subsection 25(1) and section 2 of the Act, which requires that a tariff filed with and approved by the Commission must specify a rate, that includes the specific consideration to be charged for a telecommunications service.

51. Accordingly, the proposed tariffs filed in support of the CSAs under consideration do not in the Commission’s view satisfy the requirements for a tariff as set out in subsection 25(1) of the Act.

52. With respect to the second issue, the Commission notes that claims for confidentiality are assessed in light of sections 38 and 39 of the Act and section 19 of the Rules.

53. Section 38 of the Act requires the Commission, subject to section 39, to make available for public inspection any information submitted to the Commission in the course of proceedings before it.

54. Paragraph 39(1)(c) of the Act permits a person who submits any of the following information to designate it as confidential:

> c) information the disclosure of which could reasonably be expected
>
> (i) to result in material financial loss or gain to any person,
>
> (ii) to prejudice the competitive position of any person, or
>
> (iii) to affect contractual of other negotiations of any person

55. Subsection 39(4) of the Act states that:

> Where designated information is submitted in the course of proceedings before the Commission, the Commission may disclose or require its disclosure where it determines, after considering any representations from interested persons, that the disclosure is in the public interest.

56. Subsection 19(10) of the Rules states that where the Commission is of the opinion that no specific direct harm would be likely to result from disclosure, or where the public interest in disclosure outweighs any such specific direct harm, the document shall be placed on the public record.

57. Accordingly, in assessing claims for confidentiality, the public interest in disclosure is weighed against the specific direct harm, if any, likely to result from disclosure.

58. As indicated earlier, the Commission determined in Order 2000-425 that in the case of CSAs that bundle tariffed telecommunications services with non-tariffed and/or non-telecommunications services, the proposed tariff must provide sufficient information with respect to the rates, terms and conditions of the CSA contract to enable a potential customer to assess whether its service requirements might reasonably be expected to qualify for similar rates, terms and conditions. The Commission notes that such customers can include competitors of the regulated carrier.

59. In the Commission's view the proposed tariffs filed in support of the CSAs in the present case do not provide sufficient information with respect to the rates, terms and conditions to satisfy the directives of Order 2000-425.

60. The Commission considers that its determinations in Order 2000-425 demonstrate the significant public interest in disclosure of the rates, terms and conditions of CSAs such as those filed in this proceeding. The Commission considers further that the public interest in providing the information requested by Order 2000-425 is underscored in light of the current state of competition in a number of key telecommunications markets[2].

61. With respect to Bell Canada's submissions regarding the harm that may be caused by satisfying the requirements of Order 2000-425 in this case, while the Commission acknowledges that some harm might result to Bell Canada or to some of its customers in some circumstances, the Commission considers that disclosure of the information would be beneficial to competition in this market segment. Disclosure of the rates and the key terms and conditions would provide greater transparency for customers and telecommunications service providers, thereby removing a barrier to fair and sustainable competition. This in turn would ultimately benefit all telecommunications users.

62. As to Bell Canada's argument that customers have developed a reasonable and legitimate expectation that information about their business use of telecommunication services would not be put on the public record, the Commission considers that any such expectations must be considered in light of sections 38 and 39 of the Act, which clearly contemplate that any information submitted to the Commission in the course of proceedings before it will be public, even in the case of categories of information that may be designated as confidential, where the Commission determines that disclosure is in the public interest.

63. Bell Canada also argued that there would be no positive value in publishing detailed descriptions of the service arrangements, as it was unlikely that any other customer would require the same arrangement. However, the Commission considers it reasonable to assume that other customers, including competitors, may want the same or similar service configurations. The Commission notes that it has received a number of tariff applications for CSAs where customers were being provided with similar service bundles.

64. As regards Bell Canada's submission that market forces are sufficient to discipline the actions of regulated carriers, rendering the public scrutiny of their serving arrangements and associated terms and conditions unnecessary, the Commission considers that CSAs that include tariffed service components continue to be tariffed, precisely because market forces have proven to be insufficient to discipline the actions of regulated carriers, and in order to prevent unjust discrimination among customers of such carriers, including competitors.

65. On balance, the Commission finds that the public interest in disclosure of the information required to bring the tariffs into compliance with the directives of Order 2000-425 outweighs any specific direct harm that might result from disclosure.

66. In light of the above, the Commission directs Bell Canada to file for the public record, or on an *ex parte* basis, consistent with the manner in which the original filing was made, within 60 days of the date of this decision, with the exception of the five CSAs discussed in the next section, amendments to the proposed tariffs consistent with the following:

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[2] See for example the Commission's *Report to the Governor in Council: Status of Competition in Canadian Telecommunications Markets,* December 2002.

- the tariff must state the specific rate, expressed as a price per unit, including all volume commitments and associated time periods, associated with each service or service component provided under the CSA regardless of whether or not the contract stipulated a discrete rate for the provision of the service or service components in question;

- the tariff must be self-explanatory and must not cross-reference a contract or service schedule separate from the tariff;

- the tariff must explicitly state that the tariff provisions prevail to the extent of any inconsistency between the tariff and the provisions of any written or unwritten agreement or arrangement with the customer;

- the tariff must include the following key terms:

  – a description of each service and service component that is, or may be, provided under the contract, whether or not the service is a forborne telecommunications service, whether or not the service is a telecommunications service and whether or not the service is identified in the contract as a service with a discrete rate;

  – the terms relating to rights and obligations relating to contract termination; and

  – the terms relating to contract renewal.

67. The Commission notes that the proposed tariffs must also contain specific references to all general tariff items that affect or determine the rights and obligations of Bell Canada or the customer under the contract.

68. The Commission notes that the above list may not be exhaustive, given the unique characteristics of any given CSA filed.

69. The Commission, in determining the appropriateness of an amended proposed tariff, will assess whether the proposed tariff provides sufficient information with respect to the contract's rates and key terms such that a potential customer may assess whether its service requirements are such that it may reasonably expect to qualify for the same or similar rates, terms and conditions.

70. The Commission notes that the CSA tariff requirements outlined above, while specific to Bell Canada in this decision, would be expected of each of Aliant Telecom Inc. (Aliant Telecom), MTS Communications Inc. (MTS), Saskatchewan Telecommunications (SaskTel), Société en commandite Télébec (Télébec), TELUS Communications Inc. (TCI) and TELUS Communications (Québec) Inc. (TELUS Québec) when filing CSAs for approval.

Part II – Imputation Test Issues

71. Bell Canada, pursuant to the Commission's direction in Decision 2002-76, filed supporting imputation tests for each CSA further to the imputation test framework as set out in Order 2000-425. These imputations tests were filed entirely in confidence.

72. As indicated in Order 2000-425, the following costs must be included in a CSA imputation test:

- the cost of service components provided by third parties;
- the cost, using General Tariff rates, of service components that are also provided under Bell Canada's General Tariff, including Carrier Access Tariff items; and
- the Phase II costs, without a mark-up, of service components provided by Bell Canada that are not subject to a general tariff.

73. The Commission notes that Bell Canada filed relatively minimal information in support of the costs that it included in the imputation tests. However, based on its review of the costing information provided, the Commission considers that Bell Canada has consistently underestimated the imputation test cost. For instance, Bell Canada included digital network access service components in imputation tests associated with certain CSAs at the tariffed rates for its Competitor Digital Network Access service. The Commission considers that these service components should have been included in these imputation tests at retail Digital Network Access tariff rates.

74. In reviewing the CSA Phase II cost information provided, the Commission also found a number of costing methodology irregularities that result in an underestimation of Phase II costs. These were identified in a confidential Commission staff letter to Bell Canada dated 18 July 2003 (the staff letter). However, no further information was filed by Bell Canada. These irregularities are discussed below. For the purpose of estimating the impact of each costing irregularity, the Commission has assumed that the capital and related expenses account for one half of the Phase II costs, while the operating expenses account for the other half.

Study Life for capital components

75. In the response to interrogatory Bell(CRTC)12May03-2, Bell Canada indicated that its CSA monthly capital costs had been developed using a specified study life that was provided in confidence to the Commission. The Commission finds Bell Canada's study life estimate to be inappropriate, by comparison with CSA contract lives which are typically 5 years in length or less. In the staff letter, Commission staff advised Bell Canada that the study life used to determine CSA capital costs should be no more than 10 years.

76. Based on the cost sensitivity information provided in the response to interrogatory Bell(CRTC)12May03-2, the Commission estimates that Bell Canada's study life approach will on average understate capital costs by approximately 5%, and the Phase II costs by approximately 2.5%.

One-time versus ongoing capital cashflows

77. In the response to interrogatory Bell(CRTC)12May03-2, Bell Canada submitted that its CSA capital costs were determined assuming that the required capital investments would be made continuously over the study period, instead of on a one-time or non-recurring basis. The Commission expects that the CSA demand will typically occur at the beginning of the contract, and therefore finds Bell Canada's proposed approach to be inappropriate.

78. Based on the cost sensitivity information provided in the response to interrogatory Bell(CRTC)12May03-2, the Commission estimates that Bell Canada's approach understated on average capital costs by approximately 8%, and the Phase II costs by approximately 4%.

Fill at relief versus average working fill factors

79. The Commission notes that Bell Canada generally used fill at relief factors in its CSA filings instead of average working fill factors (AWFFs).

80. In its Phase II Directive 5.2, in *Inquiry into Telecommunications carriers' costing and accounting procedures - Phase II: Information requirements for new service tariff filings*, Telecom Decision CRTC 79-16, 28 August 1979 (Decision 79-16), the Commission stated that a current unit cost may be developed for shared facilities using a capacity cost, and if such a technique is employed, the unit cost shall be based on an average fill factor determined over a time period of sufficient length to justify its appropriateness as an average for the related facility type and use. In the staff letter, Bell Canada was advised that in its CSA cost studies it should use actual AWFFs for equipment that had reached provisioning stability in the network and AWFFs of 80% for central office (CO) equipment and 70% for outside plant equipment.

81. Based on the above-specified AWFFs for CO and outside plant equipment, the Commission estimates that Bell Canada's approach of using fill at relief instead of AWFFs understated on average the capital costs by approximately 17%, and the Phase II costs by approximately 8%.

Advertising expenses

82. In the response to interrogatory Bell(CRTC)12May03-24, Bell Canada submitted that advertising was causal to a service and since a CSA was not a service, advertising was not considered causal to a CSA. Bell Canada indicated that when forborne services such as Frame Relay and toll services were provided on a stand-alone basis the company included its advertising expenses as causal, but when these services were included as service components within a CSA, advertising expenses were not considered causal and were not included.

83. The Commission considers that advertising expenses should apply to the service regardless of whether it is a component of a CSA or provided on a stand-alone basis, as the advertising expense related to a service should be borne by the customer or customers that utilize the service. The Commission is therefore of the view that advertising expenses for each service component within the CSA should be reflected in the cost study. Based on the expense

information provided in Bell Canada's 10 February 2003 letter, the Commission estimates that Bell Canada's approach of excluding advertising expenses for service components within the CSA understated the Phase II costs by approximately 1%.

Use of corporate-average operating expenses

84. Bell Canada indicated that certain CSA operating expenses such as sales management expenses were estimated based on corporate-average expenses. The Commission expects that most operating expenses associated with Bell Canada's CSA contracts will be greater than corporate-average expenses since these expenses relate to the company's larger customers. In the staff letter, Bell Canada was advised that in its CSA cost studies it should use contract-specific unit expenses instead of corporate-average unit expenses. The staff letter further advised Bell Canada that in the interim, where only corporate-average unit expenses were available, such expenses should be marked up by 25%.

85. The Commission estimates that Bell Canada's approach of using corporate-average expenses instead of contract-specific expenses will understate the Phase II costs by approximately 3%.

Portfolio expenses

86. In *TELUS Communications Inc. – Application to review and vary Decision 2000-745 and Decision 2001-238*, Telecom Decision CRTC 2002-67, 25 October 2002 (Decision 2002-67), the Commission discussed the treatment of portfolio expenses in Phase II cost studies. In that proceeding, TCI referred to portfolio expenses as non-service specific expenses causal to groupings of services of which the service in question was a constituent. In Decision 2002-67, the Commission determined that, on an interim basis, all ILEC Phase II cost studies should reflect the inclusion of portfolio expenses, consistent with earlier directives and past practice. In response to this directive, Bell Canada is now including portfolio expenses in its cost studies through the application of a portfolio loading factor of 9.7% on all expense cashflows. However Bell Canada's CSA cost studies do not reflect this portfolio expense inclusion.

87. The Commission is of the view that, consistent with Bell Canada's current costing practice, portfolio expenses should be included in its CSA cost studies through the application of a portfolio loading factor of 9.7% on all expense cashflows. The Commission estimates that the exclusion of this additional 9.7% of expenses will understate Phase II costs by approximately 5%.

Other costing issues

88. The Commission also found other costing irregularities that may also understate the Phase II costs of the CSAs. Although the impact of these irregularities has not been quantified, they include the following costing irregularities which should be addressed by the company in future CSA filings:

- Property taxes, maintenance and housekeeping expenses associated with central office buildings and land were excluded from the CSA cost studies. These expenses should be estimated and included in future CSA cost studies.

- Except in the case of Tariff Notice 6748, Bell Canada did not provide the pre-introductory costs for its CSA filings. Directive 5.8 of Decision 79-16 requires each company to file, in a Phase II cost study, the pre-introductory costs of a service on a memorandum basis. Although pre-introductory costs do not form part of the prospective cashflows for a new service, these costs would be typically recovered through the mark-up. The information should be provided on a memorandum basis for all new CSA filings.

89. In light of the above, and the need to make a determination with respect to the CSAs filed, the Commission considers that Bell Canada has understated the Phase II imputation cost component by at least 20%. Accordingly, in evaluating the imputation tests filed in support of the CSAs, the Commission has marked up Bell Canada's Phase II imputation test costs in each instance by 25%[3] and has compared the adjusted imputation costs with the current contract revenues provided. The Commission is particularly concerned with five CSAs where the reported revenues do not recover the adjusted costs.

90. The Commission notes that the five CSAs in question have an expiry date beyond the end of 2003 and the Commission therefore considers that immediate corrective action is required in all five cases.

91. Accordingly, for each of these five CSAs, the Commission directs Bell Canada to file, within 90 days of the date of this decision, proposed tariffs reflecting the CSA tariff requirements as discussed in this decision, any associated contracts and revised imputation tests that reflect the increased monthly revenues required from the customer as set out in paragraph 92 below, such that the revised CSA recovers sufficient revenues to satisfy the imputation test using the Commission's adjusted costs on a going-forward basis. In the alternative, should Bell Canada decide not to renegotiate the CSA, the Commission directs Bell Canada to advise the Commission within 90 days of the date of this decision that it has discontinued provision of service under the contract in question or that it will discontinue such service within a further 90 days of the date of this decision.

92. The five CSAs and the corresponding increase in revenues required are provided in the following table:

Contract Number	Required Increase in Monthly Revenues
P1-38, 39, 41, 42, 44 and 49	$1,380,500
P1-54	$102,600
P1-86	$195,000
P3-109	$47,500
Tariff Notice 772	$2,400

[3] In order to correct a value that has been understated by 20%, a factor of 25% must be applied to the understated value.

93. The Commission notes that for all new CSA applications, Bell Canada is required to follow the costing methodology and reporting format provided to the company in the staff letter.

Part III – Other Matters

Expired contracts

94. The Commission notes that Allstream et al. had requested that the Commission direct Bell Canada to provide and disclose information related to 40 CSAs identified in Decision 2002-76 reported by Allstream et al. to have expired as of the date of that decision.

95. Bell Canada argued that the Commission in Decision 2002-76 had not required that it file tariffs, imputation tests or contracts that were not in force as of the date of Decision 2002-76. Bell Canada submitted that it would be a more efficient use of the Commission's and parties' resources to focus on the existing contracts captured by the filing requirements directed by the Commission in Decision 2002-76.

96. As Bell Canada is correct that its directives in Decision 2002-76 were in relation to CSAs that were in force as of the date of Decision 2002-76, the Commission **denies** Allstream et al.'s request.

Requirement to file contracts going forward

97. In Decision 2002-76, the Commission directed Bell Canada to file the contracts associated with the proposed tariffs to allow for a comparison of the corresponding rates, terms and conditions.

98. The Commission notes that there currently is no requirement for the large ILECs to file contracts with a proposed tariff with respect to a CSA. The Commission considers this requirement appropriate in order for it to be able to assess the rates, terms and conditions proposed in the tariffs against those provided to the customer in the contract. The Commission further considers that it would be able to deal more expeditiously with a complaint associated with a CSA if the contract were filed with the proposed tariff.

99. Accordingly, each of Bell Canada, Aliant Telecom, MTS, SaskTel, Télébec, TCI and TELUS Québec should henceforth file any associated contract(s) at the time it files a proposed tariff with respect to a CSA.

Secretary General

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