



Telecom Order CRTC 2005-197

Ottawa, 20 May 2005

MTS Allstream Inc. - Customer specific arrangements

Reference: Tariff Notices 543 and 543A

*The Commission **approves with changes** MTS Allstream Inc.'s proposal to introduce Supplementary Tariff, item 17560 - Network Services - Customer Specific Arrangement, and item 18050 - Access Services Customer Specific Arrangement.*

1. The Commission received an application by MTS Allstream Inc. (MTS Allstream), dated 18 October 2004, and amended on 18 November 2004, proposing to add to Supplementary Tariff (CRTC 24005), item 17560 - Network Services - Customer Specific Arrangement, and item 18050 - Access Services Customer Specific Arrangement.
2. MTS Allstream's application was filed in response to the Commission's direction in *Application by Westman alleging failure by MTS Communications Inc. to comply with tariff filing requirements*, Telecom Decision CRTC 2004-32, 14 May 2004 (Decision 2004-32), to file separate Type 2 customer-specific arrangement (CSA) tariffs for the network service and access service components of the Provincial Data Network (PDN) that MTS Allstream provided to the Province of Manitoba.

Background

3. In *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994 (Decision 94-19), the Commission considered that there were two general types of customer-specific tariffs:
 - those providing, via a special facilities tariff or special assembly tariff, a service that involves service features or technology that differ from those covered by the general tariff [the Commission has referred to these as Type 1 CSAs]; and
 - those providing a bundle of services tailored to a particular customer's needs, primarily involving elements available from the general tariff, where the purpose is to customize the offering in terms of rate structure or levels [the Commission has referred to these as Type 2 CSAs].
4. The Commission permitted Type 2 CSAs, subject to the following competitive safeguards:
 - (a) the provision of a study demonstrating that the present worth of revenues under the customer-specific contract equals or exceeds the sum of:
 - (i) the present worth of revenues under general tariff rates for those service components available under the general tariff over the duration of the customer-specific contract; and

- (ii) the present worth of causal costs for those components not covered by general tariff rates;
- (b) the telephone company demonstrating in its tariff application that there is not sufficient demand to offer any of the customer-specific elements of the service through the general tariff;
- (c) in order that there be no unjust discrimination or undue preference, the service package and the associated rates, terms and conditions provided under the CSA being generally available to other customers; and
- (d) resale being permitted.

MTS Allstream's application

5. MTS Allstream stated that:

- the Access Services CSA provided for Ethernet access to Shared Network Access Points (SNAPs) in MTS Allstream's central offices (COs) throughout Manitoba to allow the customer to connect to network transport facilities in order to extend its local area network (LAN) between multiple locations; and
- the Network Services CSA provided for (i) Ethernet Transport between SNAPs in MTS Allstream's COs within Manitoba and Network Access Points (NAPs) that are the locations of customer-end sites within the city of Winnipeg; and (ii) dedicated digital facilities to customer-end sites, i.e., an Ethernet interface to the customer, access to an MTS Allstream CO, and network transport to connect to other end sites and SNAPs.

6. MTS Allstream stated that the Network Services CSA and Access Services CSA were offered subject to a Network Services Agreement and an Access Services Agreement, respectively, and that both of these agreements had been previously submitted to the Commission as part of the proceeding that led to Decision 2004-32.

7. MTS Allstream filed economic studies in support of each of the Network Services CSA and the Access Services CSA. MTS Allstream stated that its economic studies demonstrated that the Network Services CSA and the Access Services CSA each passed the imputation test.

8. MTS Allstream stated that its economic studies provided revenue, marketing and cost information and were filed in confidence to the Commission pursuant to section 39 of the *Telecommunications Act* (the Act). MTS Allstream submitted that the attachments included in its application contained sensitive financial and commercial information that should be treated in a confidential manner. MTS Allstream submitted that the release of this information would provide MTS Allstream's existing or potential competitors with sensitive market and revenue information not otherwise available to them thereby conferring an undue competitive advantage upon them, causing the company direct and specific harm. The company, therefore, requested that the Commission neither publish nor reveal this confidential information to anyone. MTS Allstream placed an abridged copy of each attachment on the public record.

9. MTS Allstream stated that both the Network Services and Access Services CSAs consisted of forborne services and non-forborne services as identified and described in the proposed items 17560 and 18050 and in the associated economic studies.

Process

10. By letter dated 4 November 2004, Commission staff made the Network Services and Access Services Agreements, submitted as part of the proceeding that led to Decision 2004-32, part of the record of this application.
11. The Commission received comments from the Westman Communications Group (Westman) on 17 November 2004, and reply comments from MTS Allstream on 29 November 2004.

Issues

12. In this Order, a number of issues are addressed as follows:
 - Appropriateness of cost studies
 - Westman's allegation that costs were omitted from the imputation test for Network Services;
 - Westman's allegations that tariffed rates were omitted from the imputation test; and
 - the requirements for Type 2 CSAs.
 - Appropriateness of the tariff provisions
 - lack of clarity;
 - Westman's allegation of unjust discrimination; and
 - Westman's contention that there was no resale provision in the tariff.
 - Westman's request for disclosure

Appropriateness of cost studies

Westman's allegation that costs were omitted from the imputation test for Network Services

Westman's position

13. Westman noted that the Network Services imputation test described Network Services as providing "Ethernet transport between Shared Network Access Points (SNAPs) in MTS' central offices within the province of Manitoba and Network Access Points (NAPs), customer end sites within the city of Winnipeg." Westman further noted that in the response to interrogatory MTS(CRTC)23May02-1, provided in the proceeding leading to Decision 2004-32, MTS Allstream provided the following description of Network Services:

- MPLS enabled routers, layer 2/3 switches, Packet-Over-SONET rings in rural areas of Manitoba and extensive plans for equipment and facility redundancy that would enhance overall PDN reliability;
 - capacity planning, network security and Quality-of-Service provisioning in order to ensure solid network performance;
 - a number of methods for creating virtual connection within the PDN, including Ethernet over ATM or Frame Relay PVCs, Ethernet VLANs, Packet-Over-SONET, MPLS VPNs and vendor-specific router protocols; and
 - specific network performance parameters including Throughput, Delay, Packet Jitter and Packet Accuracy.
14. Westman compared the above-noted description of Network Services and the brief description of the costs included in the Network services imputation test, and concluded that it was not clear that MTS Allstream had included all of the relevant costs in its imputation test.
15. Westman submitted that MTS Allstream should be directed to explain how the costs associated with the network elements listed above were included in the Network Services imputation test, and if they were not included, MTS Allstream should be directed to file a revised imputation test that included all of the costs associated with the network services offering.

MTS Allstream's reply

16. MTS Allstream submitted that all the network elements that were necessary for the provision of Network Services required by the customer had been included in its imputation test. MTS Allstream noted that these network elements made up the equipment described in section 6.4 and in Table 6.4.5-1 of the imputation test for the Network Services labelled as "costs causal to service" and "costs causal to demand". MTS Allstream specified that Table 6.4.5-1 contained the present worth and per-unit costs of all the network elements listed by category. MTS Allstream stated that Table 6.5.4-1 was submitted to the Commission, in confidence, because the release of this information would provide sensitive market and revenue information not otherwise available, causing the company direct and specific harm.

Commission's analysis and determination

17. The Commission notes that the level of detail provided in response to a specified interrogatory could be more detailed than required in an economic study. The Commission notes that the level of detail in an economic study was specified in a Commission letter dated 27 November 1998 regarding the imputation test methodology for local services.
18. The Commission notes that in section 6.4 of the economic study supporting the CSA for Network Services, MTS Allstream confirmed that the study included all prospective incremental costs related to the total service for the period under study:

- costs causal to the service but not causal to demand including hardware and software additions, maintenance, billing and other information technology costs, and
 - costs causal to demand including order processing and administration costs, sales and marketing, and other miscellaneous costs.
19. The Commission is satisfied that all the network elements that were necessary for the provision of Network Services required by the customer have been included in the imputation test.

Westman's allegation that tariffed rates were omitted from the imputation tests

Westman's position

20. Westman stated that the Commission, as stipulated in Decision 94-19, required that a CSA tariff be supported with a cost study that includes the present worth of revenues under general tariff rates for those service components available under a general tariff. Westman noted that MTS Allstream had identified forborne services and services that were comprised of forborne components in the imputation test for Network Services. Westman submitted that it was not clear from the Network Service imputation test what existing tariffed elements were included in the study, other than the possibility of local loops which were mentioned but not explained in Table 4.0-1.
21. Westman stated that similarly the Access Services imputation test provided no useful information as to whether MTS Allstream had included any tariffed services rates in the study.
22. Westman noted that in *Bundling framework developed for customer-specific arrangements*, Order CRTC 2000-425, 19 May 2000 (Order 2000-425), the Commission had summarized the requirements for an imputation test for CSAs. Westman submitted that in order to comply with this test, MTS Allstream had to, at a minimum, identify the individual services and the tariffed rates used to demonstrate that the proposed Network Services and Access Services rates satisfied the test.
23. Westman noted that MTS Allstream had approved tariffs for many of the components which make up the Network Services offering. Westman submitted that the tariffed rates for LAN-C and LAN-I service and tariffed Interexchange Voice Grade channel and link services should be included in the imputation test. Westman further submitted that if the MTS Allstream commitment to provide skilled and adequate human resources to provide the access services included a dedicated technician, then the tariffed rate for that service should have been included in the imputation test.

MTS Allstream's reply

24. MTS Allstream stated that it was fully in compliance with the approved filing and disclosure requirements for imputation tests for CSAs as documented in its "Economic Studies and Phase II Cost Studies Manual" submitted to the Commission. MTS Allstream stated that its imputation tests also incorporated the requirements in accordance with the directives contained in

Order 2000-425 and *Review of Bell Canada's customer-specific arrangements filed pursuant to Telecom Decision 2002-76*, Telecom Decision CRTC 2003-63, 23 September 2003 (Decision 2003-63). MTS Allstream noted that in Order 2000-425, the Commission had directed that a cost study demonstrate that the present worth of revenues under the customer-specific contract equalled or exceeded the sum of:

- (i) the present worth of revenues under general tariff rates for those service components available under the general tariff over the duration of the customer-specific contract;
- (ii) the present worth of causal costs for those components not covered by the general tariff rates; and
- (iii) the acquisition costs of any service elements in the bundle acquired from an affiliated or non-affiliated company.

25. MTS Allstream stated that the imputation tests filed in support of its applications included the present worth of revenues for those service components that are available under the General Tariff over the duration of the customer-specific contract:

- in the footnotes to Tables 4.0-1 and 4.0-2 of the Network Service Type 2 CSA of Attachment 1 submitted in TNs 543 and 543A, the "Imputed costs based on CDNA [competitor digital network access], proposed Tariff Notice No. 531" were included in the imputation test.
- the present worth of revenues impact of CDNA was provided in Table 4.0-1, Total Present Worth, and in Table 4.0-2, Per Service per Month.
- as the footnotes to Tables 4.0-1 and 4.0-2 of the Access Service Type 2 CSA of Attachment 2 indicated, the tariffed rates for unbundled loops and Local Analogue Channel Service were included for 2 Mbps High-Speed Access Rural and Analogue Access Service, respectively. The present worth of revenues impact of these tariffed elements are shown as in Table 4.0-1, Total Present Worth, and in Table 4.0-2, Per Service per Month.

26. With regard to the LAN-I and LAN-C services, MTS Allstream noted that these tariffs had been withdrawn at the time that Order 2000-553 was issued. MTS Allstream noted that the correct methodology to use in the imputation test with respect to service components that were not subject to a tariff, as specified in Decision 2003-63, was to use Phase II costs. MTS Allstream stated that the service previously tariffed as LAN-I was not offered as part of this CSA. MTS Allstream stated that in terms of the service previously tariffed as LAN-C, the Phase II costs for this service had been included in its imputation test and the treatment of these costs was referenced in Table 6.4.5-1 of Attachment 1 to its application.

27. With regard to Westman's concern that IXVG services may not have been included in the imputation test for Access Services, MTS Allstream confirmed that IXVG services had been included in the imputation test for Access Services. MTS Allstream stated that all of the tariffed services identified on page 4 of Attachment 2¹ of its application were included in the imputation test, in accordance with the approved methodology for imputation tests.
28. MTS Allstream submitted that contrary to Westman's assertions, it was not a requirement of the Province of Manitoba contract for MTS Allstream to provide a dedicated technician as contemplated in Tariff item 15001 of the Supplementary Tariff - Voice and Data Equipment. MTS Allstream stated that the Province of Manitoba Access Services Agreement stated that "MTS Allstream will provide skilled and adequate human resources to provide the access services". MTS Allstream stated that its labour costs associated with these obligations had been included in the imputation test.

Commission's analysis and determination

29. The Commission notes that MTS Allstream has included:
 - with respect to the imputation test for Network Services, the present worth of revenues for those service components that are available under the General Tariff for CDNA, based on the company's proposed Tariff Notice 531;
 - with respect to the imputation test for Access Services, the present worth of the tariffed rates for unbundled loops and Local Analogue Channel Service for 2 Mbps High-Speed Access Rural and Analogue Access Service, respectively; and
 - the Phase II costs for LAN-C in the imputation test for Network Services and the tariffed rates for IXVG services in the imputation test for Access Services.
30. The Commission notes that it was not a requirement under the Province of Manitoba contract that MTS Allstream provide a dedicated technician. The Commission considers that the costs associated with the human resources under the agreement have been included in the imputation tests.
31. The Commission is satisfied that imputation tests incorporate all the relevant costs in accordance with the directives in Order 2000-425.

Requirements for Type 2 CSAs

32. The Commission notes that MTS Allstream filed economic studies with imputation tests in support of the proposed Access Services item 18050 and Network Services item 17560. The Commission is satisfied that MTS Allstream has complied with the competitive safeguards set out by the Commission in Decision 94-19. Further, the Commission is satisfied that the rates for the Network Services and Access Services meet the imputation test.

¹ In its reply comments, MTS Allstream incorrectly referenced Attachment 1; it should have been Attachment 2.

Appropriateness of tariff provisions

Lack of clarity

33. MTS Allstream proposed tariff pages for Access Services and Network Services.

Commission's analysis and determinations

34. The Commission notes that in the proposed tariff for Access Services, the rates and charges for analogue service are structured on Price Tiers A, B, C, or D. The Commission notes that MTS Allstream proposed the following description with respect to the rates for analogue service - "Customer locations are classified as Price Tiers A to D". The Commission considers that the proposed tariff does not provide a clear description for the Price Tiers.
35. The Commission notes that the rates and charges for Access High-Speed type service are structured on Price Tiers 1, 2 and 3. The Commission notes that MTS Allstream proposed the following description with respect to the rates for Access Services - "Customer locations are classified as Price Tiers 1 to 3 outside of Winnipeg". The Commission considers that, similarly, the proposed tariff does not provide a clear description of the Price Tiers outside of Winnipeg.
36. Further, in the proposed tariff for Network Services, the rates and charges for Type 1 Network services for urban are priced on the basis of Price Tiers A, B, C, or D and for rural on the basis of Price Tiers 1, 2, 3, or 4. The Commission notes that MTS Allstream proposed the following description with respect to the rates for Network Services - "Customer locations are classified as Price Tier A to D for Urban locations and 1 to 4 for Rural locations". Further, the Commission considers that the proposed tariff does not provide a clear description for Urban and Rural locations.
37. The Commission also notes that in the proposed Network Services tariff, MTS Allstream has included the following wording in the last paragraph on page 84:

Telecom Decision 2004-32 made a determination that the Network Services components of this CSA meet the description of forborne WAN services at customer locations but not at central office locations. The Network Services which are described above in A. to C. and in I. to K. are provided at customer locations and consist of WAN services that would otherwise be forborne. The Network Services which are described above in D. to H. terminate at a central office and therefore are regulated services. For the purposes of this Tariff Item, the Network Services described in A. to H. above are classified as Type 1 Network Services and the Network Services described in I. to K. above are classified as Type 2 Network Services.

38. The Commission notes that, in Decision 2004-32, it found that the services that constitute the PDN and that are provided by MTS Allstream to the Province of Manitoba under the separate agreements are not WAN services that the Commission has forborne from regulating.

Accordingly, the Commission finds that all the wording in the first, second and third sentences that refers to WAN services, forborne services and regulated services should be deleted because the services that make up the Network Services tariff are not forborne.

39. In light of the above, MTS Allstream is directed to specify in the tariff the areas covered by each of the Price Tiers for analogue services, the geographic areas covered by each of the Price Tiers for Access High-Speed service, and the areas covered by each of the Price Tiers for Network Services.
40. MTS Allstream is also directed to replace the last paragraph on its proposed page 84 with the following:

The Network Services which are described above in A. to C. and in I. to K. are provided at customer locations. The Network Services which are described above in D. to H. terminate at a central office. For the purposes of this Tariff Item, the Network Services described in A. to H. above are classified as Type 1 Network Services and the Network Services described in I. to K. above are classified as Type 2 Network Services.

Westman's allegation of unjust discrimination

Westman's position

41. Westman submitted that MTS Allstream had not demonstrated that there was insufficient demand to offer Network Services and Access Services through the general tariff. Westman stated that the Commission has evidence, provided by MTS Allstream, that MTS Allstream expects the services will be requested by other customers and has made provision for this eventuality in its agreements with Manitoba.
42. Westman noted that the proposed Network Services and Access Services tariffs indicated that there was a minimum quantity required for the customer to obtain services under the respective tariffs. Westman submitted that these minimum quantity restrictions should be removed and the proposed Network Services and Access Services be available at the approved tariffed rates with no minimum quantity.
43. Westman stated that the Government of Manitoba may add customers such as hospitals, pharmacies, libraries, schools, municipalities, colleges, and universities that would not be subject to the minimum quantity requirements of the proposed tariff.
44. Westman objected to the tariff in its current form because it allowed MTS Allstream to sell services to customers and deny service to other customers, by exercising the minimum quantity requirements that were specified in the proposed tariffs. Westman submitted that this was unjust discrimination in its clearest form.

MTS Allstream's reply

45. MTS Allstream stated that contrary to Westman's assertion, the proposed tariffs for the two CSAs for Access Services and Network Services were developed to meet the unique requirements for a specific customer, the Province of Manitoba. MTS Allstream submitted

that therefore, the specific customer arrangement was filed as a Type 2 CSA, rather than as a general tariff, due to limited anticipated demand. MTS Allstream stated that the rates that were developed were based on the costs associated with that customer's demand forecast for the services that were required.

46. MTS Allstream submitted that a minimum quantity requirement for the two CSAs services must be specified in the CSA tariffs because the configuration of the service design and the associated costs (and rates) were unique to this customer.

Commission's analysis and determinations

47. With respect to Westman's allegation that MTS Allstream had not demonstrated that there was insufficient demand to offer Network Services and Access Services through the General Tariff, the Commission notes that in Decision 2004-32, it directed MTS Allstream to file two Type 2 CSAs. Contrary to Westman's submission, the Commission's direction for MTS to file CSAs as opposed to a general tariff, recognized that there was insufficient demand to warrant a general tariff.
48. With respect to Westman's submission that minimum quantity requirements should be removed, the Commission notes that there are minimum volume requirements in other tariffs, for example in the tariffs for Centrex service and Digital Network Access services. In these instances, the higher the volume commitment, the lower the applicable monthly rates. Further, the Commission notes that in Decision 2003-63, it directed that, with respect to CSAs, the tariff state the specific rate, expressed as a price per unit, including all volume commitments. Therefore, the Commission is of the view that minimum quantity requirements for the two proposed CSAs services are not unjustly discriminatory.
49. The Commission finds the minimum quantity requirements are not unjustly discriminatory, that the proposed tariffs filed as CSAs are appropriate, and that the Government of Manitoba may resell the services provided under the CSAs to health and education entities.

Westman's contention that there was no resale provision in the tariff

Westman's position

50. Westman noted that the proposed Network Services and Access Services tariffs do not include a provision for reselling these services as required by the imputation test.

MTS Allstream's reply

51. MTS Allstream stated that, in accordance with Decision 94-19, resale of Type 1 and Type 2 CSAs was to be permitted. MTS Allstream confirmed that the proposed Access Services and Network Services Type 2 CSAs were available for resale. MTS Allstream submitted that contrary to Westman's assertion, there was no regulatory obligation to include a specific provision in CSA tariffs that a service could be resold.

Commission's analysis and determinations

52. As noted above, the Commission considered in Decision 94-19 that it would be appropriate to permit Type 2 CSAs, subject to the competitive safeguards which included: (i) in order that there be no unjust discrimination or undue preference, the service package and the associated rates, terms and conditions provided under the CSA being generally available to other customers; and (ii) resale being permitted.
53. Therefore, the Commission finds that there is no regulatory obligation that MTS Allstream's proposed tariffs have to explicitly state that resale is permitted.

Westman's request for disclosure

Westman's position

54. Westman stated that MTS Allstream filed abridged versions of the Network Services and Access Services imputations tests which excluded the following information:
- the tariffed rates for local loops used to provide the Access Service;
 - the tariffed rates for local loops used to provide the Network Service; and
 - the present worth of the imputed elements (Table 4.0-1) in each of the Network Services and Access Services imputation test.
55. Westman stated that the tariffed rates of services included in the imputation test and the present worth of those tariffed rates were not confidential. Westman submitted that disclosure of the rates and present worth for each of the tariffed services included in the imputation test would enable it to comment on whether MTS Allstream had included all or the correct tariffed services in the imputation test. Westman requested that the Commission direct MTS Allstream to disclose this information.

MTS Allstream's reply

56. MTS Allstream stated that the rates for tariffed services were public documents, viewable both at MTS Allstream's business offices and online at www.mts.ca/tariffs. MTS Allstream noted that, in particular, the tariffed services that applied to the two CSAs filed in TNs 543 and 543A were Type A Local loops (Access Services Tariff item 105), Local Analogue Channel Service (Special Services and Facilities Tariff item 5600), and IXVG Service (item 5600). MTS Allstream stated that these services were identified in the economic studies submitted as part of its application.
57. MTS Allstream submitted that Westman's request for public disclosure of the present worth of the tariffed services included in the imputation test should be denied. MTS Allstream stated that while the tariffed rates for MTS Allstream's services were not confidential, the specific information requested by Westman regarding the present worth of the imputed elements contained sensitive demand information and therefore was submitted in confidence to

the Commission. MTS Allstream added that, moreover, this information has been provided to the Commission, in confidence, in accordance with the methodology for imputation tests approved by the Commission.

Commission's analysis and determinations

58. The Commission notes that the tariffed services that were costed at tariffed rates in the imputation test for the two CSAs are Type A Local loops (Access Services Tariff item 105), Local Analogue Channel Service (Special Services and Facilities Tariff item 5600), and IXVG Service (item 5600). Further, the Commission notes that these tariffs are available online and at MTS Allstream's business offices.
59. The Commission is of the view that while the tariffed rates for MTS Allstream's services are not confidential, the specific information regarding the present worth of the imputed elements contains sensitive demand information. In this regard, the Commission notes that Network Services are competitive services and disclosure of present worth of the imputed elements (Table 4.0-1) in the Network Services imputation test would provide demand information. Further, the Commission notes that while the Access Services are not competitive services, Access Services are required to access the Network Services. The Commission notes that disclosure of present worth of the imputed elements (Table 4.0-1) in the Access Network Services imputation test would provide demand information that is commercial information which would be helpful to a competitor that wanted to offer access to Network Services. Demand information has been consistently treated in a confidential manner by the Commission.
60. The Commission considers that the specific direct harm resulting from disclosure would likely outweigh the public interest in disclosure of the information as requested by Westman. Therefore, Westman's request for public disclosure is **denied**.
61. In light of the above, the Commission **approves, subject to the foregoing changes,** MTS Allstream's proposal to introduce to Supplementary Tariff item 17560 - Network Services - Customer Specific Arrangement, and item 18050 - Access Services -Customer Specific Arrangement. The revisions take effect as of the date of this Order.

Secretary General

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