



Telecom Decision CRTC 2008-74

Ottawa, 21 August 2008

Regulatory policy

Approval mechanisms for retail and CLEC tariffs

Reference: 8663-C12-200803032

In this Decision, the Commission determines that it will forbear from approving certain retail telecommunications service tariff filings, effective 6 October 2008. The Commission streamlines the approval mechanism for other retail tariff filings.

In addition, the Commission streamlines the approval mechanism for CLEC tariffs.

Introduction

1. In Telecom Decision 2007-51, the Commission released an action plan for reviewing existing regulatory measures in light of the Governor in Council's *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the Policy Direction). As part of the action plan, the Commission identified the approval processes for retail and competitive local exchange carrier (CLEC) tariff filings as matters to be reviewed.
2. In Telecom Public Notice 2008-2, the Commission invited parties to comment on the continued appropriateness of the current approval mechanism for retail and CLEC tariff applications.
3. The Commission received submissions from Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, Northwestel Inc. (Northwestel), Saskatchewan Telecommunications (SaskTel), and Télébec, Limited Partnership (Télébec) [collectively, Bell Canada et al.]; TELUS Communications Company (TCC); the Canadian Independent Telephone Company Joint Task Force (CITC-JTF); MTS Allstream Inc. (MTS Allstream); Primus Telecommunications Canada Inc. (Primus); Rogers Communications Inc. (RCI); the Canadian Cable Systems Alliance Inc. (CCSA); and the Government of the Northwest Territories.
4. The public record of this proceeding, which closed on 25 April 2008, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Issues

5. In order to determine whether the retail and CLEC tariff approval mechanism continues to be appropriate in light of the Policy Direction, the Commission will consider the following:

- What is the purpose of the regulatory measure and what are the policy objectives that are relevant to this purpose?
 - Can market forces be relied on to achieve the telecommunications policy objectives?
6. If the Commission determines that market forces cannot be relied on to achieve the policy objectives, it will then address the following, as required:
- Is the regulatory measure efficient and proportionate to its purpose?
 - Does it interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives?
 - Is the tariff approval mechanism as minimally intrusive and as minimally onerous as possible?

Background

7. Subsection 25(1) of the *Telecommunications Act* (the Act) states, in part, that no Canadian carrier may provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission.
8. The current approval process for incumbent local exchange carrier (ILEC) retail tariff applications, which includes the requirement for prior Commission approval, was established in Telecom Circular 2005-6.
9. Telecom Circular 2005-6 states that the Commission's objective will be to ensure that within 10 business days of the receipt of a tariff application, the Commission will issue one of the following:
- a) an order granting the application interim approval,
 - b) a letter stating that it intends to dispose of the application within 45 business days of receipt of the application,
 - c) a letter either with interrogatories included or confirmation that interrogatories are to follow, or
 - d) a letter indicating that the file is being closed due to deficiencies in the application.
10. Telecom Circular 2005-6 also states that interested parties may provide comments within 25 calendar days of the filing date of an application, and the applicant may file reply comments within 7 calendar days of the final date for interventions.

11. Although CLEC tariffs pertain to wholesale services, in most cases the Commission has granted interim approval to CLEC tariff applications within 10 business days of the receipt of an application. CLECs are required to use ILEC rates for wholesale services unless they provide cost justification for using different rates.
12. The process and requirements for applications for service destandardization and/or withdrawal are set out in Telecom Decision 2008-22.
13. In Telecom Circulars 2005-9 and 2006-11, the Commission adopted service standards for the current tariff approval mechanism.

What is the purpose of the regulatory measure and what are the policy objectives that are relevant to this purpose?

14. MTS Allstream, RCI, and TCC submitted that the current retail tariff approval mechanism serves to ensure compliance with the requirements of subsections 27(1) and (2) of the Act. TCC also submitted that the mechanism ensures compliance with section 24 of the Act and that tariffs provide a means of disseminating information on service providers' prices, terms, and conditions. The CITC-JTF submitted that the mechanism, as it applies to small ILECs, is intended to discipline prices for retail residential and business local exchange services in areas where competitive entry is limited.
15. The Commission considers that the current tariff approval mechanism serves to ensure compliance with the requirements under the Act, including subsections 27(1) and (2), to the extent that they relate to tariffs. The Commission also considers that the mechanism provides a means of making service providers' prices, terms, and conditions publicly available.
16. Bell Canada et al. and MTS Allstream identified the relevant telecommunications policy objectives as being those set out in paragraphs 7(b), (c), (f), and (h) of the Act, while TCC referred specifically to paragraphs 7(c) and (f).
17. The Commission concludes that all four of these objectives are relevant to the purpose of the tariff approval mechanism.

Can market forces be relied on to achieve the telecommunications policy objectives?

18. TCC submitted that market forces can be relied upon to achieve the policy objectives. In its view, the emergence of competition means that retail rates are increasingly disciplined by market forces without the need for detailed tariff regulation. TCC proposed that the Commission forbear from exercising its powers and performing its duties under section 25 of the Act in relation to retail capped services (other than services with frozen rate treatment), uncapped services, promotions, and CLEC tariffs, and that, instead, the Commission impose certain conditions on ILECs and CLECs related to information and update requirements, pursuant to section 24 of the Act.

19. The Commission considers that TCC's proposal is not appropriate because the current process for retail tariffs applies only in markets where competition is generally limited. The Commission also considers that it would not be appropriate to eliminate the Commission's ability to review tariff filings for non- forborne services except in certain circumstances.
20. The Commission concludes that market forces alone cannot be relied upon to achieve the objectives of the Act. Accordingly, it is necessary to assess the tariff approval mechanism in light of the other criteria specified in the Policy Direction.
21. With respect to the process for CLEC tariffs, the Commission considers that the modifications set out later in this Decision effectively remove the requirement for the Commission to approve CLEC tariff filings when CLECs use ILEC rates.

Is the regulatory measure efficient and proportionate to its purpose? Does it interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives? Is the tariff approval mechanism as minimally intrusive and as minimally onerous as possible?

22. MTS Allstream, Primus, and RCI submitted that the current tariff approval process is compliant with the Policy Direction to the extent feasible in light of the requirements of the Act. MTS Allstream and RCI stated that the measures implemented as a result of Telecom Circular 2005-6 have been very successful in meeting the objectives of streamlining and expediting the tariff approval process.
23. Bell Canada et al. and the CITC-JTF argued that the current tariff approval mechanism is not efficient and proportionate to its purpose, does not interfere with the operation of competitive market forces to the minimum extent necessary, and is not as minimally intrusive and as minimally onerous as possible. Both of these parties proposed changes to the mechanism that, in their view, would result in a mechanism that was compliant with the Policy Direction. Both proposals recommend, among other things, eliminating the requirement for prior Commission approval in at least some circumstances. These proposals are discussed below.
24. The CITC-JTF proposed replacing the current *ex-ante* tariff approval process with an *ex-post* intervention process in which tariffs would automatically come into effect on an interim basis after 10 days, unless the Commission took explicit action earlier. Final approval would take place 45 days after the filing, unless the Commission took explicit action earlier.
25. Bell Canada et al. proposed dividing tariff applications into two streams, Group A and Group B. Group A tariff applications would be composed of tariff applications that require only compliance with objective criteria that the Commission has previously established, such as price cap constraints or imputation tests, as well as filings that are administrative in nature. Bell Canada et al. suggested that no prior approval for Group A applications would be required and that the tariff revisions would come into effect on the filing date or a date specified in the application.

26. Bell Canada et al. proposed that Group B tariff applications be composed of those that involve more than simple compliance with objective criteria established by the Commission, such as applications that involve policy issues or changes to terms and conditions. They also proposed that tariff revisions for Group B applications would automatically come into effect on an interim basis seven calendar days after filing, unless the Commission denied or suspended the application. Bell Canada et al. further proposed that if no comments were filed regarding the application, the tariff would automatically be approved on a final basis two business days after the comment period ended, unless the Commission denied or suspended the application.
27. With respect to the approval of CLEC tariffs, the CCSA proposed that CLEC tariffs cross-reference the CLEC model tariff. RCI proposed that ILEC rates be deemed approved for all CLECs automatically upon the approval of the corresponding ILEC rates and that no filing of CLEC tariff pages be required. Bell Canada et al. and TCC proposed that the existing mechanism be replaced with their proposals for the retail tariff approval mechanism.
28. MTS Allstream, Primus, and RCI stated that the Commission does not have the statutory authority to implement the automatic approval procedures proposed by Bell Canada et al. and the CITC-JTF.

Commission's analysis and determinations

29. In Telecom Circular 2005- 6 the Commission significantly streamlined the processes for approval of retail tariff applications. The Commission considers that although the CITC-JTF's proposal to add an automatic approval provision would increase the efficiency of the current approval mechanism, Bell Canada et al.'s proposed approach would allow for greater streamlining.
30. The Commission notes that according to Bell Canada et al.'s proposal, tariff filings would be categorized into two groups and each group would be subject to a separate streamlined process. The Commission agrees that the general approach proposed by Bell Canada et al. would result in considerable resource savings, including those resources associated with the preparation and issuance of orders or decisions. However, the Commission considers that modifications are required to both Bell Canada et al.'s definition of Groups A and B, and to the proposed process that applies to each group, in order to ensure transparency, certainty, and compliance with the Act.
31. The Commission considers that the tariff approval mechanism as set out below and in Appendix 1 to this Decision will be efficient and proportionate to its purpose, will interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives, and will be as minimally intrusive and minimally onerous as possible.

Group A tariff filings

32. The Commission notes that no party suggested objective criteria for Group A tariff filings other than the price cap constraints and the imputation test. The Commission considers that tariff filings that comply with these objective criteria could be dealt with in a more streamlined manner than under the current mechanism. The Commission notes that Bell Canada et al. did not precisely define tariff revisions of an administrative nature. The Commission sets out the tariff revisions that qualify as Group A in Appendix 1 to this Decision.
33. Pursuant to subsection 34(1) of the Act, the Commission may make a determination to refrain, in whole or in part, conditionally or unconditionally, from exercising any power and performing any duty under subsection 25(1) of the Act in the circumstances specified in that provision.
34. The Commission considers that refraining from exercising its powers and performing its duties with respect to approving Group A tariff filings for retail telecommunications services provided by ILECs, while retaining certain obligations to ensure transparency and compliance with subsections 27(1) and (2) of the Act, would result in efficient and effective regulation, consistent with the telecommunications policy objective set out in paragraph 7(f) of the Act.
35. Accordingly, pursuant to subsection 34(1) of the Act, the Commission finds, as a question of fact, that to refrain from exercising its powers and performing its duties pursuant to subsection 25(1) of the Act with respect to the approval of tariff filings for retail telecommunications services provided by ILECs would be consistent with the Canadian telecommunications policy objectives, conditional on
 - the tariff filing qualifying as a Group A retail tariff filing as defined in Appendix 1 to this Decision;
 - the ILEC filing the revised tariff with the Commission, on or before the effective date, for the public record; and
 - the ILEC certifying in writing to the Commission, on or before the effective date, for the public record, that the tariff filing complies with the definition of Group A as defined in Appendix 1 to this Decision.
36. Further, pursuant to subsection 34(3) of the Act, the Commission finds, as a question of fact, that to refrain from exercising its powers and performing its duties pursuant to subsection 25(1) of the Act with respect to the approval of tariff filings for retail telecommunications services provided by ILECs that meet the conditions set out above would not be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.

37. In light of the above, the Commission finds it appropriate to forbear, pursuant to section 34 of the Act and effective **6 October 2008**, from exercising its powers and performing its duties pursuant to subsection 25(1) of the Act with respect to the approval of tariff filings for retail telecommunications services provided by ILECs that meet the conditions set out above.
38. The Commission declares that, as of **6 October 2008**, the portion of subsection 25(1) of the Act with respect to Commission approval of retail tariff filings will no longer apply to the provision of retail telecommunications services by ILECs, where the conditions set out above are met.
39. The Commission may exercise its remedial powers to address any instances in which an ILEC implements a retail tariff that does not meet the conditions set out above.

Group B tariff filings

40. The Commission determines that Group B retail tariff filings will consist of those retail tariff filings that do not belong to Group A and are not associated with service destandardization or withdrawal.
41. The Commission considers that there is potential for streamlining the process for Group B tariff filings. However, the Commission considers that Bell Canada et al.'s proposed approval schedule would not allow adequate opportunity for review by the Commission and other parties.
42. The Commission determines that the procedures for Group B tariff filings set out in Appendix 1 to this Decision will streamline the process while providing adequate time for review. These procedures will become effective on **6 October 2008**.

CLEC tariff filings

43. The Commission notes that CLECs generally use ILEC rates in the provision of their wholesale services rather than propose different rates with supporting costing information. In these circumstances, the Commission considers that it would be appropriate for CLEC tariffs to cross- reference tariff items for the applicable rates set out in ILEC tariffs. These cross- references would eliminate the need for CLECs to file tariff revisions for Commission approval when ILEC rates are revised.
44. Accordingly, the Commission directs all CLECs to file, by **1 December 2008**, for Commission approval, revisions to their CLEC tariffs that incorporate cross- references to the applicable rates set out in ILEC tariffs for all instances in which the CLEC uses ILEC rates. These filings, and any additional future revisions to CLEC tariffs, will be assessed under the procedures established in this Decision for Group B retail tariff filings.

Filing and information requirements

45. The filing and information requirements associated with the new procedures for processing retail and CLEC tariffs are set out in Appendix 1 to this Decision.

Secretary General

Related documents

- *Forbearance from the regulation of promotions for retail residential and business local wireline services*, Telecom Decision CRTC 2008-41, 22 May 2008
- *Mandatory customer contract renewal notification and requirements for service destandardization/withdrawal*, Telecom Decision CRTC 2008-22, 6 March 2008
- *Review of approval mechanisms for retail and CLEC tariffs in light of Telecom Decision 2007-51*, Telecom Public Notice CRTC 2008-2, 29 February 2008
- *Action plan for the review of Commission regulatory measures in light of Order in Council P.C. 2006-1534*, Telecom Decision CRTC 2007-51, 11 July 2007
- *Service standards for the disposition of telecommunications applications*, Telecom Circular CRTC 2006-11, 7 December 2006
- *Finalization of the streamlined process for retail tariff filings*, Telecom Circular CRTC 2005-9, 1 November 2005
- *Introduction of a streamlined process for retail tariff filings*, Telecom Circular CRTC 2005-6, 25 April 2005

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New procedures for processing retail and CLEC tariffs

The procedures set out below, which take effect on 6 October 2008, supersede those in Telecom Circulars 2005-6 and 2005-9.

Definitions

Group A filings

1. Retail tariff filings will qualify as Group A filings if the associated revisions are restricted to one or more of the following:
 - a) changes to previously approved rates for retail services where the revised rates meet the Commission's price cap or price regulation rules, and the imputation test as applicable;
 - b) the following housekeeping changes to existing tariffs for retail services:
 - i) corrections of typographical errors or administrative errors on approved tariff pages,
 - ii) updates to approved tariff pages to correct cross- references or to remove an expired promotion or special facilities tariff, and
 - iii) updates to approved tariff pages to reflect changes to corporate or service names or titles; and/or
 - c) updates to tariff pages to incorporate forborne exchanges or routes, consistent with Commission forbearance decisions.

Group B filings

2. Group B filings will consist of those retail tariff filings that do not belong to Group A and are not associated with service destandardization or withdrawal.¹ For example, Group B filings include retail filings that propose or include
 - a) the introduction of a new service or rate element,
 - b) changes to the terms and/or conditions of a tariff,
 - c) changes to frozen rates,
 - d) rates that do not comply with paragraph 1a) above,

¹ Applications for the destandardization or withdrawal of a service will continue to be assessed pursuant to the process outlined in Telecom Decision 2008-22.

- e) a request for ratification of rates charged otherwise than in accordance with an approved tariff, pursuant to subsection 25(4) of the *Telecommunications Act* (the Act),
 - f) promotions that do not meet the criteria established in Telecom Decision 2008-41, and
 - g) changes that will result in policy revisions.
3. Group B filings will also include all CLEC tariff filings. Filings that combine characteristics of Group A and Group B are to be filed as Group B filings.

Filing and information requirements

Large ILECs

4. For each Group A retail tariff filing, the large ILECs² are required to
- a) file public and, as required, confidential version(s) of both the prevailing and revised tariff pages with the Commission, on or before the effective date, using the current tariff notice numbering system; and
 - b) include in the covering letter
 - i) a description of, including the reasons for, the proposed tariff revision(s); and
 - ii) certification that the tariff revision(s) comply with the definition of Group A as defined above, identifying the specific regulatory measure(s) that apply.
5. For each Group A and Group B retail tariff filing, the large ILECs must
- a) include in the covering letter an indication that the tariff filing is a Group A or a Group B filing; and
 - b) show the filing date at the bottom left of the tariff page, the tariff notice number at the bottom centre, and the effective date at the bottom right.
6. Filings that combine characteristics of Group A and Group B must include, among other things, Group A certification as referenced above.
7. All revised tariff pages must be marked with notations that identify the specific tariff revisions. Where the Commission issues a written determination on a filing, the order or decision number must be reflected at the bottom centre of the revised page, instead of the tariff notice number.

² The term “large ILECs” refers to Bell Aliant, Bell Canada, SaskTel, MTS Allstream, Télébec, and TCC.

8. For Group B filings, except where noted above, and filings for service destandardization or withdrawal, existing filing and information requirements remain unchanged.
9. In addition, once a year, by no later than August 15, the large ILECs are to file their service basket indices (SBIs) and service basket limits (SBLs) for the previous price cap year, with supporting calculations, formulae, and spreadsheets, for each basket of capped services. This information must show all the rate changes to their capped services implemented that year and demonstrate compliance with applicable constraints. This filing must also include a list of the associated tariff notices.

Small ILECs and Northwestel

10. The same process as set out above for retail tariff filings applicable to the large ILECs will also apply to the small ILECs³ and to Northwestel, except as set out below. The procedural variations for the small ILECs and Northwestel are required to account for differences in the applicable regulatory frameworks.
11. For Group B retail tariff filings, the small ILECs and Northwestel are required to file the prevailing and revised tariff pages with the Commission, using the current tariff notice numbering system.
12. For services in the small ILECs' first and second baskets of services,⁴ Group A filings that propose a rate change are to include a table of unused rate increase credits to demonstrate compliance with the price regulation framework.
13. For services in the small ILECs' fourth basket⁵ and Northwestel's Other Capped Services basket, Group A filings are to include a reference in the tariff filing to the specific tariffed rate⁶ when using an already-approved rate. If tariff filings for these services do not propose to use already- approved rates, they are to be filed as Group B filings.
14. The requirement to file SBIs and SBLs and supporting information set out in paragraph 9 will not apply to the small ILECs.

CLECs

15. For CLEC tariff filings, existing filing and information requirements remain unchanged.

³ The small ILECs are listed in Appendix 2.

⁴ The small ILECs' first and second baskets include residential and business primary exchange services, respectively.

⁵ The fourth basket includes "other services," that is, those not included in the first, second, or third (services with frozen rates) baskets.

⁶ The source company name, tariff name or number, and the specific tariff item must be identified for each proposed rate item that will use an existing rate from another company.

Public process for the disposition of Group B filings

16. The Commission will review all Group B filings. These filings will be approved on an interim basis⁷ on the 15th calendar day after they are received, unless prior to the 15th day Commission staff issues a letter
 - a) stating that the Commission intends to dispose of the filing within 45 business days of receipt of the filing, and setting out the reasons why interim approval is not to take effect,
 - b) either with interrogatories included or confirmation that interrogatories are to follow within 7 calendar days, and an indication that the Commission still intends to dispose of the filing within 45 business days, or
 - c) indicating that the file is being closed due to deficiencies in the filing, identifying the specific deficiencies.
17. Responses to interrogatories are to be provided within 7 to 14 calendar days, depending on the complexity of the information sought. A Commission staff letter will indicate when the responses are due. Parties have the right to request an extension of time, but must provide justification for their request.
18. Parties may provide comments within 25 calendar days of the filing date,⁸ and the applicant may file reply comments within 7 calendar days of the final date for interventions. Parties have the right to request an extension of time, but must provide justification for their request.
19. The Commission will issue orders or decisions in all cases in which a Commission staff letter is issued or when comments are filed regarding Group B filings.
20. In cases where no comments are received and no Commission staff letter is issued, the proposed tariff revisions will be approved on a final basis⁹ 7 calendar days after the comment period has passed.
21. In order to help the Commission meet its objective of responding expeditiously to tariff filings, companies should submit all tariff filings electronically, using Epass. Applicants are to ensure that the Epass date is identical to the date on the filed documents. In the case of conflict, the Epass date will prevail.
22. The tariff application service standards will be revised once the Commission has sufficient information to establish new service standards.

⁷ The Commission will not issue orders or decisions for interim approvals of Group B filings.

⁸ In the case of *ex-parte* filings, parties may provide comments within 25 calendar days of the filing being placed on the public record.

⁹ The Commission will not issue orders or decisions in these cases.

The term “small ILECs” refers to the following companies:

British Columbia

CityWest Telephone Corporation

Ontario

Amtelecom Limited Partnership
Brooke Telecom Co- operative Ltd.
Bruce Telecom
Cochrane Telecom Services
Dryden Municipal Telephone System
Execulink Telecom Inc.
Gosfield North Communications Co- operative Limited
Hay Communications Co- operative Limited
Huron Telecommunications Co- operative Limited
Kenora Municipal Telephone System
Lansdowne Rural Telephone Co. Ltd.
Mornington Communications Co- operative Limited
Nexicom Telecommunications Inc.
Nexicom Telephones Inc.
North Frontenac Telephone Corporation Ltd.
NorthernTel, Limited Partnership
NRTC Communications
Ontera
People's Tel Limited Partnership
Quadro Communications Co- operative Inc.
Roxborough Telephone Company Limited
TBayTel
Tuckersmith Communications Co- operative Limited
Wightman Telecom Ltd.
WTC Communications

Quebec

CoopTel
La Cie de Téléphone de Courcelles Inc.
La Compagnie de Téléphone de Lambton Inc.
La Compagnie de Téléphone de St- Victor
La Compagnie de Téléphone Upton Inc.
La Compagnie de Téléphone de Warwick
Sogetel inc.
Le Téléphone de St- Éphrem inc.
Téléphone Guèvremont inc.
Téléphone Milot inc.