



## Telecom Order CRTC 2006-65

Ottawa, 27 March 2006

### Bell Canada

Reference: Tariff Notices 6755, 6755A, 6798, 6798A, 6825, 6898 and 6901

### High Speed Metro service

#### Applications

1. The Commission received an application by Bell Canada dated 10 June 2003 (Tariff Notice 6755 (TN 6755)), and amended on 27 June 2003 (Tariff Notice 6755A (TN 6755A)), proposing the introduction of High Speed Metro (HSM) service under its General Tariff, item 5030.
2. The Commission received an application by Bell Canada dated 16 March 2004 (Tariff Notice 6798 (TN 6798)), and amended on 21 May 2004 (Tariff Notice 6798A (TN 6798A)), proposing a new service speed for its proposed HSM service and providing clarification of the circumstances in which additional construction charges would be incurred by the customer.
3. The Commission received an application by Bell Canada dated 30 June 2004 (Tariff Notice 6825 (TN 6825)), proposing: (a) to introduce a one-year rate for the HSM service; (b) to introduce the HSM access component as a Competitor Service; and (c) to revise the Access Services Tariff for Interconnection with Carriers and Other Service Providers, item 121, in order to introduce new Optical Link Arrangements which would provide co-located competitors with an access component to HSM service as well as local access to other high-bandwidth services.
4. The Commission received two applications from Bell Canada dated 2 September 2005 (Tariff Notice 6898 (TN 6898)), proposing two new software protocols for the proposed HSM service, and (Tariff Notice 6901 (TN 6901)), proposing to introduce new HSM access options and to decrease the HSM service's monthly access rates and termination charge.

#### Background

5. The Commission issued *Bell Canada - High Speed Metro service*, Telecom Order CRTC 2003-282, 10 July 2003, approving, on an interim basis, Bell Canada TNs 6755 and 6755A. The Commission issued *Bell Canada - Introduction of 2.5 gigabits per second High Speed Metro Service*, Telecom Order CRTC 2004-174, 28 May 2004, approving, on an interim basis, Bell Canada TNs 6798 and 6798A. The Commission issued Telecom Order CRTC 2005-329, 20 September 2005, approving, on an interim basis, Bell Canada TNs 6898 and 6901. On 14 October 2005, Bell Canada requested the withdrawal of TN 6825.

## **Positions of parties**

6. On 9 July 2003, MTS Allstream Inc. (MTS Allstream), formerly Allstream Corp., filed comments with respect to TNs 6755 and 6755A. In its comments, MTS Allstream submitted that it had several concerns with respect to the proposed HSM service. MTS Allstream submitted the following:
  - TN 6755 proposed to introduce a retail service which should not be approved until the Commission had approved a Competitor Service tariff for all underlying facilities used to provision this service. MTS Allstream characterized all incumbent local exchange carrier (ILEC) facilities underlying the HSM service as essential facilities. MTS Allstream argued that competitors faced barriers to entry that limited their ability to expand their networks and acquire customers through self-supply, and argued further that a Competitor Service for HSM would represent the next level of Competitor Services as it would provide a higher bandwidth service than the Competitor Digital Network (CDN) service;
  - the proposal contained in TN 6755 was incomplete because a competitor could not connect to this service within a Bell Canada central office (CO); and
  - the language used in the proposed tariff pages provided Bell Canada with discretion to offer an undue preference to certain customers in terms of the application of additional construction charges.
7. On 15 April 2004, MTS Allstream filed comments with respect to TNs 6798 and 6798A. MTS Allstream reiterated its comments made with respect to TN 6755A and raised its concern that the proposed terms and conditions for service additions and termination were anti-competitive. MTS Allstream submitted that a customer could be locked into an additional three- or five-year contract term, simply by augmenting the existing service configuration in the final year of the initial contract or, alternatively, the customer could be required to pay significant termination charges.
8. MTS Allstream requested that the Commission direct Bell Canada to file a Competitor Service tariff for its HSM service which included the following unbundled network components priced at Category I Competitor Service rates: (a) HSM/wavelength access; (b) HSM/wavelength link; (c) HSM/wavelength intraexchange channel; (d) HSM/wavelength interexchange channel; and (e) HSM/wavelength co-location connecting links.
9. No comments were received with respect to Bell Canada TNs 6825, 6898, or 6901.
10. On 21 July 2003, Bell Canada submitted its reply comments with respect to TN 6755A. Bell Canada submitted that the HSM service provided dedicated connections between customer locations utilizing fibre transmission facilities and optical/wavelength channels which did not provide access to the Bell Canada network or to Bell Canada's COs. Bell Canada submitted, therefore, that competitors could develop an end-to-end HSM service without having to pass through an ILEC CO.

11. Bell Canada submitted that the basic components of the HSM service were fibre transmission facilities, electronics, and service management and that these components, as well as the end-to-end HSM services, were also available from a wide range of suppliers, including Municipal Electric Utilities, registered resellers, carriers, and systems integrators. Bell Canada further submitted that HSM service was based on an emerging technology which, to date, had been introduced on a limited basis in certain metropolitan areas where the appropriate facilities had been deployed. Bell Canada therefore submitted that it was not required to offer HSM service or its service components at Category I Competitor Service rates.
12. On 26 April 2004, Bell Canada submitted reply comments with respect to TN 6798. Bell Canada submitted that a new contract was required only if a customer added new services in the last year of the agreement. Bell Canada further submitted that the new contract was required in order to recover the costs of services and to maintain a compensatory level of contribution on each service component added in the final year.

#### **Commission's analysis and determinations**

13. The Commission notes that it has required an ILEC to develop a Competitor Service if competitors were subjected to an undue or unreasonable competitive disadvantage, of the ILEC was unduly or unreasonably preferring any person, including itself, in the absence of such a service. If the Commission finds that a Competitor Service should be developed, it would then classify it as a Category I service (that is, a service in the nature of an essential service), or as a Category II service (that is, a service that is not in the nature of an essential service).
14. The Commission notes that the submissions made by MTS Allstream and Bell Canada focused on whether the facilities Bell Canada used to provide its retail HSM service were essential. The Commission has considered these submissions in relation to the first question of whether competitors are at a competitive disadvantage in the absence of a Competitor Service for these facilities.
15. The Commission notes that various considerations, including those related to supply, are relevant to the question of whether competitors are unduly disadvantaged in the absence of a Competitor Service for particular ILEC facilities. In this regard, the Commission notes that MTS Allstream's arguments, which were general in nature, did not address these considerations in relation to facilities used to provide HSM service. With respect to MTS Allstream's suggestion that a Competitor Service for HSM facilities would represent the next level of Competitor Services, as it would provide higher bandwidth than the CDN service, the Commission notes that a determination to develop a Competitor Service is based on the circumstances applicable to the facilities in question.
16. The Commission therefore considers that MTS Allstream has not established that competitors are unduly disadvantaged relative to Bell Canada or that Bell Canada has conferred upon itself an undue or unreasonable preference in the absence of the creation of a Competitor Service for HSM.
17. The Commission also considers that Bell Canada has addressed MTS Allstream's concerns regarding construction charges and termination charges with respect to Bell Canada's retail HSM service.

18. Accordingly, the Commission **denies** MTS Allstream's request that Bell Canada be directed to introduce a Competitor Service for HSM.
19. The Commission also notes that in TN 6825, Bell Canada proposed the introduction of a Competitor Service HSM access and Optical Link Arrangements which would have provided co-located competitors with an HSM access. Bell Canada subsequently proposed to withdraw TN 6825 and submitted that there was no actual competitor demand for a Competitor HSM access service at the time.
20. The Commission notes that MTS Allstream did not comment on Bell Canada's proposal to withdraw TN 6825. The Commission further notes that Bell Canada submitted that, if competitor demand for the HSM service materialized, it would propose a Competitor Service for HSM access, at which time the Commission would reconsider the appropriateness of creating a Competitor Service for HSM.
21. In light of the above, the Commission **approves, on a final basis**, the following Bell Canada applications: TN 6755 as amended by TN 6755A, TN 6798 as amended by TN 6798A, TN 6898, and TN 6901. The Commission further **approves** the withdrawal of Bell Canada TN 6825.

Secretary General

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