



## Telecom Decision CRTC 2021-397

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### **Iristel Inc. – Application to review, vary, and stay Telecom Decision 2020-268 and Telecom Notice of Consultation 2020-269 regarding the routing of traffic to Numbering Plan Area 867**

Iristel Inc. (Iristel) has requested that the Commission review, vary, and rescind Telecom Decision 2020-268 and Telecom Notice of Consultation 2020-269. In the present decision, the Commission finds that it did not err in fact or law in that decision or notice and **denies** Iristel’s application.

The Commission is issuing Telecom Notice of Consultation 2020-269-2 concurrently with this decision to resume the consultation procedure to determine if it would be appropriate to impose an administrative monetary penalty on Iristel and, if so, what the appropriate monetary amount would be.

#### **Introduction**

1. The Commission is responsible for exercising its powers with a view to implementing, among other things, the objective of fostering the orderly development of Canadian telecommunications markets that provide reliable, affordable, and efficient services to Canadians. When deliberating on service provider disputes, the Commission may, where appropriate in the exercise of its powers, determine that regulatory intervention is necessary to mitigate the impact of activities that could have otherwise eroded the development of an efficient and competitive telecommunications market and resulted in increased delivery costs for services to Canadian consumers.
2. In this respect, the Commission has issued decisions such as Telecom Decisions 2017-456 and 2020-268. In Telecom Decision 2017-456, Iristel Inc. (Iristel) was found in violation of subsection 27(2) of the *Telecommunications Act* (the Act) by engaging in regulatory arbitrage activities involving 867 Numbering Plan Area (NPA) telephone numbers. In Telecom Decision 2020-268, the Commission concluded that Iristel had again violated subsection 27(2) of the Act by granting itself an undue advantage and subjecting interexchange (IX) carriers to a corresponding unreasonable disadvantage. The violations in those decisions can result in increased connection costs for other carriers, and these costs may then be passed onto consumers.
3. The Commission is also responsible for approving tariffed rates of telecommunications service providers (TSPs) and ensuring that rates are just and reasonable. In Telecom Decision 2020-268, the Commission set a new interim tariffed rate for Iristel’s long distance call termination services in area code 867. Iristel’s rate was unjustly high and

provided an incentive for traffic stimulation<sup>1</sup> activities due to the higher revenues that could be garnered from call termination charges in NPA 867.

4. The Commission also addresses review and vary applications to previous decisions and states its considerations of information submitted by applicants. In its review and vary application, Iristel raised a variety of different arguments, and the Commission considers that some of these arguments are not central to the company's application. Nonetheless, in this decision, the Commission will address the arguments that Iristel raised in its application for the sake of completeness.

## **Background**

### **Telecom Decision 2017-456**

5. As stated above, in Telecom Decision 2017-456, the Commission found that Iristel was in violation of subsection 27(2) of the Act by engaging in regulatory arbitrage activities involving 867 NPA telephone numbers.
6. Rogers Communications Canada Inc.'s (RCCI) customers placed telephone calls to a United States-based call-to-listen service<sup>2</sup> provided by AudioNow.<sup>3</sup> These calls were being routed extremely inefficiently to the United States via the 867 NPA.<sup>4</sup> There was no clear reason for the use of Iristel's 867 telephone numbers, except for the revenue-sharing arrangements that were in place between Free Conference Call Global (FCCG)<sup>5</sup> and Iristel and between AudioNow and Yakfree LLC.
7. The Commission determined that parties involved in the revenue-sharing arrangements had an incentive to stimulate traffic to AudioNow's Call-to-Listen service for the higher revenues that could be garnered from the call terminations. The Commission directed Iristel and any of its affiliates to terminate any agreement that assigned FCCG any 867 NPA numbers that were ultimately used by AudioNow, and not to re-enter into provisions of such an agreement with FCCG or any of its affiliates.
8. On 19 January 2018, Iristel submitted to the Commission that it had met the requirements of Telecom Decision 2017-456. Iristel stated that it had informed FCCG that FCCG must cease supplying AudioNow with any 867 NPA telephone numbers if

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<sup>1</sup> As stated in Telecom Decisions 2017-456 and 2017-457, traffic stimulation is a practice by which a telephone carrier inflates, or allows to be inflated, the volume or minutes of calls beyond an anticipated threshold. Depending on the circumstances, this may give certain parties an undue preference and subject others, including Canadian consumers, to a corresponding undue or unreasonable disadvantage, in contravention of subsection 27(2) of the Act.

<sup>2</sup> The call-to-listen service provides free, real-time access to international and other radio services.

<sup>3</sup> AudioNow has since been sold and now operates as ZenoRadio.

<sup>4</sup> Some 867 NPA telephone numbers were assigned for use by the company AudioNow, which provides listeners with access to audio broadcasts via its Call-to-Listen platform. That platform is based in Virginia and enables listeners to connect to the broadcaster of their choice through a telephone call.

<sup>5</sup> FCCG offers domestic and international audio, web, and video recording and conferencing services, live chat and voicemail services, voice broadcasting services, and other voice and messaging services.

those numbers might confer undue preference to Iristel or any other party. Iristel added that it had terminated all 867 NPA-associated revenue-sharing agreements with FCCG.

### **Telecom Decision 2018-432**

9. The Commission received an application from TELUS Communications Inc. (TCI), dated 3 August 2018, in which TCI alleged new traffic stimulation activities involving Iristel's 867 NPA telephone numbers. TCI requested that the Commission
  - initiate a public proceeding to review the new traffic stimulation activities involving Iristel's 867 NPA telephone numbers;
  - direct Iristel to file a tariff application to establish a rate for IX call termination for its customers in the North; and
  - make interim Iristel's current tariffed rate for IX call termination in the North.
10. In Telecom Decision 2018-432, the Commission responded to TCI's interim relief request and made interim Iristel's rate that is applicable to the Northwest Territories, Nunavut, and Yukon.<sup>6</sup>
11. The Commission also stated that as part of addressing final relief for the application, it would consider the appropriateness of imposing administrative monetary penalties (AMPs).

### **Telecom Decision 2020-268 and Telecom Notice of Consultation 2020-269**

12. In Telecom Decision 2020-268, the Commission again found that Iristel had violated subsection 27(2) of the Act by granting itself an undue advantage and allowing the use of 867 NPA telephone numbers by certain customers based in distant locations. This increased the connection costs for other carriers and caused economic harm while generating revenue for Iristel through the resulting IX call termination charges.<sup>7</sup>
13. In addition, the Commission no longer considered Iristel's tariffed IX termination rate of \$0.038 per minute per end to be just and reasonable, as per subsection 27(1) of the Act.<sup>8</sup> This is because (i) Iristel's tariffed rate used Northwestel Inc.'s (Northwestel) Carrier Access Tariff (CAT) rate<sup>9</sup> as a proxy, which was determined to no longer be

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<sup>6</sup> This rate is designated in Iristel's Access Services Tariff, item 302.2.4, Trunk-side Access – Switching and Aggregation.

<sup>7</sup> In Telecom Decision 2020-268, the Commission also addressed the associated 7 August 2018 application submitted by Iristel. The Commission found that TCI had reduced capacity of certain toll circuits that carry TCI's traffic to Iristel's 867 NPA telephone numbers, contrary to subsection 27(2) of the Act, and issued Telecom Notice of Consultation 2020-269 to explore the appropriateness of issuing TCI an AMP.

<sup>8</sup> Subsection 27(1) of the Act states that every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable.

<sup>9</sup> Northwestel's tariffed rate is a bundled tariff rate that includes the cost of termination via both terrestrial communities and via satellite to remote communities. Northwestel serves approximately 96 communities: 36

reasonable because it overcompensated Iristel, and (ii) the rate provided an incentive for stimulation of traffic to 867 NPA numbers. Accordingly, the Commission modified Iristel's tariffed IX termination rate to an interim IX termination rate of \$0.0098125 per minute per end.

14. Iristel's interim tariffed IX termination rate was to become final 90 days from the issuance of Telecom Decision 2020-268 if Iristel did not file a tariff notice supported by a Phase II cost study proposing an alternate rate by 16 November 2020. This final rate would be retroactive to 23 November 2018, the day on which it was made interim.
15. The Commission issued Telecom Notice of Consultation 2020-269 concurrent with Telecom Decision 2020-268 to examine whether it would be appropriate to impose AMPs on Iristel and TCI and, if so, what the appropriate penalty amounts would be. In that notice, the Commission stated that it was of the preliminary view that a penalty in the range of \$750,000 to \$1,250,000 may be appropriate for each company.

## **Application**

### **Iristel's review and vary application for Telecom Decision 2020-268 and Telecom Notice of Consultation 2020-269**

16. On 2 September 2020, the Commission received an application from Iristel to review and vary Telecom Decision 2020-268 and Telecom Notice of Consultation 2020-269.

### **Iristel's request for interim relief**

17. Iristel requested that the Commission issue a stay of Telecom Notice of Consultation 2020-269 and of the imposition of AMPs until the Commission ruled on the relief requested by Iristel in its review and vary application. In Telecom Notice of Consultation 2020-269-1, the Commission adjourned the proceeding initiated by Telecom Notice of Consultation 2020-269 until further notice.
18. Iristel also requested, on an expedited basis, a stay of the coming into force of the interim IX termination rate established in Telecom Decision 2020-268, as well as a deadline extension of the tariff notice and Phase II cost study submission.
19. On 23 October 2020, the Commission issued a [letter decision](#) denying Iristel's application for a stay of the modified tariffed IX termination rate. The Commission approved Iristel's stay application for an extension to the deadline for filing a tariff notice with a Phase II cost study until after the Commission provided further direction, following the issuance of the current decision.

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remote communities by satellite and 60 remote communities by terrestrial facilities. Iristel did not submit evidence that it has similar services and infrastructure.

### **Iristel's request for final relief**

20. In its application, Iristel requested that as a result of fundamental errors by the Commission in Telecom Decision 2020-268, the Commission should review and vary Telecom Notice of Consultation 2020-269 in order to rescind any consideration of the imposition of an AMP on Iristel.
21. Iristel also requested that the Commission exercise its power under section 62 of the Act to review and vary Telecom Decision 2020-268 and rescind the findings that Iristel
  - was engaged in traffic stimulation to 867 NPA numbers;
  - should no longer be permitted to use Northwestel's tariffed bundled CAT rate as a proxy for Iristel's own tariffed IX termination rate; and
  - violated subsection 27(2) of the Act.
22. The Commission received interventions from RCCI and TCI in response to Iristel's request for final relief.

### **Review and vary criteria**

23. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it would use to assess review and vary applications filed pursuant to section 62 of the Act. Specifically, the Commission stated that in order for it to exercise its discretion pursuant to section 62, applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to (i) an error in law or in fact, (ii) a fundamental change in circumstances or facts since the decision, (iii) a failure to consider a basic principle which had been raised in the original proceeding, or (iv) a new principle which has arisen as a result of the decision.

### **Issues**

24. The Commission has identified the following issues to address from Iristel's review and vary application:
  - Did the Commission err by basing Telecom Decision 2020-268 on numerous errors in fact and law?
  - Did the Commission err in law by concluding that Iristel had an overly narrow interpretation of Telecom Decision 2017-456?
  - Did the Commission fail to consider basic principles that were raised in the original proceeding with respect to 867 NPA numbers?
  - Do Telecom Decision 2020-268 and Telecom Notice of Consultation 2020-269 undermine Canada's telecommunications policy objectives, resulting in an error in law by the Commission?

## **Did the Commission err by basing Telecom Decision 2020-268 on numerous errors in fact and law?**

### **Positions of parties**

#### **Error in fact regarding the role of Iristel's tariffed rate**

##### ***Iristel***

25. Iristel submitted that the Commission erred in fact in concluding that Iristel's tariffed interexchange service provider (IXSP) rate<sup>10</sup> of \$0.038 per minute per end constituted an incentive for Iristel to engage in traffic stimulation. Iristel requested that the Commission remove the interim rate of \$0.0098125 per minute per end and reinstate the original tariffed IX termination rate of \$0.038.
26. Iristel argued that the tariffed IX termination rate for 867 NPA numbers cannot be an incentive to engage in traffic stimulation if (i) carriers are actually paying the negotiated call termination rates and no carrier is paying Iristel's tariffed rate; and (ii) the negotiated rate has no connection to the tariffed rate, as stated by the Commission in Telecom Decision 2017-456.
27. Iristel submitted that this tariffed IX termination rate is only charged when carriers interconnect directly with Iristel in the North. According to Iristel, no carriers have ever paid Iristel's tariffed IX termination rate because no other carriers have built these facilities in the North.
28. Iristel submitted that the Commission modified Iristel's Interconnection with Interexchange Service Providers Trunk-Side Access Switching and Aggregation Charges rather than Iristel's tariffed IX termination rate.<sup>11</sup>

##### ***TCI***

29. TCI submitted that the Commission did not err in Telecom Decision 2020-268 in setting a new tariffed IX termination rate because the Commission determined that the previous rate was not just and reasonable given that it significantly exceeded Iristel's

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<sup>10</sup> Iristel's tariffed IXSP rate of \$0.038 per minute per end is also called the tariffed IX termination rate. This rate is referred to in this proceeding and hereafter as a tariffed IX termination rate.

<sup>11</sup> In its review and vary application and associated reply, Iristel also refers to the tariffed IX termination rate as its "Interconnection with Interexchange Service Providers Trunk-Side Access Switching and Aggregation Charges" or the "tariffed IXSP rate." The Commission notes that parties used different terminology for the same rate interchangeably during the proceeding that led to Telecom Decision 2020-268, resulting in Iristel expressing concern that the Commission modified the wrong rate. In the Telecom Decision 2020-268 proceeding and Iristel's review and vary application, the term "tariffed IX termination" was used interchangeably with "long distance call termination rate;" "long distance IX termination rate;" "Iristel's tariffed rate;" "tariffed IXSP termination rate;" "the rate applicable to the Northwest Territories, Nunavut, and Yukon in Iristel's Access Services Tariff item 302.2.4, Trunk-side Access - Switching and Aggregation;" and "the Interconnection with Interexchange Service Providers Trunk-Side Access Switching and Aggregation Charges." The tariffed IX termination rate is not the same as the rate referred to as Iristel's "negotiated rates," "off-tariff negotiated rate," or the "forborne rate," which refer to the rates found in negotiated, off-tariff agreements between carriers.

costs. According to TCI, because the tariffed rate has not been forborne from regulation, the Commission was legally compelled to rectify it, pursuant to subsection 27(1) of the Act. TCI submitted that whether the previous rate created an incentive to stimulate traffic was irrelevant to the Commission's decision to lower Iristel's tariffed rate.

30. TCI submitted that building facilities in the North is not required to interconnect with another carrier in the North. TCI argued that like Iristel, TCI could obtain leased services from Northwestel or another service provider to reach any Iristel interconnection points in the North.
31. TCI argued that the tariffed IX termination rate underpins the forbearance of the wholesale toll market because customers of wholesale toll always have the option of leasing transport to interconnect with Iristel directly in the North in order to pay the tariffed rate (rather than paying the forborne, negotiated rate).
32. TCI added that ensuring that the tariffed IX termination rate is just and reasonable does not affect competition for the long distance portion of wholesale toll services.

#### ***RCCI***

33. RCCI submitted that there is a significant amount of information on the public record that demonstrated that Iristel's tariffed IX termination rate was too high and inappropriate.
34. RCCI added that Iristel's tariffed IX termination rate is different than Northwestel's tariffed interconnection rate, which includes many cost elements that are absent from Iristel's network in the North.

#### **Errors regarding revenue-sharing agreements, traffic stimulation, and data**

##### ***Iristel***

35. Iristel submitted that it is not engaged in traffic stimulation to its 867 NPA numbers, and that in Telecom Decision 2020-268, the Commission
  - committed an error in fact in concluding that Iristel is still engaged in traffic stimulation due to the absence of evidence of revenue-sharing agreements or any other forms of incentive for its customers to stimulate traffic to 867 NPA numbers;
  - admitted that it had not found any evidence that Iristel was engaged in traffic stimulation, which Iristel submitted constitutes an error in law; and
  - committed an error in fact in concluding that the traffic data supported a finding that traffic stimulation was still occurring.
36. Iristel submitted that the United States Federal Communications Commission's Traffic Stimulation Framework requires a revenue-sharing agreement for traffic stimulation to

exist. Iristel also cited the Merriam-Webster dictionary's definition of "stimulate." In accordance with these definitions, Iristel submitted that it could not be engaged in traffic stimulation because following the issuance of Telecom Decision 2017-456, Iristel (i) terminated all its revenue-sharing agreements and is not currently party to any revenue-sharing agreements; (ii) ensured no Iristel 867 NPA numbers were being provided to AudioNow; and (iii) does not induce customers to make use of traffic or send it to any particular NPA. Iristel submitted that the Commission therefore committed an error in fact in Telecom Decision 2020-268 in determining that Iristel is still engaged in traffic stimulation.

37. In addition, Iristel submitted that the Commission's definition of traffic stimulation in Telecom Decision 2017-456 is too ambiguous to be applied by carriers. In relation to this definition, Iristel argued that it is not allowing traffic stimulation to occur but does what the regulations require it to do, which is to terminate, without discrimination, traffic that is generated by the end-users of other carriers.
38. Iristel submitted that traffic data submitted during the Telecom Decision 2020-268 proceeding show that the amount of traffic that Iristel sends to the 867 NPA is proportionate to the population of the North, not increasing at unusual rates, and relatively small compared to the traffic generated by other carriers. Iristel also suggested that traffic volumes increased due to population growth in the North and due to Iristel capturing more market share as new telecommunications services were deployed.
39. Iristel submitted that the Commission erred in fact when it stated that Iristel's data confirmed that by May 2018, the volume of traffic had increased to levels similar to the volume of traffic levels that existed prior to the effective date of Telecom Decision 2017-456. Iristel argued that the Commission misunderstood the point that Iristel was attempting to make: Traffic levels in May 2018 and on 21 June 2019 were lower than during the period prior to Telecom Decision 2017-456 coming into force, which proved that any claims that traffic returned to pre-Telecom Decision 2017-456 levels were false.

#### **TCI**

40. TCI submitted that Iristel failed to establish that revenue sharing is a prerequisite for a finding of traffic stimulation, and that the Commission had not stated that revenue-sharing agreements were required for a traffic stimulation determination.
41. TCI submitted that while Iristel's customers may choose an 867 NPA number, the system of selecting numbers is controlled by Iristel. TCI argued that after Telecom Decision 2017-456, Iristel should have taken steps to ensure that its 867 NPA numbers were not used by program providers whose operations are not in the North.
42. TCI further submitted that the Commission did not make any errors in fact regarding the traffic volumes to Iristel's 867 NPA numbers. TCI submitted that its application that led to Telecom Decision 2020-268 showed that TCI's traffic to Iristel's 867 NPA numbers dropped drastically between January and February 2018 and then rose quickly

and steadily from March to May 2018. By May 2018, the traffic was almost as high as in January 2018, the month during which Iristel disconnected certain numbers used by AudioNow in response to Telecom Decision 2017-456.

43. TCI added that traffic should have been no higher in May 2018 than it was in February 2018, and that Iristel has yet to explain why traffic rose so quickly in that time frame. The growth during this period cannot be explained by organic growth or the demographics of the North.

#### ***RCCI***

44. RCCI submitted that in Telecom Decision 2017-456, the Commission did not specify that revenue-sharing was a prerequisite for a determination of traffic stimulation. RCCI concluded that high termination rates in high-cost service areas (HCSAs) are enough to create this regulatory arbitrage.
45. RCCI submitted that following the effective date of Telecom Decision 2017-456, its traffic to Iristel's telephone numbers in the 867 NPA dropped to 5% of its previous level, and then increased by over 295% between February and August 2018. In addition, the increase in traffic between February 2018 and April 2020 was significantly larger than increases RCCI experienced with any other carrier, taking into account the increases experienced with the COVID-19 pandemic. RCCI estimated that nearly all of this traffic is due to conference call and radio services.
46. RCCI submitted that most of this traffic is not in fact destined to the North but to the United States, or other locations, and is never sent to the North. However, carriers are paying for this traffic as if it were destined for the North. RCCI added that these payments have amounted to a significant amount over time, and that this revenue was not in fact earned by Iristel in accordance with normal business practices in the telecommunications market or in the way that the Commission understood its rules would apply when it first established them.

#### ***Iristel's reply***

47. In its reply, Iristel claimed that the spike in RCCI's traffic to Iristel's 867 NPA in April 2020 was due to COVID-19 during the height of pandemic-related lockdowns and corresponded to network-wide peaks and valleys observed by Iristel. Iristel submitted that traffic levels are now practically identical with what they were prior to the pandemic. Iristel submitted that companies based in the United States and elsewhere have many legitimate reasons to require 867 NPA numbers, including to provide local numbers for advanced telecommunications services in the North, such as Microsoft Teams and Zoom.
48. Iristel submitted that it dialed some of the numbers provided by TCI in its August 2018 application, and that none of the call-to-listen numbers that it tried were still in service. However, the conference calling services did remain in service. Iristel believes that the termination of all its revenue-sharing agreements led the call-to-listen services to move

elsewhere. Iristel added that this calls into question RCCI's claim about these services contributing to the overwhelming majority of RCCI's traffic to the 867 NPA.

#### **Errors regarding inefficient routing of traffic, modification of Iristel's rate, and violations**

##### ***Iristel***

49. Iristel submitted that in Telecom Decision 2020-268, the Commission found that Iristel was routing traffic inefficiently to the North. Iristel argued that the Commission committed an error in fact, given that the routing of these calls is a result of forbore, commercial agreements reached by Iristel with RCCI and TCI, whereby traffic terminated by Iristel is generated by the end-users of RCCI and TCI. Iristel submitted that it is routing traffic that is destined to the 867 NPA as efficiently as possible.
50. In addition, Iristel submitted that the Commission erred in law by using Iristel's routing arrangements as a justification for modifying its IX termination rate and concluding that it had violated subsection 27(2) of the Act, when in fact Iristel was adhering to Telecom Decision 98-17.
51. Iristel argued that the Commission appears to be reversing its position from that of forbearance from the regulation of routing arrangements mentioned in Telecom Decision 98-17. According to Iristel, the implication of Telecom Decision 2020-268 is that the Commission would have found the routing more efficient if it had been done entirely in Canada and not involved American services. Iristel submitted that while the Commission is entitled to change the policy of leaving network operators to decide the most appropriate routing for their traffic, it cannot penalize Iristel for adhering to the law as it existed up to Telecom Decision 2020-268, which allowed Iristel to route traffic in whatever manner it deemed most economically efficient.

##### ***TCI***

52. TCI submitted that the Commission did not make conclusions concerning the inefficient route selected by a single carrier but by the total route taken by the call. TCI submitted that it was established in the proceeding that led to Telecom Decision 2017-456 that calls (i) originated somewhere in southern Canada and were delivered by RCCI to Iristel, (ii) were carried by Iristel to Yellowknife, and (iii) were carried south to Virginia by a reseller. TCI added that the Commission did not state or imply in either Telecom Decisions 2017-456 or 2020-268 that the route selected by any individual service provider carrying the call was inefficient. It was the combination of the individual routes that was inefficient as a whole.
53. TCI submitted that no carrier upstream from the terminating local exchange carrier has knowledge of the location of the terminating customer. Upstream carriers depend entirely on the dialed number to determine the routing of the call and have no responsibility for the aggregate inefficiency observed by the Commission. TCI submitted that Iristel is responsible for the inefficiency not because it routed calls inefficiently but because it allowed the assignment of its 867 NPA numbers such that inefficient routing would result.

54. TCI submitted that Iristel alleged, but failed to demonstrate, that the Commission was creating a new routing restriction in conflict with Telecom Decision 98-17.

***RCCI***

55. RCCI submitted that it was not efficient to issue 867 NPA numbers to serve companies located in the United States. RCCI submitted that in this scenario, the customer gets to treat their local number in the North as a toll-free access service without paying the associated charges, and Iristel profits from the highest rates in Canada for appearing to route the traffic to the North when it is unlikely that Iristel in fact routed this traffic to the North at all. RCCI submitted that while revenue-sharing may no longer be Iristel's mode of operation, there is a definite quid pro quo driving these services that result in traffic stimulation. RCCI added that this is not a bilateral dispute between RCCI or TCI and Iristel. Iristel's traffic stimulation scheme affects all Canadian TSPs.

**Commission's analysis and determinations**

**Error in fact regarding the role of Iristel's tariffed rate**

56. The Commission lowered Iristel's IX termination rate in part to reduce or remove financial incentive to engage in traffic stimulation activities in the 867 NPA. However, the Commission did not exclusively or essentially rely on the rate being an incentive to stimulate traffic to reach its conclusion to modify Iristel's tariffed IX termination rate.
57. The Commission found in Telecom Decision 2020-268 that Iristel's rate was no longer just and reasonable because it overcompensated Iristel and was contrary to subsection 27(1) of the Act. Iristel using Northwestel's CAT rate as a proxy for its own tariffed rate was determined to no longer be suitable because the CAT rate is a blended rate designed to offset the cost of service to the higher-cost areas in the North with the revenue earned from serving lower-cost areas. Iristel did not provide evidence during the Telecom Decision 2020-268 proceeding or in its review and vary application that it has networks and HCSAs to the same extent as Northwestel.
58. Regardless of whether Iristel's tariffed IX termination rate was an incentive for traffic stimulation or not, the Commission's finding that the rate is no longer just and reasonable was sufficient to reach the conclusion to modify the rate. A rate that overcompensates a carrier consequentially causes economic harm to other parties, including, ultimately, Canadian consumers.

***Conclusion regarding the role of Iristel's tariffed rate***

59. In light of the above, the Commission did not err in fact by concluding that the tariffed IX termination rate was an incentive for traffic stimulation.

**Errors regarding revenue-sharing agreements, traffic stimulation, and data**

60. The Commission reiterates that in Telecom Decision 2020-268, it concluded that Iristel allowed the use of 867 NPA telephone numbers by certain customers based in distant locations, causing increased connection costs for IX carriers, resulting in the generation

of revenue for itself through the ensuing IX call termination charges. In that decision, the Commission's conclusion was not based on a finding of revenue-sharing agreements. The Commission found, in addition to evidence of increasing traffic, that Iristel's assignment of 867 NPA numbers was giving Iristel an undue advantage and causing economic harm to other carriers and to Canadian consumers.

61. Nevertheless, for the sake of completeness, in this decision, the Commission is addressing Iristel's claims regarding the following alleged errors in fact and in law.

***Error in fact related to revenue-sharing agreements***

62. While revenue-sharing agreements can be a motivation for a company to engage in traffic stimulation, they are not a necessary element of a traffic stimulation scheme. Revenue-sharing agreements are only one of any number of reasons why a company would engage in regulatory arbitrage activities or stimulate traffic. For example, in the absence of a volume-based revenue-sharing agreement, a company can still benefit from higher revenues that can be garnered by traffic stimulation to areas with high-toll termination rates, such as the 867 NPA.
63. Such an approach to the concept of traffic stimulation is consistent with the view that the Commission held in Telecom Decision 2017-456, in which it stated that traffic stimulation, also known as traffic pumping, is a practice by which a telephone carrier inflates, or allows to be inflated, the volume or minutes of calls beyond an anticipated threshold. In that decision, the Commission did not mention revenue-sharing agreements as a necessary element of traffic stimulation.
64. Therefore, the Commission did not err in fact by failing to explain in Telecom Decision 2020-268 how the absence of revenue-sharing agreements is compatible with traffic stimulation.
65. Regarding any potential error associated with the statement that Iristel was engaged in traffic stimulation in the absence of evidence of revenue-sharing agreements, the Commission considers that this issue is moot. This is because, as explained below, in Telecom Decision 2020-268, the Commission did not unequivocally determine that Iristel was engaged in traffic stimulation.

***Error in law concluding traffic stimulation***

66. In Telecom Decision 2020-268, the Commission stated that there was some indication of traffic stimulation, and that there was an incentive for traffic stimulation. However, the Commission did not unequivocally determine that Iristel was engaged in traffic stimulation. Therefore, the Commission could not have erred in law by wrongly concluding that Iristel was engaged in traffic stimulation.

***Error in fact regarding traffic data and traffic stimulation***

67. Iristel submitted that the Commission erred in fact when it stated that Iristel's data confirmed that by May 2018, the volume of traffic had increased to levels similar to the volume of traffic levels that existed prior to the effective date of Telecom Decision 2017-456.

68. In Telecom Decision 2020-268, the Commission stated that data submitted by TCI showed that May 2018 traffic volume to Iristel's telephone numbers in the 867 NPA was similar to the traffic volume prior to the effective date of Telecom Decision 2017-456. The Commission added that Iristel's data confirmed this statement. TCI's data shows that by May 2018, the traffic was almost as high as in January 2018, the month in which Iristel disconnected certain numbers used by AudioNow in response to Telecom Decision 2017-456. Iristel's data shows that the traffic volume in May 2018 was approaching, but was not as high as, the traffic volume in December 2017.
69. Moreover, Iristel's and TCI's data show a rapid rate of increase in traffic volume between February 2018 and May 2018, following an initial dramatic drop immediately after the issuance of Telecom Decision 2017-456. Such a rapid rate of increase in traffic volume is similar to the one that partially supported the Commission's finding in Telecom Decision 2017-456 that Iristel had been involved in regulatory arbitrage activities.
70. Iristel also submitted that traffic volumes naturally increased as the population of the North grew, as Iristel captured more market share, and as new telecommunications services were deployed by competitors like Iristel. In the Commission's view, Iristel did not sufficiently explain the cause of these increasing traffic levels in the Telecom Decision 2020-268 proceeding or in its review and vary application. In particular, it did not demonstrate how growing populations, Iristel's actual market share growth, and new competitor services corresponded to the traffic volumes from February 2018 through May 2018 and resulted in the escalation of traffic in the weeks following the sharp decline as a result of Telecom Decision 2017-456.
71. In response to Iristel's statement that the COVID-19 pandemic caused the April 2020 escalation in RCCI's traffic to Iristel's 867 NPA, the Commission notes that the COVID-19 pandemic and related traffic occurred after it issued Telecom Decision 2020-268 and Telecom Notice of Consultation 2020-269. Therefore, the new 2020 traffic data was not relevant to that decision, and the data under scrutiny cannot be explained by the COVID-19 pandemic.
72. Finally, the finding that the evidence suggested traffic stimulation was only indicative and not indispensable or foundational to modifying Iristel's tariffed IX termination rate. Reviewing that finding would not change the Commission's decision. Therefore, that finding could not amount to an error in fact or in law that raises substantial doubt as to the correctness of the original decision.

***Conclusion regarding revenue-sharing agreements, traffic stimulation, and data***

73. In light of all of the above, the Commission did not make any errors in fact or in law in relation to the claim that it wrongly concluded that Iristel was engaged in traffic stimulation.

## **Errors regarding inefficient routing of traffic, modification of Iristel's rate, and violations**

### ***Error in fact regarding the finding of inefficient routing***

74. Iristel submitted that the Commission erred in fact in concluding that Iristel was routing traffic inefficiently given that Iristel was routing traffic pursuant to commercial agreements whereby Iristel terminated traffic generated by end-users of RCCI and TCI.
75. The Commission considers that the statements in Telecom Decision 2020-268 concerning traffic routing are still accurate. The Commission did not make the statements in recognition of the route selected by a single carrier pursuant to a commercial agreement but the total aggregate route, where calls destined to the United States were first directed to Canada's North and then redirected to their intended destination. It was the combination of these individual routes that was inefficient as a whole, as well as 867 NPA numbers being used in a manner that led to this routing and a significant increase in traffic destined to Iristel's telephone numbers in the 867 NPA (after an initial dramatic drop immediately following the issuance of Telecom Decision 2017-456).
76. In light of the above, the Commission considers that it did not err in fact in finding that Iristel was routing traffic inefficiently. Iristel has not presented information in its application that (i) shows that the Commission failed to understand Iristel's assignment of 867 NPA numbers to call-to-listen radio stations and conference-calling companies located in the United States and elsewhere, or (ii) relates to the overall routing of this traffic.

### ***Error in law regarding the modification of Iristel's rate***

77. Contrary to Iristel's argument, the Commission did not err in law by using Iristel's routing arrangements as a justification for modifying the tariffed IX termination rate. The Commission did not exclusively or essentially rely on the routing arrangements as a justification for modifying this rate. The determination to lower Iristel's IX termination rate in Telecom Decision 2020-268 was mainly due to the finding that the rate was not just and reasonable, pursuant to subsection 27(1) of the Act.

### ***Error in law regarding violation of subsection 27(2) of the Act***

78. Iristel claimed that the Commission erred in law by using Iristel's routing arrangements to conclude that Iristel had violated subsection 27(2) of the Act. Iristel submitted that it was adhering to Telecom Decision 98-17, in which the Commission removed routing restrictions because they were inherently inefficient.
79. In Telecom Decision 95-19, the Commission determined that it would forbear from the regulation of non-dominant carriers but found that access to telecommunications networks was in the public interest.<sup>12</sup> In the same decision, the Commission, while

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<sup>12</sup> While the Commission has forbore from regulating rates of residential and business toll services, and from exercising its power under subsection 27(2) of the Act in relation to discount and toll-free services, the

otherwise forbearing from regulation under subsection 27(2) of the Act, retained its power under subsection 27(2) in respect of issues related to access to the networks of non-dominant carriers and the resale and sharing of their services.<sup>13</sup>

80. While Iristel's toll termination rate is partially forborne from regulation, its local termination rate is regulated. Iristel's local termination rate in Canada's North had used Northwestel's tariffed rate as a proxy for the same area.
81. In Telecom Decision 98-17, the Commission eliminated the rules prohibiting the routing of Canada-Canada calls or Canada-overseas calls through the United States. The Commission concluded that removal of such restrictions would be in the public interest, taking into account all of the policy objectives set out in section 7 of the Act.
82. In the Commission's view, the elimination of the rule prohibiting the routing of basic Canada-Canada or Canada-overseas traffic through the United States in Telecom Decision 98-17 did not remove the prohibition in subsection 27(2) of the Act against undue preference and undue or unreasonable disadvantage by a carrier in providing services. That is to say, in deciding that the generally applicable restriction was no longer appropriate, the Commission did not determine that Canadian carriers could route basic Canada-Canada or Canada-overseas traffic through the United States in all circumstances and for all purposes, regardless of whether it resulted in an undue preference or unreasonable disadvantage.
83. The Commission considers that it has not forborne from exercising its power under subsection 27(2) of the Act in respect of at least one telecommunications service that was provided by Iristel. One of the services that was subject to the finding of the subsection 27(2) violation in Telecom Decision 2020-268 was competitive local exchange carrier (CLEC) local exchange services. This is because to provide local exchange services, Iristel has to assign its customers a ten-digit local number within the 867 NPA. The Commission retained the regulatory power of subsection 27(2) regarding CLEC local exchange services in Telecom Decision 97-8. Under subsection 27(2), this power alone is sufficient to make a finding of a violation in relation to the provision of a telecommunications service.
84. In allowing the use of 867 NPA telephone numbers by customers based in distant locations, Iristel increased the connection costs of other carriers and caused economic harm, while generating revenue for itself through the resulting IX call termination charges. Iristel thus granted itself a preference and subjected IX carriers to a corresponding disadvantage. Iristel did not provide justification to discharge its burden

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Commission retained its power under subsection 27(2) in relation to basic toll services and mobile wireless traffic.

<sup>13</sup> In Telecom Decision 97-19, the Commission considered that the continued exercise of certain of its powers under subsection 27(2) of the Act, similar to that prescribed in respect of the non-dominant carriers in Telecom Decision 95-19, would serve to ensure that continued access to the incumbent companies' toll and toll-free services was available and that these services were made available on a non-discriminatory basis for resale and sharing.

of establishing that such preference or disadvantage is not undue or unreasonable, as required by subsection 27(4) of the Act.

85. Iristel did not present information in its review and vary application that shows that the Commission failed to understand Iristel's assignment of 867 NPA numbers to call-to-listen radio stations and conference calling companies located in the United States and elsewhere. It has not provided new information regarding the overall routing of this traffic either.

***Conclusion regarding inefficient routing of traffic, modification of Iristel's rate, and violations***

86. The Commission considers that there is no merit to Iristel's arguments that (i) its traffic routing was permitted under Telecom Decision 98-17, and that (ii) the Commission's determination in Telecom Decision 2020-268 in effect restores the routing restrictions.
87. Therefore, the Commission considers that it did not err in law by referencing Iristel's routing arrangements in its determinations regarding Iristel's violation of subsection 27(2) of the Act.

**Did the Commission err in law by concluding that Iristel had an overly narrow interpretation of Telecom Decision 2017-456?**

**Positions of parties**

**Iristel**

88. Iristel submitted that the Commission committed an error in law by (i) first concluding that Iristel's interpretation of Telecom Decision 2017-456 was overly narrow, when the Commission had previously led Iristel to believe that it was in compliance with Telecom Decision 2017-456; and (ii) by then using the fact that Iristel was again violating subsection 27(2) of the Act as a pretext for considering an AMP. Iristel requested the Commission vary Telecom Decision 2020-268 to rescind the finding that Iristel's interpretation of Telecom Decision 2017-456 was overly narrow<sup>14</sup> and rescind the consideration of an AMP.
89. Iristel submitted that it filed a compliance report with the Commission in January 2018, stating that it complied with Telecom Decision 2017-456 by terminating all of its revenue-sharing agreements. Iristel submitted that it also engaged in email correspondence in January 2018 with one of its customers and Commission staff, which

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<sup>14</sup> In Telecom Decision 2020-268, the Commission specified that Iristel and FCCG both responded to a request for information, stating that they no longer have revenue-sharing agreements with each other. Iristel stated that it did have an agreement with FCCG to assign 867 NPA telephone numbers, and that to the best of Iristel's knowledge, FCCG did not continue to provide Iristel's numbers to AudioNow. Iristel added that it did not have a contract with ZenoRadio. Iristel submitted that ZenoRadio was not mentioned in Telecom Decision 2017-456, so it did not take any action regarding any service provided to ZenoRadio. In the Commission's view, this was an overly narrow interpretation of Telecom Decision 2017-456.

it feels demonstrates that since at least January 2018, the Commission was fully aware how Iristel had implemented Telecom Decision 2017-456.

90. Iristel submitted that at no point did the Commission issue a clarification or a directive or raise objections to Iristel's interpretation or method of implementing Telecom Decision 2017-456, leading Iristel to believe it had fully complied. Iristel added that it was a serious error in law for the Commission to change its view and now find that Iristel has not complied with Telecom Decision 2017-456 after implicitly endorsing Iristel's method of compliance.
91. Iristel submitted that because ZenoRadio was not mentioned in Telecom Decision 2017-456, it did not take any action regarding any service provided to ZenoRadio. Iristel emphasized that it had no knowledge of the sale of AudioNow to ZenoRadio. Iristel submitted that once this fact became generally known on the record leading to Telecom Decision 2020-268, the Commission did not raise any concerns about Iristel's ongoing compliance with Telecom Decision 2017-456. Iristel added that it is not reasonable to expect it to track the various corporate transactions of its customers.

#### **TCI**

92. TCI submitted that the Commission was correct that Iristel did not comply with Telecom Decision 2017-456. The report Iristel filed did not state that it had terminated the agreement with FCCG but only that Iristel had warned FCCG that this agreement could be terminated.
93. TCI argued that the subject of the January 2018 email conversation mentioned above was not Iristel's interpretation of Telecom Decision 2017-456, as Iristel implies. TCI submitted that the absence of objections from the Commission in this email conversation does not constitute an implicit endorsement by the Commission itself. Even if Commission staff had openly stated their concurrence with Iristel's interpretation, Iristel would still not be compliant because a Commission staff endorsement does not supersede a Commission decision, nor does it constitute a Commission endorsement.

#### **RCCI**

94. RCCI submitted that the fact that Iristel's 867 NPA numbers are still used by radio and conference call services located in the United States results in precisely the same result as before, and that Iristel should now accept the consequences of an AMP. RCCI added that there is no way that the Commission could have guessed that this is what Iristel had done until the facts were presented in this proceeding. RCCI concluded that the Commission in no way endorsed what Iristel was doing, and that it is improper to suggest that it did.

#### **Iristel's reply**

95. Iristel replied that in the directive issued in Telecom Decision 2017-456, it was not required to terminate its entire relationship with FCCG. The Commission was explicit

that Iristel was to cease assigning FCCG any 867 NPA numbers that would ultimately be used by AudioNow.

96. Iristel argued that the Commission's silence gave rise to a legitimate expectation for Iristel.<sup>15</sup> Iristel submitted that if the Commission decided as a matter of policy that further regulation of traffic to Iristel's 867 NPA numbers was required (in addition to the directive issued in Telecom Decision 2017-456), then the Commission would not couple such additional regulation with consideration of an AMP. Iristel added that this legitimate expectation was bolstered by the fact that never before has a violation of subsection 27(2) of the Act (on its own) been used as a basis for the consideration of the imposition of an AMP.
97. Iristel further argued that in both Telecom Decisions 2017-456 and 2020-268, aside from the directive to cease providing 867 NPA numbers to AudioNow, the Commission did not provide any directive, instruction, or rules for Iristel to implement with respect to traffic termination in the 867 NPA or how to bring its business into compliance with subsection 27(2) of the Act.

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

98. After the release of Telecom Decision 2017-456, Iristel filed a high-level compliance report briefly outlining Iristel's actions to comply with the decision. In addition, Commission staff engaged in email correspondence concerning a discussion with an Iristel customer about telephone numbers that are still active.<sup>16</sup> Such correspondence did not contain details of Iristel's implementation of Telecom Decision 2017-456 or ask Commission staff for a determination of Iristel's compliance with that decision.
99. The Commission considers that an absence of objections to the report or an absence of objections from its staff to the email correspondence does not amount to endorsing Iristel's method of compliance to Telecom Decision 2017-456 and do not bind the Commission in any way.
100. The Commission considers that it did not err in law by changing its view about Iristel's compliance with Telecom Decision 2017-456 because it did not express a view or endorse Iristel's method of compliance. Therefore, the Commission cannot change its view about one it never held.

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<sup>15</sup> Iristel referred to the doctrine of legitimate expectations as described by the Supreme Court of Canada in *Baker v. Canada*: "Our Court has held that, in Canada, this doctrine is part of the doctrine of fairness or natural justice, and that it does not create substantive rights...the doctrine of legitimate expectations cannot lead to substantive rights outside the procedural domain. This doctrine, as applied in Canada, is based on the principle that the 'circumstances' affecting procedural fairness take into account the promises or regular practices of administrative decision-makers, and that it will generally be unfair for them to act in contravention of representations as to procedure, or to backtrack on substantive promises without according significant procedural rights."

<sup>16</sup> Referred to as direct inward dialing (DIDs) in the email correspondence.

101. Iristel also argued that it had a legitimate expectation that the Commission would not consider the imposition of an AMP. According to the Supreme Court of Canada, this doctrine is based on the principle that the circumstances affecting procedural fairness take into account the promises or regular practices of administrative decision-makers, and that it will generally be unfair for them to act in contravention of representations as to procedure, or to backtrack on substantive promises without according significant procedural rights. However, the Court also established that the doctrine of legitimate expectations is procedural only and does not create substantive rights.<sup>17</sup>
102. Imposing an AMP on Iristel would not be a breach of Iristel's procedural rights. In both Telecom Decisions 2017-456 and 2018-432, the Commission stated that future remedies such as AMPs were available if Iristel did not comply. Imposing an AMP is a substantive measure that the Commission has the authority to implement under the Act<sup>18</sup> to promote compliance with the Act. Because it is a substantive measure and not simply a procedural one, the doctrine of legitimate expectations does not apply.
103. Regarding Iristel's argument that it was incorrect for the Commission to conclude that its interpretation of Telecom Decision 2017-456 was overly narrow, in the Commission's view, a proper interpretation of Telecom Decision 2017-456 should have taken into account the overall purpose of Telecom Decision 2017-456 and the direction for Iristel to cease and not resume regulatory arbitrage activities. Iristel did not appropriately consider that overall purpose. In both Telecom Decisions 2017-456 and 2020-268, the Commission found that Iristel conferred an undue preference on itself in the form of the revenue generated through the use of its 867 NPA numbers in a manner that subjects others to a disadvantage.
104. Although Iristel denied knowledge of ZenoRadio's acquisition of AudioNow, this does not negate Iristel's responsibility for its own compliance. In Telecom Decision 2017-456, Iristel was directed to terminate any agreement that assigns FCCG any 867 NPA numbers that are ultimately used by AudioNow and to not re-enter into provisions of such an agreement with FCCG or any of its affiliates. Iristel failed to take any action regarding service provided to ZenoRadio and other similar companies, which was necessary to ensure compliance with Telecom Decision 2017-456 or avoid a potential situation of non-compliance.
105. Finally, regardless of whether Iristel was aware that AudioNow was acquired by ZenoRadio, in continuing to allow the use of 867 NPA numbers by customers based in distant locations in the same or a similar manner as previously documented in Telecom Decision 2017-456, Iristel once again granted itself an undue advantage resulting in a violation of subsection 27(2) of the Act, as the Commission found in Telecom Decision 2020-268.

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<sup>17</sup> *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817

<sup>18</sup> Pursuant to section 72.001 of the Act, the Commission has the authority to impose an AMP in case of a contravention of a provision of the Act, including a violation of subsection 27(2).

## Conclusion

106. The Commission considers that (i) it did not err in law by changing its view about Iristel's compliance with Telecom Decision 2017-456 because the Commission never endorsed nor expressed a view regarding the company's compliance; (ii) it did not generate legitimate expectations concerning the imposition of an AMP, which is a substantive measure to which the doctrine of legitimate expectations does not apply; and (iii) it was not mistaken when it found in Telecom Decision 2020-268 that Iristel had an overly narrow interpretation of Telecom Decision 2017-456 because Iristel did not consider the overall purpose of the direction set out in Telecom Decision 2017-456.

## Did the Commission fail to consider basic principles that were raised in the original proceeding with respect to 867 NPA numbers?

### Positions of parties

#### Iristel

107. Iristel submitted that the Commission failed to consider basic principles relating to maximum reliance on market forces and an efficient and proportionate regulatory response. Iristel submitted that its arguments fall within the scope of a basic principle found in paragraph 7(f) of the Act and the 2006 Policy Direction<sup>19</sup> because they represent (i) maximum reliance on market forces and (ii) an efficient and proportionate regulatory response to claims of excessive traffic to HCSAs that interferes with the operation of market forces to the minimum extent necessary.
108. Iristel submitted that it is not the responsibility of the carrier to regulate traffic that it terminates on its network, which is originated by end-users of other carriers. Iristel emphasized that its software did not have any input or influence on the NPAs that its customers select. Iristel did not encourage its customers to select 867 NPA numbers.
109. Iristel submitted that despite being provided with traffic statistics, the Commission never commented on the amount of traffic being sent to Iristel's 867 NPA numbers, which is a trifling amount.
110. Finally, Iristel proposed self-help remedies in its response to RCCI in June 2019 and again in its review and vary application, including suggesting that RCCI and TCI can
- build facilities in Canada's North as Iristel has done, which would allow for direct interconnection with Iristel;
  - use Northwestel's services instead of Iristel's;

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<sup>19</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

- enforce RCCI's and TCI's acceptable usage policies on end-users who they believe are making excessive use of one-way inbound calling services;
- apply restrictions or sanctions, such as long distance fees, on end-users who make an excessive number of calls to HCSAs; and
- lower the high amounts that RCCI and TCI charge end-users for access to mobile wireless data, which may incentivize end-users to rely more on Internet protocol-based music streaming and conference services instead of using services that utilize voice minutes.

111. Iristel submitted that at no point in the reasons for Telecom Decision 2017-456 or for Telecom Decision 2020-268 did the Commission address the arguments regarding self-help remedies listed above. Iristel added that this lack of consideration constitutes a failure to consider a basic principle. Iristel also submitted that once arguments regarding self-help remedies are properly considered, the Commission will conclude that Iristel has discharged its burden of establishing that it did not give itself undue preference or subject any other carrier to an undue disadvantage.

#### **TCI**

112. TCI submitted that the basic principles presented by Iristel are not principles that the Commission failed to consider but arguments that Iristel made twice and the Commission rejected each time. TCI added that the Commission made a determination consistent with the perspective that the principle of responsible assignment of numbering resources must prevail.

113. Further, TCI submitted that the self-help remedies that Iristel suggested would either provide no relief to TCI or would unfairly blame the consumer for Iristel's misuse of the numbering resources with which it has been entrusted as a CLEC. Telephone numbers are a public resource, the misuse of which can lead to higher industry costs of providing service (which are ultimately borne by the customer), customer inconvenience and confusion, and arbitrage. TCI submitted that although there is some flexibility in the assignment of numbers, the costs and complications must be borne by the service provider offering the service and the service provider's own customers.

114. Regarding Iristel's suggestion of self-help remedies, TCI argued that

- paying to build or use facilities in the North would simply replace one cost (payment to Iristel) with another (costs to build or lease facilities). TCI argued that IX carriers would still be subjected to an undue and unreasonable disadvantage due to the increased traffic destined for the 867 NPA, and that Iristel would still receive the increased traffic;
- paying Northwestel instead of Iristel would do nothing to relieve the undue disadvantage to which RCCI and TCI are subjected because it would replace a payment to Iristel with a payment to Northwestel;

- enforcing acceptable usage policies on end-users believed to be making excessive use of one-way inbound calling services would lower the value of RCCI's and TCI's wireless services in Canada for the benefit of Iristel and prevent consumers from calling numbers they wish to call. This situation would not be in the public interest; and
- applying restrictions or sanctions, such as long distance fees, on end-users who make an excessive number of calls to HCSAs would have the same harmful implications as enforcing acceptable usage policies. In this case, however, it would affect customers who have legitimate reasons to call the North frequently.

## **RCCI**

115. RCCI submitted that the self-help remedies proposed by Iristel would all result in penalizing legitimate customers of RCCI who have a right to make calls to whatever telephone numbers they want. RCCI argued that Iristel's suggested self-help remedies are not a legitimate way to address an issue that is caused by Iristel's improper behaviour.

## **Iristel's reply**

116. Iristel replied that RCCI and TCI are not willing to address what Iristel views as unacceptable behaviour by RCCI's and TCI's own end-users.

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

117. It is a well-established principle in administrative law that decision-makers must consider central arguments, yet they are not bound to respond to every argument in a proceeding.<sup>20</sup> The Commission considers that the arguments Iristel raised regarding basic principles were not central in Telecom Decision 2020-268 because they would not alter the Commission's ultimate decision, and, therefore, the Commission did not need to consider them explicitly. Notwithstanding, for the sake of completeness, the Commission will address Iristel's arguments regarding basic principles below.

## **Carriers' responsibility to regulate traffic**

118. Iristel submitted that it is not its responsibility to regulate traffic that it terminates on its network that was originated by another carrier's end-user. Nonetheless, it is Iristel's responsibility to comply with the Act by ensuring that use of its 867 NPA numbers does not confer an undue or unreasonable preference on itself or subject IX carriers to an undue or unreasonable disadvantage, as per subsection 27(2) of the Act, regardless of how traffic terminates on Iristel's network.

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<sup>20</sup> *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, para. 128.

### **Amount of traffic to the 867 NPA**

119. In Telecom Decision 2020-268, the Commission stated that it was appropriate and warranted for it to establish a new rate because Iristel's tariffed IX termination rate was no longer just and reasonable, and because the rate was contrary to subsection 27(1) of the Act. The overall amount of traffic was not essential to the finding that the rate was not just and reasonable.

### **Self-help remedies**

120. The Commission considers that self-help remedies were not appropriate solutions to the issues raised in the proceedings for Telecom Decisions 2017-456 and 2020-268 for the following reasons:

- Directing carriers to bear the burden of implementing self-help remedies is not a reasonable or effective solution for addressing Iristel's contravention of subsection 27(2) of the Act. For example, Iristel suggested a self-help remedy where the IX carrier must bear the cost of building facilities to the North to directly interconnect with Iristel. This would not address Iristel's non-compliance and would place an unnecessary burden on the carrier implementing this remedy.
- Iristel proposed that carriers such as RCCI and TCI have a choice to discontinue use of Iristel's services and use the services of IX service providers other than Iristel. The Commission considers that as per paragraph 7(f) of the Act, and under normal market conditions, this could be one self-help remedy available to carriers. However, this is not a reasonable or effective solution to counteract the impact caused by a violation of the Act.
- Relying on RCCI and TCI to implement the proposed self-help remedies to counteract the economic harm resulting from Iristel's non-compliance would not prevent economic harm to carriers other than RCCI and TCI or to RCCI's and TCI's customers who may be required to pay additional fees due to the self-help remedies suggested (e.g. long distance fees).

121. Iristel submitted that if the Commission did find that Iristel was granting itself a preference and subjecting other carriers to a corresponding disadvantage, it would find that Iristel has discharged its burden of establishing that such advantage is not undue. In the Commission's view, Iristel's suggested self-help remedies have not provided justification to discharge Iristel's burden of establishing that such advantage is not undue, as required by subsection 27(4) of the Act.

### **Conclusion**

122. As stated above, the Commission is not bound to respond to every argument in a proceeding. However, in this section, the Commission expresses its consideration of Iristel's submissions regarding basic principles, even if they are not central arguments, thus remedying the alleged failure to consider such submissions in the past.

## **Do Telecom Decision 2020-268 and Telecom Notice of Consultation 2020-269 undermine Canada's telecommunications policy objectives, resulting in an error in law by the Commission?**

### **Positions of parties**

#### **Iristel**

123. Iristel submitted that the Commission committed an error in law by failing to appreciate the actual impact of Telecom Decision 2020-268 and Telecom Notice of Consultation 2020-269 on Canada's telecommunications policy objectives as they are (i) expressed in section 7 of the Act and (ii) required to be interpreted by the 2006 Policy Direction and 2019 Policy Direction<sup>21</sup> (collectively, the Policy Directions).
124. Iristel argued that the Commission is punishing Iristel for having built facilities in the North, and that the Commission relied on heavy-handed regulation for a relatively small amount of 867 NPA traffic.
125. Iristel submitted that the Commission sent a message that it will not hesitate to order parties to use the transmission facilities and routing that the Commission deems are most efficient, regardless of whether it suits an entity's business needs.

#### **RCCI**

126. RCCI submitted that misleading carriers into paying more than necessary to terminate traffic to radio services located in the United States is not a benefit to the Canadian public or the Canadian telecommunications system. RCCI added that this unnecessarily increases the cost of telecommunications services to the benefit of Iristel and its foreign business customers. This cost increase disrupts the Canadian telecommunications market and is contrary to both the policy objectives in the Act and the Policy Directions.

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

#### **Error in law**

127. Section 47 of the Act provides that the Commission shall exercise its powers and perform its duties under the Act with a view to implementing the Canadian telecommunications policy objectives and ensuring that Canadian carriers provide telecommunications services and charge rates in accordance with section 27 and in accordance with any orders made by the Governor in Council.
128. In Telecom Decision 2020-268, the Commission considered the policy objectives as expressed in section 7 of the Act and as interpreted by the Policy Directions. The Commission's considerations of these policy objectives are detailed in Telecom

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<sup>21</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

Decision 2020-268, specifically at paragraph 102 and in the Policy Directions section. These considerations extend to the resulting consultation process launched through Telecom Notice of Consultation 2020-269.

129. Given that the Commission did consider these policy objectives, it could not have committed an error in law by failing to consider these policy objectives in Telecom Decision 2020-268 and, by extension, in Telecom Notice of Consultation 2020-269. At most, it could only have committed an error in mixed law and fact.
130. In Telecom Decision 2020-268, the Commission considered that Iristel's inefficient routing of traffic within the forborne toll interconnection regime was not consistent with the policy objectives set out in paragraphs 7(a), (b), (c), and (h) of the Act.
131. The Commission found that by allowing the use of 867 NPA telephone numbers by customers based in distant locations, Iristel was increasing the connection costs of other carriers and causing economic harm while generating revenue for itself through the resulting IX call termination charges. The Commission considered that its determinations serve to further the achievement of the policy objectives set out in paragraphs 7(a), (b), (c), (f), and (h) of the Act.
132. In the Commission's view, these considerations, which were based on applying the Policy Directions and the policy objectives as expressed in section 7 of the Act to the facts on the record, are sound. Therefore, the Commission did not commit an error in mixed law and fact.

## **Conclusion**

133. With respect to the issues identified by Iristel in its review and vary application, the Commission finds that it did not err in questions of fact, law, or mixed law and fact in either Telecom Decision 2020-268 or Telecom Notice of Consultation 2020-269. Therefore, the Commission **denies** Iristel's application to review, vary, and rescind Telecom Decision 2020-268 and Telecom Notice of Consultation 2020-269, as outlined in the following paragraphs regarding Iristel's requests.

### **Request 1: Rescind the finding that Iristel is engaged in traffic stimulation to 867 NPA numbers**

134. The Commission **denies** this request. Because the Commission did not unequivocally determine that Iristel was engaged in traffic stimulation, the Commission considers that rescinding this finding would be incongruous.
135. As discussed throughout this decision, the Commission ultimately found that Iristel contravened subsection 27(2) of the Act by routing traffic in an inefficient manner, granting itself an advantage and subjecting IX carriers to a corresponding unreasonable disadvantage. In allowing the use of 867 NPA numbers by customers based in distant locations, Iristel was increasing the connection costs of other carriers and causing economic harm while generating revenue for itself through the resulting long distance termination charges.

**Request 2: Rescind the finding that Iristel should no longer be permitted to use Northwestel's tariffed bundled CAT rate as a proxy for Iristel's own tariffed IX termination rate**

136. The Commission **denies** this request. As explained in this decision and in Telecom Decision 2020-268, Northwestel's CAT rate was determined to no longer be just and reasonable because it overcompensated Iristel. Iristel has the opportunity to apply to modify the interim rate set by the Commission in Telecom Decision 2020-268 by filing a tariff notice for an alternative rate, along with a cost study justifying that rate in accordance with the direction given in that decision.

**Request 3: Rescind the finding that Iristel violated subsection 27(2) of the Act**

137. The Commission **denies** this request. The Commission found in Telecom Decision 2020-268 that Iristel granted itself an undue advantage, contrary to subsection 27(2) of the Act.

138. The Commission considers that it did not err in its understanding of the facts or in its application of the law. The Commission is still correct in its finding that Iristel's use of 867 NPA numbers led to Iristel gaining an undue advantage, to the economic disadvantage of other carriers. In addition, Iristel has not provided proof in its review and vary application or justification to discharge its burden of establishing that such advantage is not undue, as required by subsection 27(4) of the Act. Accordingly, the Commission does not see any reason to vary its decision that Iristel contravened subsection 27(2) of the Act.

**Request 4: Review and vary Telecom Notice of Consultation 2020-269 to rescind any consideration of the imposition of an AMP**

139. Given that the Commission did not find any reason to review, vary, or rescind Telecom Decision 2020-268, the Commission will resume the consultation process for the imposition of an AMP, which had been adjourned in Telecom Notice of Consultation 2020-269-1.

**Further direction regarding interim rate and tariff notice**

140. The Commission considers that the stay of the deadline to file a tariff notice with a Phase II cost study granted in its 23 October 2020 letter decision is no longer justified. Therefore, the Commission lifts the stay.

141. Iristel's interim tariffed IX termination rate of \$0.0098125 per minute per end (originating or terminating) will be made final **17 March 2022**, and will take effect retroactively to 23 November 2018 (the date on which the rate of \$0.038 per minute was made interim with the issuance of Telecom Decision 2018-432) if Iristel has not filed, by **17 March 2022**, a tariff notice supported by a cost study that is consistent with the information to be provided in support of wholesale service tariff applications.

## Policy Directions

142. In arriving at these determinations, the Commission has considered the Policy Directions. When relying on regulatory measures, the Commission must specify the policy objective that is advanced by those measures. The Commission considers that Telecom Decision 2020-268 and its findings and determinations in the current decision serve to further the achievement of the policy objectives set out in paragraphs 7(a), (b), (c), (f), and (h) of the Act.<sup>22</sup>
143. The 2006 Policy Direction requires that the Commission rely on market forces to the maximum extent feasible and regulate, where there is still a need to do so, in a manner that interferes with market forces to the minimum extent necessary to meet the policy objectives of the Act.
144. In compliance with subparagraph 1(b)(ii) of the 2006 Policy Direction, the Commission considers that the analysis and determinations set out in Telecom Decision 2020-268 and in this decision would neither deter economically efficient competitive entry into the market nor promote economically inefficient entry.
145. The 2019 Policy Direction provides that when the Commission is exercising its powers and performing its duties under the Act, it should consider how its decisions can promote competition, affordability, consumer interests, and innovation.
146. The Commission considers that the setting of an interim IX termination rate for Iristel, which is upheld by the present decision, is a regulatory measure that advances the policy objectives in compliance with subparagraph 1(a)(iii) of the 2019 Policy Direction. An orderly telecommunications system that allows all calls to be routed and completed in an efficient manner is in the public's and the consumer's interest. The modified rate imposed by the Commission promotes competition, affordability, and consumer interests by reducing the incentive for traffic stimulation activities that benefit one carrier to the detriment of other carriers. The modification to Iristel's IX termination rate lowers an unjustly high rate and helps to ensure that affordable access to high-quality telecommunications services is available in all regions of Canada.
147. In conclusion, the Commission considers that the determinations made in this decision and in Telecom Decision 2020-268 are consistent with the Policy Directions for the reasons set out above.

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<sup>22</sup> The cited policy objectives are 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; 7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; 7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and 7(h) to respond to the economic and social requirements of users of telecommunications services.

Secretary General

## Related documents

- *Call for comments – Imposition of Administrative Monetary Penalties on Iristel Inc. and TELUS Communications Inc. in relation to the routing and termination of phone calls to the 867 area code in Northern Canada*, Telecom Notice of Consultation CRTC 2020-269, 14 August 2020; as amended by Telecom Notices of Consultation CRTC 2020-269-1, 11 September 2020; and 2020-269-2, 1 December 2021
- *Iris Technologies Inc. and TELUS Communications Inc. – Applications for final relief regarding the termination of traffic to certain 867 Numbering Plan Area telephone numbers*, Telecom Decision CRTC 2020-268, 14 August 2020
- *Iris Technologies Inc. and TELUS Communications Inc. – Applications for interim relief regarding the termination of traffic to certain 867 Numbering Plan Area telephone numbers*, Telecom Decision CRTC 2018-432, 23 November 2018
- *Bell Canada and Northwestel Inc. – Request for implementation of a traffic stimulation regulatory framework*, Telecom Decision CRTC 2017-457, 20 December 2017
- *Rogers Communications Canada Inc. – Allegation of traffic stimulation by Iris Technologies Inc. and Iristel Inc.*, Telecom Decision CRTC 2017-456, 20 December 2017
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *Regulatory regime for the provision of international telecommunications services*, Telecom Decision CRTC 98-17, 1 October 1998
- *Forbearance - Regulation of toll services provided by incumbent telephone companies*, Telecom Decision CRTC 97-19, 18 December 1997; as amended by Telecom Decision CRTC 97-19-1, 9 March 1998
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997
- *Forbearance – Services provided by non-dominant Canadian carriers*, Telecom Decision CRTC 95-19, 8 September 1995