



## Telecom Regulatory Policy CRTC 2009-401

Ottawa, 2 July 2009

### **MTS Allstream Inc. – Application to review and vary certain aspects of Telecom Decision 2008-74 regarding the retail tariff approval process**

File number: 8662-M59-200901927

*In this decision, the Commission denies MTS Allstream's request to review and vary certain aspects of the retail tariff approval process established in Telecom Decision 2008-74.*

#### **Introduction**

1. The Commission received an application by MTS Allstream Inc. (MTS Allstream), dated 21 January 2009, requesting that the Commission review and vary certain aspects of the retail tariff approval process established in Telecom Decision 2008-74.
2. MTS Allstream submitted that there has been a fundamental change in circumstances or facts since Telecom Decision 2008-74 was issued, which raised substantial doubt as to the correctness of that decision. As such, MTS Allstream requested that the Commission
  - amend the criteria for an application to be eligible for Group A treatment to include a condition that the maximum potential annual rate increase to any individual rate element not exceed 10 percent. Applications for increases that exceed the 10 percent threshold would be accorded Group B treatment; and
  - amend the process applicable to Group B applications such that (i) interested parties could signal their intent to comment on a filing within 15 calendar days of the filing being received, and (ii) where a party signalled its intent to comment, interim approval would only be granted if Commission staff issued a letter stating that interim approval is to take effect.
3. The Commission received comments from Saskatchewan Telecommunications (SaskTel), on behalf of itself, Bell Aliant Regional Communications, Limited Partnership, and Bell Canada (collectively, SaskTel et al.); Rogers Communications Inc. (RCI); and TELUS Communications Company (TCC). The public record of this proceeding, which closed on 2 March 2009, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under “Public Proceedings” or by using the file number provided above.

#### **Background**

4. In Telecom Decision 2008-74, the Commission revised the process for the approval of retail and competitive local exchange carrier tariffs. The Commission designated two groups of tariff filings in its revised approval process, Group A and Group B.

5. The Commission forbore from the approval of Group A tariff filings subject to certain criteria set out in that decision. Retail tariff filings qualify as Group A if the associated revisions are restricted to one or more of the following: (i) changes to previously approved rates for retail services where the revised rates meet the Commission's price cap or price regulation rules, and the price floor test,<sup>1</sup> as applicable, (ii) certain housekeeping changes, and (iii) updates to tariff pages to incorporate forborne exchanges or routes.
6. The Commission also streamlined the approval mechanism applicable to Group B filings, which include those retail filings that do not belong to Group A and that are not associated with service destandardization or withdrawal. The Commission determined that
  - these filings would be approved on an interim basis on the 15<sup>th</sup> calendar day after they are received, unless Commission staff issues a letter indicating otherwise;
  - parties may provide comments within 25 calendar days of the filing date, and the applicant may file reply comments within 7 calendar days of the final date for interventions;
  - orders or decisions would be issued in all cases in which a Commission staff letter is issued, or when comments are filed; and
  - in cases where no comments are received and no Commission staff letter is issued, the proposed tariff revisions would be approved on a final basis 7 calendar days after the comment period has passed.

### **Is there substantial doubt as to the correctness of the retail tariff approval mechanisms established in Telecom Decision 2008-74?**

#### **Positions of parties**

7. MTS Allstream submitted that the actions of certain incumbent local exchange carriers (ILECs) subsequent to the implementation of the streamlined process for retail tariff filings set out in Telecom Decision 2008-74 demonstrated that the current lack of regulatory oversight was resulting in harm to customers.
8. MTS Allstream argued that the process for Group A filings allowed ILECs to increase prices without advance notification to customers or the provision of comments by parties, leaving customers in non-forborne exchanges vulnerable and unprotected. MTS Allstream noted that some ILECs had filed Group A filings to increase rates by more than 10 percent.
9. MTS Allstream also argued that Group B filings could receive interim approval even though there may be cause for concern, which may result in the ILECs incurring significant costs if approval was subsequently denied. MTS Allstream noted that certain Group B filings had

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<sup>1</sup> The Commission first made reference to the price floor test in Telecom Regulatory Policy 2009-80. Prior to that decision, the price floor test was referred to as the imputation test.

received interim approval even though comments were filed.

10. MTS Allstream submitted that by granting approval to tariff revisions pursuant to the process established in Telecom Decision 2008-74, the Commission was failing in its duty under the *Telecommunications Act* (the Act) to ensure that rates are just and reasonable and that the ILECs do not unjustly discriminate against competitors or give themselves an undue or unreasonable preference.
11. RCI supported MTS Allstream's application, submitting that it was concerned that by permitting tariffs to become effective without prior approval or with deemed approval, the Commission was granting regulatory forbearance in the absence of evidence of sufficient market forces.
12. SaskTel et al. and TCC opposed MTS Allstream's application. They argued that the changes in circumstances referred to by MTS Allstream resulted from Telecom Decision 2008-74 and were intended by the Commission. TCC also argued that the Commission continues to exercise regulatory oversight through its streamlined approval process and that the safeguards put in place protect customers.
13. SaskTel et al. and TCC submitted that the Commission's decision to conditionally forbear from the regulation of Group A filings was based on pre-established objective criteria, such as those outlined in the ILECs' price cap regime. They argued that since the Commission still controls the rates charged by the ILECs, these rates remain just and reasonable and non-discriminatory as required by section 27 of the Act.
14. SaskTel et al. and TCC submitted that the use of interim decisions is permitted under the Act and has been employed by the Commission for an extensive period of time. They argued that the risks alleged by MTS Allstream are a potential consequence of any interim decision.
15. SaskTel et al. and TCC argued that the modifications proposed by MTS Allstream would result in a less responsive, less efficient, and more expensive regulatory approval process. They submitted that the requested relief was therefore contrary to 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), which requires the Commission to use tariff approval mechanisms that are as minimally intrusive and as minimally onerous as possible.
16. MTS Allstream replied that the measures it proposed were consistent with the Policy Direction, in that they would be efficient and proportionate to their purpose, and that they would not interfere with the operation of competitive market forces. MTS Allstream argued that its requested relief would maintain the resource savings and streamlining that the Commission cited as reasons for amending the retail tariff approval process.

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

17. The Commission notes that the examples provided as evidence by MTS Allstream to illustrate a fundamental change of circumstances were the result of procedural changes prescribed and intended by Telecom Decision 2008-74. The Commission also notes that the retail tariff

approval process was reviewed in light of the Policy Direction, which requires the Commission to use tariff approval mechanisms that are as minimally intrusive and as minimally onerous as possible. In view of the regulatory safeguards that were in place, the Commission determined, in Telecom Decision 2008-74, that its streamlined retail tariff approval process was consistent with the Canadian telecommunications policy objectives.

18. The Commission notes that MTS Allstream's request that rate increases that exceed 10 percent be treated as Group B filings would only affect the services included in the Uncapped Services basket. The Commission also notes that it has already determined that, in view of the substitutes available and the discretionary nature of these services, it was not necessary to apply constraints to these services. The Commission considers that additional regulation of these services is therefore not required and that its determination to forbear from the approval of the retail tariff filings that met its price cap rules was appropriate.
19. With respect to MTS Allstream's request to modify the process for Group B filings, the Commission notes that it reviews all Group B filings prior to granting interim approval, in order to ensure that rates, terms, and conditions are just and reasonable, and do not unjustly discriminate or give an undue preference to any person, as required by section 27 of the Act.
20. The Commission also notes that, pursuant to the public process set out in Telecom Decision 2008-74, customers and interested parties may already provide comments or notice of intent to comment within 25 calendar days of an application being filed. If a comment or notice of intent to comment is received within 15 calendar days of an application being filed, the Commission will assess the concerns raised and may issue a letter indicating that interim approval will not take effect. The Commission further notes that if significant concerns were raised regarding a tariff revision that had received interim approval, it could exercise its remedial powers to address the situation.
21. With regard to MTS Allstream's argument that the ILECs could incur significant costs if interim approval of tariff revisions was overturned, the Commission considers that the ILECs understand the risks of obtaining interim approval of their tariff revisions and could choose to ask for a later effective date.
22. The Commission considers that the safeguards that are currently in place serve to protect customers in non-forborne exchanges, while maintaining tariff approval mechanisms that are as minimally intrusive and as minimally onerous as possible. The Commission therefore considers that the streamlined approval process for retail tariff filings established in Telecom Decision 2008-74 is appropriate.
23. In light of the above, the Commission determines that MTS Allstream has failed to demonstrate that there is substantial doubt as to the correctness of Telecom Decision 2008-74. Accordingly, the Commission **denies** MTS Allstream's application to review and vary Telecom Decision 2008-74.

## Related documents

- *Review of the price floor test and certain wholesale costing methodologies*, Telecom Regulatory Policy CRTC 2009-80, 19 February 2009
- *Approval mechanisms for retail and CLEC tariffs*, Telecom Decision CRTC 2008-74, 21 August 2008

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