

- 1 **Q. Reference: CA-NP-156, Schedule 3, p. 3 of 4: please provide the relevant extracts of**
2 **the CRTC decisions referred to in footnotes 3 and 4.**
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- 4 A. Attachment A is the relevant extract of Telecom Decision CRTC 88-4, issued March 17,
5 1988, which is referred to in footnote 3 in Schedule 3 of the *Report on Inter-Corporate*
6 *Charges* filed with the Board on March 31, 2004.
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- 8 Attachment B is the relevant extract of Telecom Decision CRTC 2002-34, issued May
9 30, 2002, which is referred to in footnote 4 in Schedule 3 of the *Report on Inter-*
10 *Corporate Charges* filed with the Board on March 31, 2004.

Extract from Telecom Decision
CRTC 88-4, issued March 17, 1988

V INTERCORPORATE TRANSACTIONS

A. Compensation for Temporarily Transferred Employees

1) Background

In Decision 86-17, the Commission determined that the appropriate compensation for employees temporarily transferred to Bell Canada International Inc. (BCI) was a 25% contribution calculated on an imputed cost comprising the aggregate of the annual salary and the labour related costs of each such employee immediately prior to transfer. It was also determined that these costs should be adjusted, where applicable, for any normal salary increases during the period of transfer, but should not include any salary adjustments attributable solely to an overseas posting.

In its 10 August 1987 Memoranda of Support, Bell noted that, in order to reflect the Commission's decision, it had made an adjustment to its 1985, 1986 and 1987 financial results reported for regulatory purposes. However, in accordance with the arrangements previously concluded between Bell and BCI, the company was continuing to charge BCI a one time fee of \$700 per employee, as well as an annual \$1,000 per employee fee. The company noted that the JMP for the year 1988 reflected these fees.

Bell stated that it had engaged Touche Ross & Co. (Touche Ross) to provide an opinion with respect to the level of fees required to fully compensate Bell for the 1988 direct and indirect costs related to the temporary transfer of employees. The company noted that, in a letter dated 9 April 1987, Touche Ross had concluded that the existing fees charged by Bell fully compensated Bell for costs incurred in relation to the transfers.

Bell also stated that, in a letter attached to its Memoranda of Support dated 14 July 1987 and addressed to Mr. A.J. de Grandpré, Chairman of BCE Inc. (BCE), formerly Bell Canada Enterprises Inc., the Minister of Communications had indicated, in effect, that the level of compensation for regulatory purposes should not exceed the audited costs directly and indirectly associated with these transfers.

In a letter to the Commission dated 9 October 1987 and filed as CRTC Exhibit 2, the Minister of Communications stated that the remarks in her letter of 14 July 1987 did not instruct the Commission on how to deal with the transfer of revenues between Bell and BCI. The letter also stated that it was not the Minister's intention to leave the impression that the determination of the value of these transfers should be restricted to the use of accounting costs.

In a letter dated 19 October 1987, Bell advised the Commission of revisions to the manner in which BCI is charged for temporary transfers. Effective 1 November 1987, the one time fee of \$700 was replaced by separate and distinct fees for a) each employee accepted by BCI, b) each employee repatriated to Bell from special leave of absence to BCI, and c) each extension of the term of any special leave of absence for an employee temporarily transferred to BCI. As of 1 January 1988, these fees were raised to \$1840, \$455, and \$90, respectively. The annual fee of \$1000 per employee would continue to be charged to BCI.

A copy of a letter from Touche Ross to Bell, dated 8 October 1987, was attached to Bell's 19 October 1987 letter. In its letter, Touche Ross expressed the opinion that the fees proposed for 1988 should be adequate to compensate Bell for all costs to be incurred for 1988, assuming that there was no significant change in the activities involved.

2) Positions of Parties

Bell argued that a Commission finding on this issue similar to that in Decision 86-17 would be inappropriate. It noted that, in that decision, the Commission deemed the contract between BCI and the kingdom of Saudi Arabia (the Saudi contract) to be non-integral. Bell stated that, in so doing, the Commission recognized that neither the risks nor the benefits of such ventures should be borne by subscribers and that the issue is solely one of appropriate compensation for temporarily transferred employees. In Bell's view, the Commission should focus on ensuring that monopoly subscribers are not called upon to cross-subsidize any portion of BCI's international ventures.

The company stated that it had taken careful measures in order to be in a position to demonstrate clearly that all costs are being, or will be, recovered from BCI. It stated further that the new fee structure was designed to recover the costs related to the temporary transfer of employees, plus a contribution of 25%, plus a \$1000 annual fee. While Bell acknowledged that the compensation arising from the new fee structure was not of the same magnitude as the 25% contribution on imputed costs prescribed by the Commission in Decision 86-17, the company submitted that this fee structure would ensure that there was no cross-subsidy by subscribers.

Bell stated that it is virtually impossible to determine a fair market value for the services it provides to BCI, and that there is no evidence that the company does not receive at least as much as other companies would receive in similar circumstances. The company suggested that the Commission should take into account the particular effect on BCI of the pricing structure prescribed in Decision 86-17. According to the company, there is evidence that BCI is experiencing serious difficulties in the international marketplace. Bell noted that the Saudi contract was renewed for a one-year period only, and that it cannot be presumed that the renewal was made at the same rates or terms.

Ontario, CBTA et al and CAC addressed this issue. All expressed the view that the regulatory treatment set out in Decision 86-17 continues to be appropriate.

In the view of CBTA et al, a number of benefits that were paid for by Bell's subscribers are being provided by the company to BCI. These benefits include: a) the expertise in telecommunications developed over the years by Bell employees; b) the goodwill associated with the quality of Bell employees; c) the fees saved by using Bell employees instead of having to use a "head-hunter" firm to hire employees; d) the job guarantee provided to high quality Bell employees, without which highly skilled employees might be unwilling to take the risk of working for an international consulting firm; and e) the flexibility of being able to return employees to Bell when work is slow and bring them back again as required. Since these benefits have nothing to do with audited costs, CBTA et al submitted that the audited costs are not relevant.

CAC argued that the only circumstance that has changed since Decision 86-17 is the mix of recruited, extended and repatriated employees. Since this change is a technical or administrative matter that does not bear directly on the appropriate regulatory treatment, CAC believes that the treatment considered appropriate in Decision 86-17 continues to be appropriate. CAC stated that nothing, in effect, has changed.

CAC expressed the view that the Touche Ross audit, the results of which were reported to Bell in the letter dated 8 October 1987, was not adequate for regulatory purposes. CAC noted that the Canadian Institute of Chartered Accountants (CICA) considers it highly desirable that an auditor obtain an engagement letter from a client. CAC was critical of Touche Ross for failing to obtain such a letter. A witness from Touche Ross replied that a letter had not been considered necessary since the terms of the engagement were fairly clear. In CAC's view, the terms of the

engagement were not clear. According to CAC, the role of Tele-Direct (Publications) Inc. (Tele-Direct), which, for regulatory purposes, is treated as an integral part of Bell, should have been clarified in the engagement letter. CAC noted in this regard that Tele-Direct is not compensated for the transfer of employees to BCI, and proposed that Tele-Direct be compensated, for regulatory purposes, on the same basis as Bell.

CAC argued that the risk of not finding enough work for its employees, a risk that would otherwise be borne by BCI, has been transferred from BCI to Bell by virtue of re-employment guarantees that give BCI the ability to send employees back to Bell. CAC suggested that the compensation ordered by the Commission in Decision 86-17 could be considered, in effect, an insurance premium for the assumption of the risk associated with the re-employment guarantee.

In reply argument, Bell stated that Touche Ross had a clear understanding of the terms of its engagement and that those terms were reflected accurately in the reports. Bell noted that Touche Ross had not considered the role of Tele-Direct since it had not been asked to do so.

Bell also expressed the view that the Commission should not feel constrained by its finding in Decision 86-17, but should regard the matter in the light of the factors and developments outlined during this proceeding.

3) Conclusions

The Commission has not been persuaded that the approach to compensation for temporarily transferred employees prescribed in Decision 86-17 should be changed. Bell has chosen to address the question of whether a cross-subsidy exists solely on the basis of accounting costs. The Commission rejects this view and is of the opinion that accounting costs alone do not capture the full costs involved in temporary employee transfers to BCI. The Commission notes in this regard the Minister's letter, dated 9 October 1987, in which she stated: "... it was not my intention to leave the impression that the determination of the value of these transfers should be restricted to the use of accounting costs."

Among the costs not included in the accounting costs are those costs associated with the re-employment guarantees. The Commission finds persuasive CAC's argument that Bell, by virtue of these guarantees, absorbs a large part of the risk that BCI might, at some point, be unable to find sufficient work for its employees.

In Decision 86-17, the Commission noted that the company had been reasonably successful in achieving the traditional 25% contribution in connection with intercorporate transactions. In this regard, the Commission notes that when Bell employees are merely loaned to BCI, rather than being temporarily transferred, BCI compensation to Bell includes a 25% contribution on employee salaries and benefits, and that the approach adopted in Decision 86-17 is consistent with that practice.

In the Commission's view, the question of whether or not a cross-subsidy exists is best determined by reference to the fair market value of the goods or services being supplied. If Bell is supplying goods or services to a non-arm's length company at less than fair market value, it is subsidizing that company. The Commission realizes that fair market value is, in these circumstances, difficult to determine. However, there is nothing on the record of this proceeding to indicate that the proxy for the fair market value of temporarily transferred employees adopted in Decision 86-17 is not appropriate. In the Commission's view, difficulties BCI may be experiencing in the international marketplace do not provide sufficient justification for a departure from the Commission's policy that Bell subscribers should not be obliged to subsidize the competitive endeavours of Bell affiliates.

The Commission notes that Bell employees are now temporarily transferred to affiliates other than BCI, and that employees of Tele-Direct are also temporarily transferred to affiliates. The Commission has therefore determined that, for regulatory purposes, the compensation for any employee temporarily transferred from either Bell or Tele-Direct to any affiliated company shall be as prescribed in Decision 86-17. The Commission has adjusted the company's 1988 revenue requirement to reflect its decision regarding the annual compensation for temporarily transferred employees. The Commission estimates that, for regulatory purposes, this will increase the company's 1988 net income after taxes by about \$4 million.

**Extract from Telecom Decision
CRTC 2002-34, issued May 30, 2002**

998. The Commission considers that under the structure of the next price cap regime, the incentive to overstate intercorporate transactions is reduced. Accordingly, the Commission has determined that the current intercorporate transaction reports for Aliant Telecom, Bell Canada, MTS, SaskTel and TELUS are no longer required, effective immediately.