



## Telecom Decision CRTC 2007-6

Ottawa, 2 February 2007

### **Rogers Wireless Partnership – Part VII application with respect to the applicability of retail Digital Network Access link charges to Competitor Digital Network facilities**

Reference: 8622-R11-200515505 (*verified by S. Perron – 30.01.07*)

*In this Decision, the Commission determines that the incumbent local exchange carriers (ILECs) have been charging retail Digital Network Access link rates in various situations where Competitor Digital Network (CDN) service components are connected to other CDN service components or non-CDN services, otherwise than in accordance with their tariffs.*

*The Commission directs the ILECs to repay affected competitors the charges improperly billed, consistent with their respective Terms of Service.*

#### **The application**

1. The Commission received an application by Rogers Wireless Partnership (Rogers Wireless) dated 23 December 2005, filed pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure*, requesting clarification on the applicability of retail Digital Network Access (DNA) link charges in conjunction with the Competitor Digital Network (CDN) services of Bell Aliant Regional Communications, Limited Partnership (Bell Aliant),<sup>1</sup> Bell Canada, MTS Allstream Inc. (MTS Allstream), Saskatchewan Telecommunications (SaskTel), and TELUS Communications Company (TCC)<sup>2</sup> (collectively, the incumbent local exchange carriers (ILECs)).
2. Specifically, Rogers Wireless requested that the Commission issue a determination clarifying that, pursuant to *Competitor Digital Network Services*, Telecom Decision CRTC 2005-6, 3 February 2005, as amended by Telecom Decision CRTC 2005-6-1, 28 April 2006 (Decision 2005-6), the ILECs do not have the right to apply retail DNA link charges in lieu of other connecting link charges on CDN-eligible intra-exchange, metropolitan interexchange (IX), and channelization facilities, and that the ILECs' CDN tariffs should be amended accordingly. Further, Rogers Wireless requested that the Commission order Bell Aliant, Bell Canada, MTS Allstream, SaskTel, and TCC to account for and rebate all retail DNA link charges levied on CDN facilities leased by Rogers Wireless and any other similarly affected competitors.

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<sup>1</sup> On 7 July 2006, Bell Canada's regional wireline telecommunications operations in Ontario and Quebec were combined with, among other things, the wireline telecommunications operations of Aliant Telecom Inc. (Aliant Telecom), Société en commandite Télébec, and NorthernTel, Limited Partnership to form Bell Aliant Regional Communications, Limited Partnership (Bell Aliant).

<sup>2</sup> Effective 1 March 2006, TCI (or TELUS Communications Inc.) assigned and transferred all of its network assets and substantially all of its other assets and liabilities, including substantially all of its service contracts, to TELUS Communications Company.

3. On 10 January 2006, Rogers Wireless, on behalf of Rogers Telecom Inc. (Rogers Telecom), filed additional information in support of its application.

### **Process**

4. On 27 January 2006, the Commission received comments in support of Rogers Wireless' application from Primus Telecommunications Canada Inc. (Primus). The Commission also received comments from the ILECs, dated 3 February 2006, with regard to Rogers Wireless' application.<sup>3</sup>
5. Rogers Wireless filed reply comments on 13 February 2006.<sup>4</sup>
6. On 22 February 2006, the Commission issued an initial set of interrogatories to the ILECs. Responses to these interrogatories were filed by Bell Aliant, Bell Canada, MTS Allstream, and SaskTel on 24 March 2006, and by TCC on 31 March 2006.
7. On 19 April 2006, the Commission issued supplementary interrogatories to Bell Aliant, Bell Canada, and SaskTel. Responses to these interrogatories were filed on 1 May 2006.
8. On 2 June 2006, the Commission issued additional interrogatories to the ILECs and further procedural directives to allow parties to comment on the ILECs' interrogatory responses by 7 July 2006 and the ILECs to reply by 14 July 2006. Responses to these interrogatories were filed on 23 June 2006. Comments on the ILECs' interrogatory responses were received from Primus, Rogers Wireless,<sup>5</sup> and TCC on 7 July 2006. Reply comments were received from Bell Aliant, Bell Canada, SaskTel, and TCC on 14 July 2006.

### **Background**

9. In *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002, as amended by Telecom Decision CRTC 2002-34-1, 15 July 2002 (Decision 2002-34), the Commission noted that the ILECs' DNA tariffs included four elements: an access, a link, an intra-exchange channel, and a channelizing feature. In that Decision, the Commission concluded that there was a need for the ILECs to develop a CDN service and that this service should be classified as a Category I competitor service. In that Decision, the Commission also determined that the access and link components should be included in the CDN service. The Commission directed, among other things, that the CDN service was to be available only to competitors to provide access between an end-customer's premises and a competitor's switch within the same ILEC serving wire centre area or to the ILEC serving wire centre, in which case it must terminate on a competitor's co-located equipment, and that the link component was to be available solely for use in conjunction with the access component of the CDN service to connect to a competitor's equipment. The Commission directed each ILEC to issue an interim Competitor DNA tariff and initiated a process to examine the final scope, rates, terms, and conditions applicable to the CDN service.

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<sup>3</sup> Bell Canada also provided comments on Primus' 27 January 2006 submission. MTS Allstream provided its comments in confidence, with an abridged version provided for the public record.

<sup>4</sup> These comments were filed on behalf of Fido Solutions Inc. and Rogers Telecom.

<sup>5</sup> See footnote 4.

10. In Decision 2005-6, the Commission rendered its determinations in the proceeding initiated by *Competitive Digital Network Access service proceeding*, Telecom Public Notice CRTC 2002-4, 9 August 2002 (Public Notice 2002-4). In Decision 2005-6, the Commission determined that, among other things, the ILECs were to provide to competitors the following services and facilities as part of CDN services: DNA access, DNA intra-exchange, central office (CO) channelization, non-forborne metropolitan IX, copper and optical co-location links, and other CO connecting links.
11. In Decision 2005-6, the Commission noted that copper-based CO connecting links might be required in certain service configurations involving competitor requests for links between CDN intra-exchange, metropolitan IX, and channelization services. The Commission directed each ILEC to file for approval rates for this copper-based CO connecting link service.
12. On 18 March 2005, MTS Allstream submitted that the final rates for CDN services established in Decision 2005-6 already included the link functionality and that, accordingly, there was no requirement for MTS Allstream to submit new rates for an additional connecting link service.
13. On 21 March 2005, Bell Aliant submitted that it had not identified any requirement for a new CO connecting link service, and that it was not filing new rates, terms, or conditions.
14. On 21 March 2005, Bell Canada also submitted that it had not identified any requirement for a new CO connecting link service, and that CO arrangements or links required to connect CDN service components with each other or with other Bell Canada services, as defined in Bell Canada's National Services Tariff (NST) item 300.2 for non-CDN services, were already included in the CDN service components. Further, Bell Canada submitted that the link services included in its Access Services Tariff (AST) items 40 and 110 would continue to apply as appropriate.
15. On 21 March 2005, SaskTel indicated that it had determined that there was no anticipated demand and no significant additional link costs, as identified by the Commission, specific to these arrangements. As such, SaskTel had not filed a tariff for approval.
16. On 21 March 2005, TCC filed Tariff Notice 168, pursuant to the Commission's directive in Decision 2005-6, proposing the introduction of a copper-based CO connecting link. In *Competitor Digital Network Services – Other Central Office Connecting Link (copper-based)*, Telecom Order CRTC 2005-323, 16 September 2005 (Order 2005-323), the Commission approved on an interim basis a service order charge of \$180.55 per connecting link, which reflected the costs associated with the link and a 15 percent mark-up.

### **Rogers Wireless' application**

17. Rogers Wireless noted that, during the migration of eligible leased facilities from the ILECs' retail DNA services to CDN services, it had discovered that extra retail DNA link charges had appeared on invoices received from several ILECs with respect to the leasing of CDN intra-exchange, metropolitan IX, and channelization facilities. Rogers Wireless submitted that it appeared that Bell Canada was categorizing these retail DNA links as "in-house DS-1

charges" and that Bell Canada was of the view that these charges were not captured by Decision 2005-6.

18. Rogers Wireless submitted that Bell Canada, MTS Allstream, SaskTel, and TCC had applied some credits for these charges, but that the credits had been applied inconsistently and, in many cases, were not retroactive to the date of Decision 2005-6, i.e., 3 February 2005.
19. Rogers Wireless argued that, by applying retail DNA link charges to CDN-eligible services, the ILECs continued to confer an undue preference upon themselves in contravention of the Commission's determinations in Decision 2005-6.
20. Rogers Wireless also argued that TCC was the only ILEC to file a tariff for copper-based CO connecting links pursuant to the Commission's determinations in Decision 2005-6, and that Bell Aliant, Bell Canada, MTS Allstream, and SaskTel each explained that existing cost studies already included these extra link charges and thus that the copper-based CO connecting link service was not required.

### **Parties' initial comments**

21. Primus submitted that the Commission should grant the relief requested by Rogers Wireless and also clarify whether Bell Canada was entitled to charge competitors for the links not captured by Rogers Wireless' application.
22. Primus submitted that, for most of the 12 months prior to the filing of its initial submission, Bell Canada had charged Primus for the in-house DS-1s referred to by Rogers Wireless. As such, Primus was of the view that Bell Canada had over-billed competitors for functionality that was accounted for in other tariffed charges.
23. Primus also submitted that it had routinely been charged by Bell Canada for in-house DS-1s in completely different circumstances than those described by Rogers Wireless. Primus noted that in many cases it used channelized DS-3 CDN access circuits to connect a Primus point of presence and a Bell Canada CO where Primus was not co-located. Primus submitted that, pursuant to Decision 2005-6, the link functionality cost for such DS-3 circuits was recovered through the monthly access charges associated with those circuits. Primus further submitted that the DS-3 was then de-multiplexed into DS-1 circuits that may, for example, be connected to an Access Tandem or an end-office at that CO location, and that Bell Canada charged Primus the in-house DS-1 charge for each DS-1 connection between the point at which the DS-3 terminated in the CO and either the Access Tandem or the end-office.
24. MTS Allstream supported the relief requested by Rogers Wireless. MTS Allstream submitted that its experience was similar to that of Rogers Wireless, as it continued to receive invoices from the various ILECs that included retail DNA link charges associated with CDN service arrangements.
25. MTS Allstream acknowledged that, in some cases, it had inadvertently charged competitors for retail DNA links in certain situations similar to those raised by Rogers Wireless, but that as

soon as this matter was brought to its attention, MTS Allstream removed these charges from competitor invoices and started to process rebates for these charges back to 3 February 2005.

26. MTS Allstream submitted that there was no ambiguity in Decision 2005-6 with respect to the treatment of links to connect CDN service components with each other, and that the Commission classified all "other CO connecting links" as Category I competitor services since the ILEC was the only carrier capable of providing these links. MTS Allstream argued that there were no circumstances under which an ILEC should be charging retail DNA link rates to interconnect CDN service components, or to interconnect any other ILEC service or non-ILEC services and facilities, where the ILEC was the only supplier of that link service. MTS Allstream submitted that the DNA link service was essentially a rating element and was never designed to recover specific cost components.
27. MTS Allstream submitted that, in Decision 2005-6, the Commission (a) determined that the costs for the link functionality formed part of the associated CDN access component, and (b) recognized that other types of links referred to as "other CO connecting links" may be required between the intra-exchange, metropolitan IX, and channelization components of the CDN service.
28. MTS Allstream submitted that Bell Aliant, Bell Canada, MTS Allstream, and SaskTel had advised the Commission that a tariff for copper-based CO connecting links was not required. In particular, MTS Allstream had taken the position that the costs associated with the copper-based CO connecting link service were already included within the cost studies for each CDN component and that, therefore, there was no need to file a separate tariff for the service.
29. MTS Allstream submitted that its position was consistent with the information it had provided to the Commission during the course of the proceeding leading to Decision 2005-6, and that Bell Aliant, Bell Canada, and SaskTel had provided similar information to the Commission.
30. Bell Aliant submitted that the application of the retail DNA link charge for in-house DS-1 circuits was correct and in compliance with Bell Aliant's retail and wholesale tariffs. Bell Aliant submitted that the in-house DS-1 circuits were not contemplated in the proceeding leading to Decision 2005-6, and that the continuing application of the retail DNA link charge remained appropriate.
31. Bell Aliant submitted that any directive to rebate charges for these circuits would be contrary to its approved tariffs, and would be inappropriate given the scope of Decision 2005-6. Bell Aliant further submitted that, if the Commission found that a new CDN rate element to replace the legacy in-house DS-1 service was required, the rates for this new rate element could not be retroactive.
32. Bell Canada submitted that, pursuant to *Interim Competitor Digital Network Access service*, Telecom Decision CRTC 2002-78, 23 December 2002, and Decision 2005-6, competitors could use CDN service components in conjunction with other ILEC services, and submitted that, as a result, there were some circumstances in which it would be appropriate for DNA link

charges to apply when competitors leased CDN service components.

33. Bell Canada submitted that competitors would continue to be billed for retail DNA links in cases where the competitor was co-located in a wire centre and requested a channelization service. Bell Canada submitted that, consistent with paragraph 160 of Decision 2005-6, a competitor requesting channelization service was only eligible for CDN rates for this service if the competitor was not co-located in that particular wire centre. Bell Canada further submitted that its retail DNA tariff stated that use of the channelizing feature would result in the link charge also being applicable and that, therefore, in the case where a competitor was leasing channelizing features at retail DNA rates, it was appropriate to apply the retail DNA link charge.
34. Bell Canada indicated that CDN customers would continue to be billed retail DNA link charges for what the company referred to as "in-house links." Bell Canada submitted that in-house links were physical facilities that connected competitor services to other ILEC services, or connected one competitor's service to another competitor's service. Bell Canada further submitted that these facilities were not part of the CDN service components identified in Decision 2005-6.
35. With regard to the Commission's directive in Decision 2005-6 that the ILECs were to file rates for copper-based CO connecting links, Bell Canada submitted that the definitions of its CDN intra-exchange, metropolitan IX, and channelization services were such that no new links were required. Bell Canada argued that the in-house links it described were not links between CDN intra-exchange, metropolitan IX, or channelization services, and that, accordingly, it was appropriate that the company continue to apply NST item 300.2 for such links.
36. SaskTel submitted that the Commission's directive in Decision 2005-6 was not intended to provide an opportunity for the ILECs to identify the link arrangements required to connect CDN service components to retail or competitor services that were not CDN service components.
37. SaskTel indicated that it applied retail DNA link charges to provide interconnecting carrier to interconnecting carrier (IC-to-IC) cross-connection links, links associated with IX carrier interconnection circuits, and links associated with wireless service provider trunk-side and line-side access circuits. SaskTel submitted it was both necessary and appropriate to apply the retail DNA link charges in these circumstances because the rates for the services to which the interconnection circuits connected did not include any costs associated with the equipment and activities needed to connect the interconnection circuits to SaskTel's public switched telephone network.
38. TCC noted that the Commission established rates for most, but not all, CDN service elements in Decision 2005-6 and, in particular, the Commission did not establish a rate for other CO connecting link services.
39. TCC argued that although no CDN tariff was in effect for its copper-based CO connecting link service on 3 February 2005, there was still a demand for the service from competitors. TCC

submitted that the creation of the CDN competitor service was the re-rating of an existing retail service that had been in place and used by Rogers Wireless for many years (retail DNA link service), and that the underlying functionality (i.e. cross-connecting circuit elements to create a complete circuit) had not changed.

40. TCC submitted that it had no legal authority to charge anything other than the existing Commission-approved retail DNA link rate for copper-based CO connecting link service functionality provided to competitors prior to 16 September 2005, the effective date of the interim rate approved in Order 2005-323.

### **Rogers Wireless' reply comments**

41. Rogers Wireless submitted that, based on parties' comments, there were two instances in which the ILECs levied retail DNA link charges on CDN services: (1) where links were requested between CDN intra-exchange, metropolitan IX, and channelization services; and (2) where CDN service components were connected to what Bell Canada and SaskTel referred to as "other ILEC services".
42. Rogers Wireless argued that these charges were unlawful as the ILECs had not filed tariffs for them, as required by Decision 2005-6, the charges were priced at retail rates even though they were determined to be Category I competitor services by the Commission in Decision 2005-6, and the charges for what were described as in-house DS-1 services were not levied pursuant to any Commission-approved tariff.
43. Rogers Wireless argued that no retail DNA link charges should apply on CDN-eligible facilities, and that any such links, if determined by the Commission to be applicable, must be classified as Category I competitor services.
44. In response to Bell Aliant's statement that it charged interconnecting carriers for in-house DS-1s under its tariffs, Rogers Wireless argued that nowhere in its tariffs does Bell Aliant refer to charges for in-house DS-1s.
45. In response to Bell Canada's statements related to the application of retail DNA link charges and the provisioning of in-house links, Rogers Wireless submitted that Bell Canada was attempting to portray in-house links as different from retail DNA links in an effort to circumvent Decision 2005-6, and that the charges were unlawful because in-house links were not tariffed services.

### **Commission's interrogatories**

46. As noted above, the Commission addressed a number of interrogatories to the ILECs. In these interrogatories, the ILECs were asked, among other things, to:
  - identify the scenarios and services involved where they apply link service rates for CDN service components that connect to either non-CDN or other

CDN service components;

- determine precise tariff references that define and specify the rates of their link services currently being applied in conjunction with CDN service components;
- provide their views (with the exception of TCC) as to whether a link service was required that would be used to connect CDN service components to other competitor services, whether this new service should be a Category I competitor service, and the rates that would be proposed; and
- provide their views as to whether any additional link services were required to connect CDN service components or other competitor services to retail services, and if so, whether these new services should be competitor services.

47. A brief summary of the ILECs' responses is provided below.

#### **Tariffs**

48. Bell Aliant submitted that it applied charges for interconnecting circuits pursuant to Aliant Telecom Inc.'s (Aliant Telecom) Carrier Access Tariff item 608.6(a)(vi), which states: "The facility over which interconnecting circuits with trunk-side access and CCS7 [common channel signalling system 7] links are provided is furnished at the rates and charges specified in Item 302 of the National Services Tariff CRTC 7400." Bell Aliant submitted that the charge associated with this element was a DS-1 link charge, pursuant to NST item 302.4(a), which referenced NST item 301.3 with the relevant charges showing in item 301.3(b)2.
49. Bell Aliant submitted that the term "in-house DS-1" was not defined under its tariffs, but rather was a term that it used to refer to a specific subset of interconnecting circuits that connect its CO switch to a customer's facility, without leaving the CO.
50. Bell Canada submitted that in-house links were subject to the terms and conditions of its retail DNA link charge as specified in its NST item 300.2.
51. Bell Canada noted that NST item 300.2 defined a link in the following manner:

*'Link'* provides the central office equipment required to connect:

- a. an access to an intra-exchange channel,
- b. an access to a network service at the rate centre or wire centre,<sup>6</sup>

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<sup>6</sup> The Commission notes that MTS Allstream's, SaskTel's, and TCC's definitions do not include the term "wire centre."

- c. an intra-exchange channel to a network service at the rate centre, and
  - d. an access to an access.
52. Bell Canada submitted that the link described in its NST item 300.2 referred to a facility that began and ended within a CO and was sometimes referred to as an in-house link. Bell Canada indicated that the rate for a link was specified in its NST item 301.2(b).
53. Bell Canada submitted that most of the configurations in which links were charged under NST item 300 met the explicit definitions of links contained in that tariff. Bell Canada conceded, however, that due to an oversight, it also applied link charges with regard to two configurations not specifically described in its tariffs: (1) when connecting a retail service to a CDN co-location link; and (2) when connecting a retail service to a network service at a wire centre that was not a rate centre. Bell Canada indicated that it would propose to amend its CDN tariff to clarify that such configurations were assessed the link charge as described in NST item 300.
54. SaskTel noted that its Competitor Access Tariff item 650.28.1 makes reference to three other SaskTel tariff items that offer link services: item 610.20 related to link arrangements for interconnecting Canadian carriers; item 610.16 related to co-location arrangements for interconnecting Canadian carriers; and item 610.06 related to interconnecting circuits with trunk-side access. SaskTel submitted that each of these tariffs contained descriptions regarding information on the application of the associated link charge.
55. SaskTel noted that its Competitor Access Tariff item 650.28.4 states: "The Competitor shall pay to SaskTel the following rates and charges for CDN services. Such rates and charges are in addition to any other rates and charges that may be applicable."
56. SaskTel opined that the precise tariff reference(s) that defined and specified the application of the rates of its link services, when used in conjunction with CDN service components, was (were) made within its Competitor Access Tariff item 650.28.
57. TCC referenced former TCI General Tariff (GT) item 500 (Alberta only) and TCBC GT item 447 (B.C. only) with regard to the application of its link charges.

**New link service to connect CDN or other competitor services to other competitor services**

58. MTS Allstream submitted that there was no requirement for a new competitor link service to connect CDN service components to other competitor services. MTS Allstream argued that link functionality associated with competitor services was integral to the service requiring such functionality, to the extent that the ILECs were the only suppliers of that functionality.
59. MTS Allstream submitted that the costs associated with link functionality for each component of CDN service were already explicitly included in the cost studies for CDN services for all ILECs, except TCC.

60. Bell Aliant, Bell Canada, and SaskTel each indicated that costs incurred to connect a CDN Category I competitor service to another Category I competitor service could be recovered through a new CDN link element at rates based on Phase II costs plus a 15 percent mark-up.

### **Parties' comments on the ILECs' interrogatory responses**

61. TCC submitted that there should be consistency across all ILECs with respect to the application of link charges, i.e., for any two services being connected by a link, all ILECs must apply either the retail link charge or a CDN link charge, or apply no link charge.
62. TCC submitted that there were two particular inconsistencies with regard to the other ILECs' interrogatory responses:
- Bell Aliant referred to Bell Canada's cost study for CDN links as being representative of its own costs. Bell Aliant noted that the Bell Canada cost study indicated that rates were based on the inclusion of multiplexer costs, among other things. However, in its 1 May 2006 interrogatory response, Bell Aliant depicted the link as being comprised only of cable, while the cross-connection panels were depicted as being included in the services being connected.
  - SaskTel's 1 May 2006 interrogatory response depicted a situation where two links were connected in tandem for two identified scenarios. SaskTel did not explain why such a scenario existed, or why this configuration was not considered to be a single link with additional components. TCC submitted that the requirement for two links to connect two services within the same CO was not supported by the SaskTel tariff, nor was it generally accepted in the industry.
63. TCC submitted that the Commission was clear in Decision 2005-6 when it directed the ILECs to include the cost of a link in the cost of a CDN access. Therefore, TCC argued that there could be no instances where a link charge would be applied by any ILEC for the connection of a CDN access to any other service, whether that other service was a retail service, a Category II competitor service, or a Category I competitor service.
64. TCC further submitted that Bell Aliant, Bell Canada, and SaskTel had asserted that link costs had been included in the rates of other CDN service components, but unlike the case with CDN access, the Commission had not, in Decision 2005-6, directed that link costs be included in these services, and that the ILECs were given an opportunity to file proposed tariffs with respect to a separate copper-based CDN link service.
65. TCC submitted that it was uncertain as to what extent link costs actually had been included in the costs of the other CDN service components, but that the information provided by Bell Aliant, Bell Canada, and SaskTel in this proceeding suggested that some costs had not been included. TCC indicated that it had no objections to the other ILECs' recovery of link costs through new CDN link services, or through the services being connected by the links, subject to: (1) there being no double recovery of these costs through charges for the services

being connected and charges for the links, and (2) the condition that the charges not be applied when either of the services being connected was a CDN access facility.

66. Primus noted that the Commission granted interim approval to a one-time service order charge for TCC of \$180.55 for its copper-based CO connecting link service, instead of the monthly recurring charge proposed by the company. Primus submitted that the Commission should adopt a similar approach with respect to the other ILECs, with the rate not being significantly different from the rate approved for TCC.
67. Rogers Wireless submitted that if the Commission considered that charges were warranted for the links at issue in its application, at most they should be calculated at cost plus a 15 percent mark-up, and that this rating principle should be extended to all instances in which a competitor orders a link in the wire centre for connection to a CDN service or a competitor service.
68. Rogers Wireless submitted that the underlying issue in its application remained quite simple: the majority of the ILECs are charging competitors retail DNA link rates for CDN services that connect with other CDN services or other competitor services.
69. Rogers Wireless noted that the ILECs identified network scenarios in respect of which additional DNA rates were applied. Rogers Wireless submitted that these network scenarios were based on billing concepts rather than on actual network topology.
70. Rogers Wireless submitted that a new CDN link service, if necessary, must not be limited to Category I competitor services and that competitors should have access to such a CDN link service no matter what types of services the CDN link interconnected.
71. Rogers Wireless submitted that, given the costing similarities, CDN link rates for Bell Aliant, Bell Canada, and SaskTel should be similar to the rate approved for TCC's copper-based CO connecting link.

### **ILECs' reply comments**

72. Bell Canada submitted that the link functionality included in the CDN access service component was fundamentally different from the functionality of the links at issue in this proceeding. Bell Canada asserted that the link functionality included in the CDN access service was essentially a cross-connection to connect to another CDN access, a CDN intra-exchange channel, a CDN metropolitan IX channel, or a CDN channelizing feature. Bell Canada argued that the links at issue in this proceeding connected to other ILEC services or connected a competitor service to another competitor service. The company further submitted that these links typically required the use of cross-connection panels, CO frame space, cables, multiplex equipment, and circuit design, and that these costs were not included in the link costs filed in the proceeding that led to Decision 2005-6 and were not reflected in the company's CDN access service rates.

73. Bell Canada submitted that the costs incurred to connect a CDN Category I competitor service component to a Category I competitor service could be recovered through a separate CDN service component priced in accordance with the Commission's Category I competitor service pricing rules.
74. Bell Canada further submitted that whenever a CDN service element connected to a Category II competitor service or to a retail service, it would be appropriate to continue charging the retail DNA link charge, as the links would be used to connect a CDN component to a non-essential service, which by definition was subject to alternative sources of supply.
75. Bell Canada submitted that, should the Commission determine that it would be appropriate to implement a new CDN link tariff to replace situations where retail DNA link rates were currently being applied, such a tariff could only come into effect the date of a new Commission decision since the retail DNA link rates were currently approved on a final basis.
76. SaskTel submitted that links between any two Category I competitor services satisfied all the criteria established by the Commission for setting rates for these links based on Phase II costs plus a 15 percent mark-up, and that any adjustments to its rates should only apply to incremental demand occurring after 3 February 2005.
77. TCC submitted that if the services connected by a link could be offered by another service provider, as is the case with Category II competitor services and retail services, then the link itself could and would also be provided by the other service provider. Therefore, a conclusion that all links should be offered at Category I competitor service rates would be invalid.

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

78. The Commission notes that the ILECs, except for MTS Allstream and, to a certain extent, TCC, have taken the position that it is appropriate to charge retail DNA link rates where CDN service components are connected with other largely non-CDN services because: (1) such links are not included within the scope of the CDN service established on a final basis in Decision 2005-6; (2) the costs applicable to the links are not captured in the various CDN service components; and (3) the companies' retail tariffs contemplate the application of such charges. Rogers Wireless, MTS Allstream, and Primus, on the other hand, take the position that it is inconsistent with the rationale underpinning the establishment of the CDN service that competitors should be charged retail rates to connect CDN services to other services, regardless of whether the other services are competitor services or not.
79. The Commission considers that the issues in this proceeding can be narrowed down to whether or not the ILECs are compliant with their tariffs when they bill retail DNA link rates to competitors where CDN service components leased by competitors are connected either to other CDN service components or to non-CDN service components, such as other competitor services or ILEC retail services.

80. The Commission notes that the term "link" is currently defined in the ILECs' tariffs,<sup>7</sup> as set out in paragraph 54 above.
81. In response to the Commission's interrogatories, Bell Aliant, Bell Canada, SaskTel, and TCC each identified various scenarios involving the connection of CDN services to other services for which retail DNA link rates are billed. The Commission considers, however, that many of the scenarios identified do not conform to the tariff definition set out above. The Commission also notes that MTS Allstream indicated that it had charged competitors for retail DNA links in certain situations similar to those raised in Rogers Wireless' application, but that it had removed the charges from competitor invoices and had started to process rebates for the charges back to 3 February 2005.
82. The Commission notes that, in Decision 2005-6, it determined that the ILECs were to provide competitors the following services and facilities as part of CDN services:
- DNA access facilities;
  - DNA intra-exchange facilities;
  - Metropolitan IX facilities within the extended area service regions of certain specified core metropolitan exchanges;
  - Channelization facilities at a relevant wire centre for competitors that are not co-located at that wire centre;
  - Copper co-location link service; and
  - Optical co-location link service.
83. In Decision 2005-6, the Commission noted that separate copper-based CO connecting links may be required to connect certain CDN services (i.e. intra-exchange, metropolitan IX, and channelization) and directed each ILEC to file for approval proposed rates, supported by a costing study.
84. The Commission notes that Bell Aliant, Bell Canada, MTS Allstream, and SaskTel each indicated that there was no requirement for a copper-based CO connecting link because the costs of such functionality were already reflected in the rates for the CDN services in question. TCC was the only ILEC to file a proposed tariff for the introduction of a new copper-based CO connecting link, which the Commission subsequently approved on an interim basis in Order 2005-323.
85. The Commission notes that each of the ILECs' CDN tariffs includes wording specifically related to links required to connect CDN services to other services.
86. Bell Aliant's tariff for its former Aliant Telecom operating territory<sup>8</sup> states that CO

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<sup>7</sup> Bell Aliant and Bell Canada NST item 300.2, MTS Allstream Supplementary Tariff – Special Services and Facilities item 6000.2, SaskTel GT – Basic Services item 82, former TCI GT item 500.2 (Alberta only), and TCBC GT item 434.B (B.C. only).

<sup>8</sup> Aliant Telecom GT item 612.

arrangements or links required to connect the CDN services with each other or with other company services are included within the CDN services.

87. Bell Aliant's tariff for its operating territory in Ontario and Quebec<sup>9</sup> states that CO arrangements or links required to connect the CDN services with each other or with other company services, as defined in NST item 300.2 for non-CDN services, are included within the above services, and that link services included in AST items 40 and 110 apply as appropriate.
88. Bell Canada's tariff<sup>10</sup> states that CO arrangements or links required to connect the CDN services with each other or with other Bell Canada services, as defined in NST item 300.2 for non-CDN services, are included within the above services, and that link services included in AST items 40 and 110 apply as appropriate.
89. The Commission notes that, with reference to Bell Aliant's and Bell Canada's tariffs, NST item 300.2 provides definitions for Bell Aliant's and Bell Canada's digital network services, and in particular the definition of a link as described above. The Commission also notes that the link services in Bell Aliant's and Bell Canada's AST item 40 relate to CCS7 links, which are not at issue in this proceeding, but that the AST item 110 relates to IC-to-IC cross-connection links that are at issue in this proceeding.
90. The Commission notes that neither Bell Aliant's nor Bell Canada's tariffs refer to "in-house DS-1 circuits" and/or "in-house links," which are the terms used by Bell Aliant and by Bell Canada, respectively, to refer to the links that are the subject of Rogers Wireless' application.
91. MTS Allstream's tariff<sup>11</sup> states that CO arrangements or links required to connect the CDN services with each other or with other MTS Allstream services are included within the CDN services. The Commission notes that MTS Allstream's tariff<sup>12</sup> identifies that retail DNA link charges are applicable for IC-to-IC cross-connection links.
92. SaskTel's tariff<sup>13</sup> states that CO arrangements or links required to connect the CDN services with each other or with other SaskTel services are included within the CDN services. The tariff also states that link services included in SaskTel's Competitor Access Tariff item on co-location arrangements for interconnecting Canadian carriers, and the company's item on interconnecting circuits with trunk-side access, apply as appropriate.
93. The Commission notes that SaskTel's reference to its Competitor Access Tariff items on co-location arrangements for interconnecting Canadian carriers and interconnecting circuits with trunk-side access relates to CCS7 links, which, as noted above, are not at issue in this proceeding, and to IC-to-IC cross-connection links, which, again as noted above, are at issue

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<sup>9</sup> Bell Aliant AST item 130.1.

<sup>10</sup> Bell Canada AST item 130.1.

<sup>11</sup> MTS Allstream Supplementary Tariff – Access Services for Interconnection with Carriers and Other Service Providers item 125.1.B.

<sup>12</sup> MTS Allstream Supplementary Tariff – Access Services for Interconnection with Carriers and Other Service Providers item 110.4.E(7).

<sup>13</sup> SaskTel Competitor Access Tariff item 650.28.1.

in this proceeding.

94. TCC's tariff<sup>14</sup> states that a CDN copper-based other CO connecting link provides a copper-based link to connect CDN intra-exchange channel, CDN metropolitan IX channel, and CDN CO channelization services, as needed.
95. The Commission notes that, unlike the tariffs of the other ILECs, TCC's tariff does not include provisions for IC-to-IC cross-connection links, for which the company has indicated that it has been charging the retail DNA link rate.
96. The Commission considers that the language in Bell Aliant's, Bell Canada's, MTS Allstream's, and SaskTel's CDN tariffs is very broad and clearly provides that the links at issue in this proceeding are included in the relevant CDN service components, regardless of whether the links connect the CDN facilities to other CDN facilities or to non-CDN services provided by the company in question. Accordingly, the Commission considers that, with the exception of IC-to-IC cross-connection links, the charging of retail DNA link tariff rates by Bell Aliant, Bell Canada, MTS Allstream, and SaskTel is inconsistent with their CDN tariffs, and, hence, improper.
97. The Commission notes that, unlike the tariffs of the other ILECs, TCC's CDN tariff does not define the CDN service to include the links at issue in this proceeding, except for its CDN copper-based other CO connecting links between CDN intra-exchange channel, metropolitan IX channel, and channelization services.<sup>15</sup> However, based on the company's responses to interrogatories, the Commission considers that TCC has been charging the retail DNA link rate in circumstances not provided for in a TCC tariff. With regard to the numerous situations identified by TCC where it has been billing competitors the retail link charge to connect CDN services to other services, the Commission finds that the only situation that is consistent with TCC's retail DNA tariff definition is the connection of a CDN intra-exchange service to a TCC switch providing a network service, if such a connection were made at a rate centre. For the other situations identified by TCC, the Commission considers that TCC has also been billing retail DNA link tariff rates otherwise than in accordance with the applicable tariff and, hence, improperly.
98. In the circumstances, the Commission finds that the ILECs should repay affected competitors for the improperly billed charges, consistent with their relevant Terms of Service, and directs the ILECs to do so, supported by a document setting out the relevant amounts, which is to be provided to the competitor concerned and to the Commission, within 180 days of the date of this Decision.
99. To the extent that the ILECs applied link charges consistent with their retail DNA tariffs at the time of the creation of the CDN services in question, the Commission considers that the revenues associated with these charges would properly constitute forgone revenues for which those companies are entitled to compensation through their respective deferral accounts.

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<sup>14</sup> TCC Carrier Access Tariff item 224.1.

<sup>15</sup> Approved on an interim basis in Order 2005-323.

100. As noted above, the ILECs (except TCC) have submitted in this proceeding that the costs for the links at issue in this proceeding are not captured in the rates of the services being connected. The Commission considers it would be appropriate that, to the extent that an ILEC considers that costs incurred to connect a CDN service to any other service in a CO are not recovered through the services being connected, the ILEC may file proposed tariffs to recover such costs, consistent with the process set out in paragraph 102 below.
101. The Commission notes that, in Decision 2005-6, it classified other CO connecting links as essential Category I competitor services in all bands because the services to be connected by these links were all ILEC services and the ILEC was the only provider of such links. Similarly, the Commission considers that any additional link services proposed by an ILEC as a result of the Commission's determinations in this Decision should also be classified as Category I competitor services, regardless of whether the services being connected are CDN or non-CDN services.
102. To the extent that ILECs wish to file proposed tariffs for link charges for Commission approval, they are to do so within 90 days of the date of this Decision. The filing is to include (a) detailed cost studies for all relevant scenarios and services, including any existing services being connected, that clearly identify all underlying cost components involved and the specific rate component(s) through which such costs should be recovered, and (b) proposed link rates determined on the basis of essential services pricing principles.

Secretary General

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