



## Telecom Decision CRTC 2003-62

Ottawa, 19 September 2003

### Allstream v. MTS – Sherbrook Central Office

Reference: 8622-A4-20/02

*In this decision, the Commission determines that MTS Communications Inc. (MTS) is responsible for the costs of the conditioning equipment, and its installation and maintenance, necessary to provide digital Centrex service to an Allstream Corp. customer following an MTS-initiated network reconfiguration.*

*The Commission also initiates a follow-up proceeding to consider procedures for the implementation of network reconfigurations that affect competitors, and the responsibility of affected carriers for the costs incurred as a result of a network reconfiguration.*

1. The Commission received an application dated 23 September 2002, filed by AT&T Canada Corp. Inc., on behalf of itself and AT&T Canada Telecom Services Company, now known as Allstream Corp. (Allstream), under Part VII of the *CRTC Telecommunications Rules of Procedure*. Allstream requested that the Commission order MTS Communications Inc. (MTS) to continue to provide Allstream with the necessary services at no extra charge at the Sherbrook Central Office (Sherbrook CO) to allow Allstream to continue to provide service to a customer following an MTS-initiated network reconfiguration.
2. The Commission received comments from MTS on 3 October 2002. Allstream filed reply comments dated 9 October 2002. On 30 October 2002, Commission staff requested further information from MTS. The Commission received MTS's response dated 6 November 2002. Allstream filed supplementary comments dated 15 November 2002. Reply comments were received from MTS on 20 November 2002. Final reply comments were received from Allstream on 25 November 2002.

#### The application

3. Allstream submitted that as part of a network reconfiguration scheduled for 2 March 2002, MTS had required Allstream to relocate 180 customers served from MTS's Sherbrook CO to its Brooklands remote digital installation located within the Inkster wire centre area (Inkster CO). Allstream submitted that before undertaking the network cut-over, it had requested that MTS provide, among other things, an explanation of why the reconfiguration was necessary. It had also requested cable make-up reports to assess if the new loops to be provided would be of the same or better quality than the existing loops, and a commitment from MTS to compensate Allstream for costs incurred directly related to the project.
4. Allstream indicated that MTS had responded that the network change was being initiated to relieve congestion in some cables within the Sherbrook CO. Allstream stated that although MTS had provided boundary maps, MTS had indicated that cable make-up reports would

only be available for a charge. Allstream submitted that MTS had taken the position that since the network reconfiguration was mutually beneficial to Allstream and MTS, it would not compensate Allstream for costs incurred as a result of the changes. Allstream indicated that although it had considered MTS's response unsatisfactory, it had proceeded with the cut-over.

5. Allstream stated that although it was satisfied with the facilities provided from the Sherbrook CO, it had expended considerable time and effort reconfiguring its network and services to accommodate the reconfiguration, with no benefit to either itself or to its customers. Allstream indicated that it had fully co-operated with MTS and had expended over 460 person-hours to complete the project. Allstream stated that despite the inconvenience and significant cost, it had reconfigured its loops to facilitate this MTS-initiated project and was successful in completing the migration of all of its customers with the exception of one. Allstream indicated that it was unable to proceed with migration of this customer's service because like service was not available without the need to condition the loops provided by MTS.
6. Allstream argued that at a minimum, MTS was responsible to ensure that Allstream's customer received the same level of service it had received prior to the network reconfiguration. Allstream submitted that since its customer's service had operated effectively from the Sherbrook CO, MTS was responsible for ensuring that the service continued to work in the same manner from the Inkster CO. In Allstream's view, if the MTS-initiated project resulted in the need for loops to be conditioned, MTS should be responsible for such conditioning.

### **Positions of parties**

#### *MTS's comments*

7. MTS stated that the network reconfiguration was necessary in order to relieve congestion at its Sherbrook CO, which, otherwise, would have caused a deterioration of service to both MTS's and Allstream's end-customers. MTS indicated that it had offered Allstream assistance with the cut-over after it was determined that the digital Centrex service Allstream provided to one of Allstream's customers would not operate from the Inkster CO without special conditioning. MTS indicated that it had installed the necessary conditioning equipment at Allstream's customer premises, at a cost to Allstream of approximately \$8,900, in order to permit Allstream to maintain service to its customer.
8. MTS stated that it agreed with Allstream that it had an obligation to continue providing Allstream with at least the same level of service it received prior to the network reconfiguration, but disagreed with Allstream's characterization of what that service was. MTS considered that it was providing the same service from the Inkster CO as had been provided to Allstream from the Sherbrook CO. MTS stated that it had provided Allstream with A3 loops<sup>1</sup> from the Sherbrook CO and was providing Allstream with A3 loops from the

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<sup>1</sup> Unbundled Type A loops categories 1, 2, 3, and 4, provide an analogue transmission facility which extends from the Central Office Loop Termination or Point of Termination (POT) to the Customer Network Interface (CUST-NI) and is intended to facilitate the transmission of voice grade signals of approximately 3 kHz usable bandwidth. Unbundled Type A category 5 loops provide a transmission facility which extends from the POT to the CUST-NI and is intended to facilitate the transmission of signals above voice band of approximately 300 to 3400 Hz.

Inkster CO. MTS submitted that the loops it provisioned to Allstream from the Inkster CO met the requirements of unbundled loop service, as described in its General Tariff. MTS further submitted that they met Allstream's request for local loops and exceeded industry specifications for A3 loops. MTS stated that at no time had it provided Allstream with loops that were guaranteed to support digital Centrex service.

9. MTS stated that the fact that Allstream was able to provide digital Centrex service to its customers over the loops provided from the Sherbrook CO was fortuitous. MTS indicated that while the loop provided from the Sherbrook CO happened to accommodate Allstream's digital Centrex service without special conditioning, this ability should not have been expected in all circumstances.
10. MTS stated that, in fact, it did not, in any circumstances, warrant that its facilities would be suitable for specific customer-provided equipment or services. MTS referred to its General Tariff item 2800.1.D, which states that MTS shall not be responsible to the customer for any equipment, apparatus or device which ceases to be compatible with MTS facilities or becomes inoperative because of changes to MTS equipment, apparatus, lines, circuits, devices, signalling or transmission mediums.
11. MTS submitted that Allstream's application should be rejected and that Allstream should be required to pay MTS for any conditioning required to facilitate Allstream's provision of digital Centrex service.

*Allstream's reply comments*

12. Allstream argued that the network reconfiguration was not mutually beneficial, as it had a distinctly disadvantageous result for Allstream. Allstream submitted that the unbundled loops provided by MTS to Allstream from the Inkster CO were of significantly poorer quality than those that had been provided from the Sherbrook CO. Allstream noted that prior to the network reconfiguration, it had requested loop make-up reports for the new facilities from the Inkster CO but MTS had stated that there would be an associated charge and implied that in any event the reports were unnecessary.
13. In support of its argument, Allstream provided test results which it claimed indicated that loop resistance and loss of signal strength had increased in the new configuration. As a result, the loop quality had fallen below the level at which Allstream's service could continue to operate. Allstream maintained that, at a minimum, MTS should be responsible for any charges and continued maintenance associated with the conditioning provided on the loops from the Inkster CO.

*MTS's reply to the Commission's interrogatories*

14. MTS indicated that the reconfiguration provided shorter loops to its customers thereby improving transmission and providing them with the opportunity to receive digital subscriber line (DSL) service.

15. MTS stated that it continued to provide the same type of loops to Allstream for its customers. There was no change in the service to any customers as a result of the network reconfiguration.

*Allstream's supplementary comments*

16. Allstream submitted that as part of the network reconfiguration, MTS had terminated its loops on digital carrier systems and DSL equipment within the Brooklands remote. This had effectively shortened the loops for MTS's retail customers, thereby improving transmission capability and providing its retail customers with the ability to receive MTS's DSL service. Allstream submitted that in its case, its customers' loops were lengthened as a result of the network reconfiguration because they had been extended through the Brooklands remote to the Inkster CO on copper facilities rather than on MTS's digital carrier system. Allstream stated that as a result, the functionality, and hence, the services capable of being provided to Allstream customers from the loops at the Inkster CO had been diminished rather than improved, and in the case of one of its customers, the need for loop conditioning.
17. Allstream noted that while MTS stated that its customers had received the same service before and after the move, it was clear that MTS's retail customers actually received a better quality of service due to shorter loop lengths in the new configuration. This, in turn, provided MTS with the potential to generate additional revenues. Allstream submitted that, other than a brief interruption while service was migrated to the new facility, MTS's end-customers did not have to alter or relocate any of their equipment in order to accommodate the network reconfiguration. Allstream indicated that unlike any other MTS customer, it was required to pay for the conditioning of the new loops. Allstream submitted that in light of the significant expense it had incurred to accommodate MTS's network reconfiguration, and in light of the fact that any beneficial impact of the reconfiguration would only be experienced by MTS customers, it should be compensated by MTS for all expenses incurred as a result of the reconfiguration.
18. Allstream also submitted that in the future, any incumbent local exchange carrier (ILEC) network reconfiguration that impacts a competitive local exchange carrier's (CLEC) co-located facilities should not proceed without six months prior notice. In particular, Allstream submitted that such notice should include:
  - identification of the loop characteristics available to CLECs at the new location;
  - identification of any improvement of the loop characteristics to the ILEC as a result of the reconfiguration;
  - an explanation of why ILECs are experiencing improved loop functionality and CLECs are not, and why such improvements are not also available to CLECs; and
  - a clear explanation of why the network reconfiguration is needed, including but not limited to what additional services (such as DSL) are available to ILEC customers as a result of the reconfiguration, and why the network reconfiguration cannot be accommodated without impacting the CLECs' network or customers.

*MTS's reply comments*

19. MTS submitted that Allstream's request to be compensated for any costs over the cost of the loop conditioning for one of its customers, was not part of the original application and was, therefore, outside the scope of this proceeding. MTS further submitted that Allstream's attempt to broaden its Part VII application to other ILECs was inappropriate. MTS stated that Allstream's original request was based on a single network reconfiguration, but that it was now asking the Commission to apply new rules for network reconfigurations to all of the ILECs. MTS submitted that parties that would be affected by any measure taken by a regulatory authority must, at the very least, be given a chance to address the implications and their concerns about such a measure. MTS argued, therefore, that the Commission should summarily reject Allstream's request.

*Allstream's final reply comments*

20. Allstream stated that it supported the need for procedural fairness and recognized that all parties should have an opportunity to comment on its proposal. Allstream requested therefore, that as part of a decision on this application, the Commission:
- hold MTS responsible for the installation and maintenance of the conditioning equipment associated with the loops for Allstream's digital Centrex service customer;
  - order MTS to compensate Allstream for all the costs it incurred as a result of the network reconfiguration; and
  - initiate a follow-up proceeding to address the notification process for ILECs where a network reconfiguration has an impact on a CLEC.

**Commission analysis and determination**

21. The Commission notes that the original loops provided from the Sherbrook CO met the standards required to provide telephone service, but were too long for DSL to function effectively. As part of the network reconfiguration, MTS located a DSL access module at the Brooklands remote. Although the same type of loops were still provided to MTS's retail customers in this new configuration, the quality of the service provided with this configuration was superior because the loops were shorter with the installation of the digital carrier system at the remote and, therefore, could be used to provide DSL service.
22. The Commission notes that in the case of Allstream, the length of the loops provided from the Inkster CO were lengthened because they were extended through the Brooklands remote to the Inkster CO on copper facilities rather than on MTS's digital carrier system. As a result, the loop quality decreased and Allstream could not provide digital Centrex service to one of its customers unless the loops received special conditioning.
23. Subsection 27(2) of the *Telecommunications Act* (the Act) provides that no Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

24. The Commission notes that the test results filed by Allstream were not contested by MTS. According to the test results, the loop resistance and loss of signal strength increased in the new configuration. The Commission notes that although the same type of loops were provided in the new configuration, due to the loops being lengthened, the quality of service provided to Allstream's customers was inferior to the quality of service provided to MTS's retail customers. The Commission considers that the provision of an inferior level of service to Allstream is discriminatory toward Allstream and its customers, and preferential toward MTS and its customers.
25. The Commission notes MTS's submission that pursuant to its General Tariff, MTS is entitled to modify the design and layout of its network facilities. MTS further submitted that it can reserve the right to make any network reconfigurations without being responsible to the customer for equipment that ceases to be compatible with MTS facilities or becomes inoperative because of changes to MTS equipment, apparatus, lines, circuits, devices, signalling or transmission mediums.
26. In Telecom Order CRTC 92-979, 5 August 1992, the Commission denied an application made by Bell Canada to remove or convert existing installations on specific routes as its network was modernized. The Commission made this determination despite Bell Canada claiming that pursuant to its General Tariff, it was exempted from responsibility to subscribers for effects on their equipment of any changes Bell Canada made to its network. The alarm and energy monitoring companies that would have been affected by the proposed change would have had to retrofit their terminal equipment, at substantial expense, to be able to continue providing the same service to their customers. The Commission denied Bell Canada's request on the basis that it was in the public interest to ensure that the proposed changes not penalize the general body of subscribers. Instead, the Commission ordered Bell Canada to phase-in its project over a two-year period.
27. In this case, the Commission notes that MTS did not charge its retail customers for costs associated with its network reconfiguration. The Commission further notes that MTS had taken steps, like using digital carrier systems, to ensure that its retail customers received better service at no additional cost than they had before, while at the same time, MTS did not use digital carrier systems or provide conditioning equipment at no charge, to ensure that service to Allstream and its customers was not reduced in quality without the need to incur additional costs. The Commission considers that MTS's network reconfiguration had a negative effect on Allstream and its customers. The Commission notes that Allstream's digital Centrex service customer could no longer receive its digital Centrex service without conditioning on the loops. Also, a large number of Allstream's loops were lengthened as a result of the reconfiguration resulting in reduced transmission capability. In light of the above, the Commission finds that MTS's treatment of Allstream in the provision of local loops in its network reconfiguration constitutes an undue preference toward itself and its retail customers, and unjust discrimination against Allstream and its customers, contrary to subsection 27(2) of the Act.
28. The Commission considers that CLECs need to have continuity and reliability in the services they provide to their customers in order to be competitive. Ensuring that the quality of service is maintained for competitive services that result from network configurations is essential to enable CLECs and other service providers to compete fairly with ILECs. The Commission considers that since MTS initiated the network reconfiguration, MTS should

ensure that Allstream's service to its customers is unaffected by the reconfiguration, relative to the service provided to MTS's retail customers. Accordingly, the Commission determines that MTS is responsible for the costs of the conditioning equipment, and its installation and maintenance, necessary to provide digital Centrex service to Allstream's customer.

29. The Commission notes Allstream's request that MTS reimburse it for all other expenses incurred as a result of the network reconfiguration. The Commission notes that MTS did not provide a position on this issue as it was of the view that this issue was outside the scope of this proceeding.
30. In *Notification of Network Changes, Terminal-to-Network Interface Disclosure Requirements and Procedures for the Negotiation and Filing of Service Arrangements*, Telecom Letter Decision CRTC 94-11, 4 November 1994, the Commission established the current rules concerning network reconfigurations. The Commission determined that all changes that affect a competitor's use or potential use of bottleneck services and facilities should generally require notification, either at the time the ILEC makes the decision to proceed with the change, or six months before the proposed change, whichever is earlier. Issues such as who would be responsible for any costs incurred as a result of a network reconfiguration were not considered. The Commission notes that any costs incurred by parties which result from an ILEC network reconfiguration have been the responsibility of each party.
31. The Commission is of the view that when an ILEC plans to reconfigure its local network, a consultation process should take place between the affected CLEC(s) and the ILEC, in order to ensure that all services provided to the CLEC continue to operate and to minimize any adverse impact on the CLEC. The Commission considers that a follow-up proceeding should be held to address these issues and permit all potentially affected parties the opportunity to comment. Accordingly, the Commission initiates a follow-up proceeding to consider procedures for the implementation of network reconfigurations that affect competitors, and the responsibility of affected carriers for the costs incurred as a result of a network reconfiguration. The Commission is of the preliminary view, that as a customer of MTS, Allstream should not be responsible for any costs that resulted from the network reconfiguration. Allstream's request that MTS pay all expenses incurred as a result of MTS's network reconfiguration will be determined separately.
32. The Commission is of the preliminary view that ILECs should provide the following information to affected parties at least six months prior to the planned implementation date of a local network reconfiguration:
  - a general description of the reconfiguration, including reasons why it is to be undertaken;
  - a planned schedule for the reconfiguration;
  - a map, or maps, defining the serving area(s) affected;
  - information to each CLEC, detailing how the unbundled loops and other ILEC-provided facilities it uses will be affected;

- reasons why the network reconfiguration cannot be accommodated without impacting a CLEC's network or customers; and
  - rationale for the proposed change where, as a result of a network reconfiguration, the level of service to a CLEC and its customers would diminish relative to the level of service to the ILEC and its retail customers, and a cost analysis of each CLEC's costs where such a change is proposed. The cost analysis should include items such as the cost of reconfiguring CLEC co-location sites and conditioning of circuits used by CLECs, as appropriate.
33. The Commission invites parties, including but not limited to, TELUS Communications Inc., Bell Canada, Aliant Telecom Inc., Saskatchewan Telecommunications, MTS Communications Inc., TELUS Communications (Québec) Inc., Société en commandite Télébec, Allstream, Call-Net Enterprises Inc., Microcell Telecommunications Inc., LondonConnect Inc. and FCI Broadband, to show cause, within 30 days of the date of this decision, as to why the Commission should not adopt the above provisions, and the responsibility of affected carriers for the costs incurred as a result of a network reconfiguration. Parties may file reply comments with the Commission, serving copies on all parties who provided comments on the show cause, within 45 days of the date of this decision.
34. The Commission directs MTS to show cause within 30 days of the date of this decision, serving a copy on Allstream, as to why it should not pay for all the expenses incurred by Allstream as a result of MTS's network reconfiguration of the Sherbrook CO. Allstream may file reply comments within 45 days of the date of this decision.
35. Where a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date.

Secretary General

*This document is available in alternative format upon request and may also be examined at the following Internet site: <http://www.crtc.gc.ca>*