



Telecom Decision CRTC 2004-15

Ottawa, 3 March 2004

Millennium Global Telecom Inc. – Contribution deduction for Canadian non-telecommunications revenues

Reference: 8695-M34-200309502

*In this decision, the Commission **denies** Millennium Global Telecom Inc.'s (Millennium) request that the portion of its calling card revenues related to the unused portion of calling cards sold in Canada and the small unusable portion of calling cards sold in Canada be considered Canadian non-telecommunications revenues for purposes of the contribution regime. The Commission also **denies** Millennium's request to increase its inter-carrier payments for contribution purposes above the level reported in its financial statements.*

The Commission directs Millennium to file monthly contribution reports with the Central Fund Administrator and revised 2001 and 2002 annual revenue reports with the Commission that includes the aforementioned revenues in its calculation of contribution-eligible revenues by 28 April 2004.

Background

1. In *Changes to the contribution regime*, Decision CRTC 2000-745, 30 November 2000 (Decision 2000-745), the Commission introduced a revenue-based contribution regime that required all telecommunications service providers (TSPs) to file a revenue report and supporting documentation with the Commission, annually by 31 March (annual revenue report). This report provides the calculation of a TSP's contribution-eligible revenues and allows, among other things, for the deduction of Canadian non-telecommunications revenues. The starting point for contribution reporting is a TSP's total operating revenue line from its financial statements. TSPs, or groups of related TSPs, with Canadian telecommunications service revenues (CTSR) equal to or greater than \$10 million are then required to contribute a percentage of their contribution-eligible revenues towards the subsidization of basic residential local service in high-cost serving areas.
2. In *Industry Consensus Reports submitted by the Contribution Collection Mechanism (CCM) Implementation Working Groups*, Order CRTC 2001-220, 15 March 2001 (Order 2001-220), the Commission approved, among other things, the following definition for operating revenues:

For the purposes of calculating the contribution charge ordered in Decision CRTC 2000-745, operating revenues are a company's reported non-consolidated operating revenues which have been prepared in accordance with generally accepted accounting principles.

3. In Order 2001-220, the Commission also approved the following definition:

"Canadian Telecommunications Service Revenue" means, for the purposes of the contribution reporting regime established pursuant to Decision CRTC 2000-745, Total Operating Revenues less Non-Canadian Revenues and less Canadian Non-Telecommunications Revenues as those terms are defined for the purposes of Decision 2000-745.

4. In *Disputed issues submitted by the Contribution Collection Mechanism (CCM) Implementation Working Groups*, Order CRTC 2001-221, 15 March 2001 (Order 2001-221), the Commission determined that Canadian non-telecommunications revenues should be calculated based on the definition of "telecommunications service" found in section 23 of the *Telecommunications Act* (the Act). In Order 2001-221, the Commission stated that it expected the Revenue Consistency Working Group¹ to submit a proposed definition of the term "non-telecommunications service revenues" taking into account the Commission's determination in Order 2001-221.
5. In *Definition of Canadian non-telecommunications service revenues for the purpose of the contribution regime*, Order CRTC 2001-288, 11 April 2001 (Order 2001-288), the Commission approved the following definition:

"Canadian non-telecommunications service revenues" include all Canadian revenues that are derived from services other than telecommunications service as defined in section 23 of the *Telecommunications Act*, i.e. ... "telecommunications service" has the same meaning as in section 2 [of the *Telecommunications Act*] and includes any service that is incidental to the business of providing telecommunications services.

For the purposes of calculating contribution eligible revenues pursuant to Decision 2000-745, services that are incidental to the business of providing telecommunications services are services that the Commission has treated as or determined to be telecommunications services, in accordance with section 23 of the Act.

6. Section 23 of the Act defines a "telecommunications service" as having the same meaning as in section 2 [of the Act] and includes any service that is incidental to the business of providing telecommunications services. Section 2 of the Act defines a "telecommunications service" as a service provided by means of telecommunications facilities and includes the provision in whole or in part of telecommunications facilities and any related equipment, whether by sale, lease or otherwise.

¹ The Revenue Consistency Working Group was one of five working groups created to resolve implementation issues associated with the introduction of the revenue-based contribution regime established by Decision 2000-745.

7. In *Revised procedures for the revenue-based contribution regime*, Telecom Decision CRTC 2003-8, 28 February 2003 (Decision 2003-8), the Commission approved revised procedures for the operation of the revenue-based contribution regime including provisions for charges to recover interest and/or extra costs incurred by the Central Fund Administrator (CFA) in cases where a TSP is not compliant with its reporting obligations.

Introduction

8. Millennium Global Telecom Inc. (Millennium) is a TSP that is in the business of marketing and selling prepaid calling cards, primarily in Canada, that allow cardholders to make long distance telephone calls. Each calling card has a personal identification number that allows the cardholder to access the public switched telephone network (PSTN). Millennium holds a Class B basic international telecommunications service licence.
9. Commission staff initially contacted Millennium in August 2002 requesting the company to file its 2001 annual revenue report. Commission staff followed-up with Millennium on numerous occasions requesting its 2001 annual revenue report.
10. By letter dated 30 April 2003, Millennium filed its 2001 annual revenue report. Millennium included a deduction for Canadian non-telecommunications revenues for revenues related to both the unused portion of calling cards sold in Canada and the small unusable portion of calling cards (referred to as breakage) sold in Canada.
11. Millennium submitted that, in its view, the revenues associated with the unused portion of calling cards sold in Canada within a given year were not telecommunications revenues for purposes of contribution reporting because no telecommunications service had been provided in connection with these revenues. Millennium also submitted that a "telecommunications service" was only provided when the cardholder places a long distance call, thereby accessing the PSTN through the various telecommunications facilities employed and leased by Millennium. Millennium noted that its calling cards do not have expiry dates and that the unused portion may be reported at a later date when the cardholder makes long distance calls in future years.
12. Millennium stated that breakage represented the unused portion of calling cards that is too small to place a call and submitted that these amounts are eventually cancelled by it and were not associated with the provision of a telecommunications service.
13. By letter dated 17 June 2003, Millennium was advised that Commission staff considered the revenues derived from the unused portion of calling cards sold in Canada and any breakage amount related to calling cards sold in Canada did not meet the definition of Canadian non-telecommunications service revenues approved in Order 2001-288, and, therefore, could not be deducted as Canadian non-telecommunications revenues in its annual revenue report.

Application

14. The Commission received an application by Millennium, dated 18 July 2003, filed pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure*. The application was submitted to the Commission entirely in confidence. Millennium requested a Commission determination concerning its deduction of the unused portion of calling cards sold in Canada within a given year and any breakage amount related to calling cards sold in Canada as Canadian non-telecommunications revenues in its annual revenue report.
15. By letter dated 22 July 2003, Commission staff advised Millennium to provide a copy of its confidential Part VII application on the public record or justify its claim of confidentiality, and to begin contribution reporting with the CFA by 28 July 2003. Millennium was further advised that, if the company followed its proposed methodology and if it was unsuccessful before the Commission, then it would be subject to the terms and conditions approved in Decision 2003-8, which could include interest and/or penalties.
16. By letter dated 1 August 2003, Millennium filed an abridged version of its Part VII application on the public record.
17. The Commission received no comments regarding this application.
18. In its application, Millennium requested that the Commission determine that the revenues associated with the unused portion of calling cards sold in Canada and any breakage amount related to calling cards sold in Canada meet the definition of Canadian non-telecommunications revenues for purposes of contribution reporting. Millennium also requested that the Commission instruct the CFA to forbear from requiring Millennium to pay any interest or penalties that may otherwise be assessed in accordance with the approved procedures for a period of three months following the date of a determination in this matter.
19. Millennium submitted that the long distance calling card business was comprised of two separate functions: (a) the sale of calling cards to distributors and/or customers, and (b) the provision of the underlying telecommunications services that a customer accesses when it uses the card. Millennium indicated that distributors typically acquire the calling cards at a discount, then sell the calling cards to retailers and/or customers, which allows them a modest profit. Millennium argued that it was clear that a distributor or retailer was not providing a telecommunications service through the mere selling of calling cards to the public.
20. Millennium also submitted that it was just performing both functions, distributor and telecommunications service provider, and that it could only be subject to regulatory oversight in its capacity as a telecommunications service provider, not as a distributor of cards.

Unused portion of calling cards sold in Canada

21. Millennium submitted that, based on section 2 of the Act, the revenues associated with the unused portion of calling cards sold in Canada within a given year were not Canadian telecommunications revenues for purposes of contribution reporting because a telecommunications service had not been provided in connection with these revenues. Millennium argued that a telecommunications service was only provided when a cardholder

placed a long distance call. Millennium stated that it considered this situation analogous to that of an alternative long distance service provider, who earns revenues on a per-minute basis each time a customer makes a long distance call. Millennium submitted that the revenues associated with the unused portion of calling cards sold in Canada were not lost forever and, where applicable, would be reported for contribution purposes at a later date. Millennium noted, for example, that a calling card sold in 2001, but not used until 2002 would be reported as telecommunications revenues in its 2002 annual revenue report.

22. Millennium submitted that for section 23 of the Act to apply, a telecommunications service must be provided in the first place, in order for the service to be "incidental to the business of providing telecommunications services". Millennium noted that the phrase "incidental to the business of providing telecommunications services" was not defined in the Act. Millennium identified four Commission decisions related to "incidental" services (maintenance, inspection and repair services, the provision of directory database information and the provision of co-location) that, it argued, all had the common thread of an actual "service" being provided. Millennium submitted that, in the case of calling cards, ownership of a calling card does not entail the provision of a service, but rather represents nothing more than a stored value, similar to a debit card.
23. Millennium submitted that its proposed treatment of the unused portion of calling cards sold in Canada would be consistent with the Canadian telecommunications policy objectives set out in section 7 of the Act and Decision 2000-745. The proposed treatment would ensure that revenues would continue to be generated into the future, that no new or existing competitor would be disadvantaged and that more contribution would be collected from users who make greater use of the network.
24. Millennium submitted that the mere fact that a customer needed to purchase a calling card to place a long distance call was not conclusive that the sale of a calling card was incidental to the provision of a telecommunications service. Millennium also submitted that a customer needed to (a) purchase a phone from a retail store to place a call, yet a service does not occur until a call was placed, or (b) sign up with a wireless provider, yet no service was provided until the customer places a mobile call. Millennium argued that calling cards that feature on their face original artwork, celebrities or sports tie-ins are purchased as collectibles with no expectation that they will ever be used to place telephone calls.
25. Millennium submitted that the right to use a telecommunications service cannot constitute a service that was incidental to the business of providing a telecommunications service.

Breakage

26. Millennium submitted that there was absolutely no telecommunications service associated with breakage because no telephone call will ever be placed. According to Millennium, the associated revenues cannot meet the wording in Order 2001-288, as it requires a service to be provided.

Reporting of inter-carrier payments

27. Millennium submitted that its methodology for deferring the revenue associated with the unused portion of calling cards sold in Canada and any breakage amount related to calling cards sold in Canada was consistent with its methodology for accounting for inter-carrier payments, which was based upon each actual minute of traffic carried. Millennium also submitted that if it had to report contribution based upon all revenues, then it would have to "gross up" its inter-carrier payments to coincide with the revenue and that the procedures only allow for the deduction of inter-carrier payments actually payable to TSPs for services rendered.

Contribution reporting to the CFA

28. In its 1 August 2003 application, Millennium advised the Commission that it would be filing its monthly contribution reports with the CFA based upon its proposed methodology (i.e., the unused portion of calling cards sold in Canada and any breakage amount related to calling cards sold in Canada are Canadian non-telecommunications revenues). Millennium requested that the Commission instruct the CFA to forbear from requiring Millennium to pay any interest or penalties that may otherwise be assessed, in accordance with the approved procedures, for a period of three months following the date of a determination in this matter.

Commission analysis and determination

29. Section 46.5 (1) of the Act states that "[t]he Commission may require any telecommunications service provider to contribute, subject to any conditions that the Commission may set, to a fund to support continuing access by Canadians to basic telecommunications services." The Commission notes that the Act does not identify what services could be contribution-eligible under a revenue-based contribution regime.
30. In Decision 2000-745, the Commission determined that applying contribution against the broadest range of telecommunications services would spread the contribution burden across various sectors of the marketplace. In the Commission's view, this approach is competitively equitable, results in a lower revenue-percentage charge being applied to each service, and is more administratively efficient because it eliminates the need for a detailed review and classification of all telecommunications services.
31. Millennium has taken the position in this proceeding that it only provides a telecommunications service when a cardholder accesses the PSTN by placing a long distance call. The Commission considers that Millennium has taken a narrow view of the meaning of "telecommunications service" that is not consistent with past Commission decisions. For example, as noted above, Millennium argued that, while a customer needs to purchase a telephone from a retail store to place a call, a service does not occur until a call is placed. The Commission notes that this argument by Millennium is incorrect. The Commission, in *Forbearance – Sale of terminal equipment by Canadian carriers*, Telecom Decision CRTC 94-14, 4 August 1994, found that the sale of terminal equipment (e.g., telephones) by a Canadian carrier constituted a telecommunications service. The Commission further notes that revenues from the sale of terminal equipment are properly included in a TSP's total CTSR for the purpose of determining

whether a TSP meets the \$10 million minimum revenue threshold under the revenue-based contribution regime. Terminal equipment revenue is subsequently deducted from a TSP's CTSR during the calculation of contribution-eligible revenues.

32. The Commission also considers that various other activities would not fall within Millennium's narrow view of "telecommunications service" under the Act, but would, in fact, constitute a telecommunications service. For example, in *Access to telephone company support structures*, Telecom Decision CRTC 95-13, 22 June 1995, the Commission found that access to telephone company support structures is a "telecommunications service" within the meaning of the Act. In addition, in *Aliant Telecom Inc. – Part VII application with respect to late payment charges*, Telecom Decision CRTC 2003-41, 20 June 2003, the Commission found that late payment charges constituted a "telecommunications service" within the meaning of section 23 of the Act.
33. The Commission notes that both wireless and long distance services are often provided on the basis of plans under which a customer pays a certain amount in return for the right to make, or in certain circumstances to make and receive, calls up to a pre-defined amount of minutes or dollar value. The Commission and the industry have consistently recognized that in such circumstances a telecommunications service is being provided, namely the ability to make and receive calls for up to the pre-determined amount of money paid. The Commission considers that under these circumstances a telecommunications service is provided whether or not any calls actually occur. The Commission also considers that the provision of local primary exchange service constitutes a "telecommunications service" within the meaning of the Act, whether or not a customer places or receives any telephone calls.
34. The Commission notes that Millennium is a TSP that is in the business of marketing and selling prepaid calling cards, primarily in Canada, that allow cardholders to make long distance telephone calls. The Commission further notes that Millennium holds a Class B basic international telecommunications service licence and that Millennium provides cardholders with access to the PSTN through the telecommunications facilities employed and leased by Millennium. Accordingly, the Commission considers that Millennium is in the business of reselling long distance service through the mechanism of calling cards. The Commission further considers that Millennium is providing users of its calling cards with the ability to make long distance telephone calls up to the amount pre-paid for the calling card. The Commission is of the view that this constitutes a telecommunications service regardless of whether or not any telephone calls, or telephone calls to the full value of the calling card, are made.
35. The Commission, therefore, considers the revenues associated with the sale of calling cards sold in Canada to be telecommunications revenues for the purposes of the contribution regime in the year in which the revenues were reported as revenue in the company's income statement, which was prepared in accordance with generally accepted accounting principles. The fact that a customer might not use an entire card within a given year, resulting in an unused portion or breakage, does not change the fact that Millennium has received payment and recorded the revenue in the revenue line of its financial statements.

36. In light of the above, the Commission finds that the revenues associated with the unused portion of calling cards sold in Canada and any breakage amount related to a calling card sold in Canada constitute CTSR and do not meet the definition of Canadian non-telecommunications service revenues approved by the Commission in Order 2001-288, for deduction on line D.3 (Canadian non-telecommunications Revenues) of the annual revenue report.
37. Accordingly, the Commission **denies** Millennium's request that the unused portion of calling cards sold in Canada and any breakage amount related to calling cards sold in Canada be considered Canadian non-telecommunications service revenues for purposes of the contribution regime.

Reporting of inter-carrier payments

38. Millennium submitted that its methodology for deferring revenue was consistent with its methodology for accounting for inter-carrier payments, which is on each actual minute of traffic carried or terminated. Millennium also submitted that if it had to report all revenues for contribution purposes, then it would have to "gross up" its inter-carrier payments to coincide with those revenues and the procedures only allow for the deduction of inter-carrier payments actually payable to TSPs for services rendered.
39. The Commission notes that, according to the Handbook of the Canadian Institute of Chartered Accountants, financial statements are to be prepared in accordance with generally accepted accounting principles and that items recognized in financial statements are accounted for in accordance with the accrual basis of accounting.
40. The Commission is of the view that inter-carrier payments can only be reported for contribution purposes to the extent that the inter-carrier payments were reported in a company's financial statements, which were prepared in accordance with generally accepted accounting principles, and are in accordance with Order 2001-220.
41. In light of the above, the Commission **denies** Millennium's request to increase its inter-carrier payments for contribution purposes above the level reported in its financial statements. Millennium, like other TSPs, can only report inter-carrier payments for contribution purposes to the extent that the inter-carrier payments were reported in its financial statements.
42. The Commission considers that to the extent that a company has included accruals for inter-carrier payments in its financial statements, then the inter-carrier payment accruals would be allowed for contribution purposes. The Commission notes that when a company is claiming inter-carrier payment accruals as part of its inter-carrier payments deduction, then the company must identify whom the accruals were established payable to, rather than just identifying them with the term "accrual". If only the term "accrual" is used, then the inter-carrier payment deduction will be denied.

Contribution reporting to the CFA

43. The Commission notes that Millennium was advised by Commission staff to begin contribution reporting with the CFA by 28 July 2003 and that, if it followed its proposed methodology and its application was unsuccessful before the Commission, it would be subject to the terms and conditions approved in Decision 2003-8, which could include interest and/or penalties.
44. The Commission also notes that, in its 1 August 2003 application, Millennium stated that it would be filing monthly contribution reports with the CFA based upon its proposed methodology and requested forbearance from the payment of interest or penalties that may otherwise be assessed for a period of three months following a determination on its application.
45. The Commission further notes that Millennium's commitment, to file monthly contribution reports, came three months after Millennium filed its 2001 annual revenue report and that Millennium knew, when it filed its 2001 annual revenue report, that it would be a required contributor to the contribution fund.
46. In the Commission's view, Millennium has not provided any arguments to justify why its lack of timely compliance with the approved procedures should result in an exemption from the normal application of the approved procedures.
47. As noted above, Millennium was advised that it could be subject to interest and/or penalties, if it chose to follow its proposed methodology. The Commission is concerned that if it approved an exemption in this case, companies could use procedural processes to delay paying contribution.
48. Accordingly, the Commission **denies** Millennium's request that the CFA be instructed to forbear from requiring Millennium to pay any interest or penalties that may otherwise be assessed in accordance with the approved procedures for a period of three months following the date of a determination in this matter.
49. The Commission considers that, given Millennium's lack of timely contribution reporting, a deadline must be established to ensure that Millennium makes all of the necessary contribution filings.
50. The Commission directs Millennium to file monthly contribution reports with the CFA and revised 2001 and 2002 annual revenue reports with the Commission by **28 April 2004**.
51. In the event that the above-mentioned filings are not received by 28 April 2004, the Commission will register this decision in Federal Court pursuant to section 63 of the Act for possible legal action.

Secretary General

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