Telecom Decision CRTC 2007-56

Ottawa, 23 July 2007

Review of the regulatory constraints that apply to the basic toll schedules

Reference: 8661-C12-200608672

In this Decision, the Commission removes the constraints that apply to the basic toll schedules which were established in Telecom Decision 97-19 except in relation to registered or certified hearing- or speech-impaired teletypewriter users. The determinations apply to Bell Aliant Regional Communications, Limited Partnership; Bell Canada; MTS Allstream Inc.; Ontera; Saskatchewan Telecommunications; Télébec, Limited Partnership; and TELUS Communications Company.

Introduction

1. The Commission received an application by Bell Canada, dated 9 May 2006, seeking an order to remove the regulatory constraints that apply to the company's basic toll schedules in its traditional Ontario and Quebec serving territories.

2. The Commission found it appropriate to initiate a proceeding and issued Telecom Public Notice 2006-10 to consider (1) the appropriateness of granting the relief sought in Bell Canada's application, in whole or in part, and (2) the appropriateness of granting similar relief to Aliant Telecom, now Bell Aliant Regional Communications, Limited Partnership (Bell Aliant); MTS Allstream Inc. (MTS Allstream); Ontera; Saskatchewan Telecommunications (SaskTel); Sogetel inc. (Sogetel); TELUS Communications Company (TCC); and Société en commandite Télébec, now Télébec, Limited Partnership (Télébec).

3. The Commission received submissions and/or responses to interrogatories from ARCH Disability Law Centre (ARCH); Bell Aliant; Bell Canada; the Canadian Association of the Deaf (CAD); the Canadian Hearing Society (CHS); MTS Allstream; Ontera; the Public Interest Advocacy Centre on behalf of the National Anti-Poverty Organization, the Consumers' Association of Canada, and l'Union des consommateurs (collectively, the Consumer Groups); SaskTel; Sogetel; TCC; and Yak Communications (Canada) Inc. (Yak). The record of this proceeding closed with reply arguments dated 23 February 2007.

4. In this Decision, the Commission considers the following issues:

    I. The appropriateness of removing the constraints that apply to the basic toll schedules of Bell Aliant, Bell Canada, MTS Allstream, Ontera, SaskTel, TCC, and Télébec;[1] and

    II. The appropriateness of retaining the 50 percent teletypewriter (TTY)[2] discount and applying it to all long distance telecommunications service providers.

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[1] Sogetel inc. does not provide long distance services.

I. The appropriateness of removing the basic toll constraints

Positions of parties

5. Bell Canada noted that, in Telecom Decision 97-19, the Commission generally forbore from regulating certain incumbent telephone companies'[3] toll and toll-free services but, pursuant to section 24 of the *Telecommunications Act* (the Act), made the offering and provision of toll services subject to the basic toll constraints set out below:

    i) these telephone companies were to provide to the Commission, and make publicly available, rate schedules setting out the rates for basic toll service. These schedules were to include the 50 percent discount that applies to calls which originate from, and are billed to, the residence service of a registered certified hearing- or speech-impaired TTY user;

    ii) these telephone companies were to provide reasonable direct notice in writing to subscribers in advance of any increases to the basic toll rates;

    iii) these telephone companies were not to route de-average basic toll rates;

    iv) the cap on overall North American basic toll rates implemented by the Commission in Telecom Decision 94-19 was to continue to apply in modified form. Changes within any of the North American basic toll schedules would be permissible, provided any rate increases within a schedule were offset by corresponding decreases within the same schedule such that there was no change to that schedule's weighted average rate; and

    v) these telephone companies were to ensure that all toll customers and applicants for toll services in their respective serving territories could choose basic toll service at the rates set out in the rate schedules noted in Telecom Decision 97-19.

6. Bell Canada noted that, in Telecom Decision 2002-34, the Commission retained the basic toll constraints and determined that credit card surcharges should continue to be included in the rates used to calculate the average price of calls in the basic toll schedule.

7. In its application, Bell Canada requested that the Commission issue an order:

    - immediately removing the basic toll constraints that apply to the company in their entirety; or

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[2] A TTY, also called a text telephone, is an electronic device that enables text communication via a telephone line.

[3] These telephone companies were BC TEL (now part of TCC); Bell Canada; The Island Telephone Company Limited, Maritime Tel & Tel Limited, The New Brunswick Telephone Company Limited, and NewTel Communications Inc. (now Bell Aliant); MTS NetCom Inc. (now MTS Allstream); Sogetel; Télébec; and TELUS Communications Inc. and Québec Téléphone (now part of TCC).

- in the alternative, immediately removing the basic toll constraints that apply to the company in their entirety, except for the requirement to retain the 50 percent discount that applies to calls which originate from, and are billed to, the residence service of a registered certified hearing- or speech-impaired TTY user, provided this condition applies to all long distance service providers in respect of long distance services offered or provided within the company's traditional Ontario and Quebec serving territories;

- irrespective of whether the Commission granted the above noted relief, an order that credit card surcharges should no longer be included in the calculation of the average basic toll schedule rate; and

- such other relief as the Commission considered appropriate in the circumstances.

8. Bell Canada submitted that fundamental changes had occurred since the release of Telecom Decisions 97-19 and 2002-34 that had significantly increased the competitiveness of the long distance market, including the basic toll segment. Bell Canada indicated that the competitiveness of the long distance market had increased the level of protection afforded to all toll subscribers in the company's Ontario and Quebec serving territories. Bell Canada noted that these changes included the ubiquitous roll-out of equal access-capable switches and the presence of numerous competing service providers offering stand-alone and bundled long distance services that were often priced lower than the company's long distance services.

9. Another change identified by Bell Canada was the availability of multiple alternative substitute services for traditional wireline long distance service such as voice over Internet protocol (VoIP) services, peer-to-peer services, wireless services, dial-around long distance services, and prepaid calling cards.

10. Bell Canada indicated that none of the Commission's original underlying concerns, nor any other regulatory basis, existed to justify applying the basic toll constraints. Bell Canada also indicated that removing the basic toll constraints would be consistent with the telecommunications policy objectives prescribed under paragraphs 7(*b*), 7(*c*), and 7(*f*) of the Act.[4]

11. Bell Canada submitted that, in light of the dynamically competitive market forces that were generating numerous reasonably priced alternatives which protected all basic toll customers, the basic toll constraints did not comply with 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). Bell Canada indicated that market forces obviated the need for these constraints, and that continuing to apply them would not meet the direction that the Commission regulate to the minimum extent necessary.

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[4] The objectives set out in paragraphs 7(*b*), 7(*c*) and 7(*f*) of the Act are, respectively, "to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada"; "to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications"; and "to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective."

12. The incumbent local exchange carriers (ILECs) who were made party to this proceeding agreed with the arguments put forth by Bell Canada, and supported both granting the relief sought in Bell Canada's application and extending similar relief to them.

13. SaskTel noted that the application did not seek to discontinue or withdraw the basic toll schedule, but rather sought to have the constraints on the basic toll schedule eliminated. SaskTel indicated that the basic toll schedule was required to accommodate the instances when a customer chose not to subscribe to a toll plan or when the toll plan would not apply. However, SaskTel also indicated that no other providers of long distance services were subject to the basic toll constraints. SaskTel submitted that continuing to apply the basic toll constraints was an unnecessary and asymmetric form of regulation of a forborne market that distorted competitive market forces.

14. Bell Canada submitted that equal access was available throughout its Ontario and Quebec operating territory. TCC submitted that equal access was available throughout its Alberta operating territory. Bell Aliant in the Atlantic provinces, SaskTel in Saskatchewan, and TCC in British Columbia and Quebec submitted that equal access was available in over 99 percent of their respective ILEC operating territories, while MTS Allstream covered a slightly lower percentage.

15. Bell Aliant submitted that the small pockets that remained in non-equal access areas would not rely on the basic toll schedule any more than customers in areas where equal access was available, due to the many options and alternatives offered to them. Bell Canada noted that equal access was not required for VoIP services.

16. TCC submitted that in the areas without equal access capability, the company was prepared to maintain its basic toll schedule. TCC, however, suggested that the Commission should discontinue the application of the basic toll schedule in all other parts of its ILEC territory.

17. Bell Aliant suggested that continued regulation of credit card surcharges was unnecessary. Bell Aliant noted that in Telecom Decision 2002-34, the Commission retained the basic toll constraints partially because it concluded that the basic toll schedule represented a significant portion of the ILECs' long distance revenue. Bell Aliant submitted that in arriving at this determination, the Commission incorrectly included ILEC long distance calls that would be billed to customers in discount toll packages at a lower rate. Bell Aliant submitted that customers who used a credit card to place basic toll schedule calls had alternative methods of payment available to them, including ILEC alternate billing options, cash, and prepaid cards.

18. Yak opposed removing the basic toll constraints and disagreed with, among other things, the claims that the competitiveness of the long distance market, particularly with respect to the residential long distance market, had increased significantly since Telecom Decisions 97-19 and 2002-34 were issued.

19. The Consumer Groups noted Bell Canada's argument that there were no longer any vulnerable and uncontested long distance subscribers in its territory that required the protection of a rate cap or any other regulatory protection, which, the Consumer Groups noted, focused on the availability of long distance options to consumers. The Consumer Groups expressed concern

that, if the constraints were removed, the basic toll schedule would experience significant price increases, or be eliminated such that only long distance rate plans would be offered to subscribers, with greater discounts offered to those customers taking several other services as part of a bundle. The Consumer Groups submitted that, if this happened, consumers would no longer have access to unbundled stand-alone long distance service with no minimum monthly charge, which was currently available through the basic toll schedule. The Consumer Groups also submitted that a large number of basic toll customers would face a significant price increase if forced to go on a long distance plan with a network access charge and possibly a minimum monthly fee. The Consumer Groups alleged that some customers would be unduly burdened by even slight increases in their overall monthly telephone charges, whether stemming from increases in long distance or local rates. The Consumer Groups further submitted that it was unlikely that competitive market forces would result in a long distance rate plan from the ILECs, or any other provider, that would offer low-cost access for low-volume toll users comparable to basic toll schedule rates.

20. Regarding the available alternatives, the Consumer Groups argued that some of the proposed substitutes were not true substitutes as they lacked either the functionality or the reliability of traditional long distance services. The Consumer Groups submitted that VoIP and other Internet-based substitutes for long distance assumed access to computers and underlying Internet service, which many vulnerable and low-income consumers did not have. The Consumer Groups further submitted that many elderly consumers and those that lacked technical know-how would not benefit from the increased presence of alternatives and would continue to rely on traditional long distance services.

21. The Consumer Groups submitted that the Commission had already been regulating basic toll in accordance with the Policy Directive in that it had been relying upon market forces to achieve the policy goals of the Act and, where necessary, regulating in such a manner as to impair market forces to the least possible extent.

Commission's analysis and determinations

22. The Commission notes subparagraphs 1(*a*)(i) and (ii) of the Policy Direction, which state that the Commission should

> (i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and
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> (ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.

23. The Commission notes that, in Telecom Decision 97-19, it considered that the basic toll sector of the toll market was not subject to as intense a level of price competition as were the toll market as a whole and the toll-free market. The Commission considered that retaining the ceiling on basic toll rates established in Telecom Decision 94-19 would be appropriate as it would preclude the ILECs from generating increased revenues from the basic toll sector of the toll market, which could be used to finance below-cost pricing in areas of the market that were highly competitive.

24. The Commission further considered that, in a forborne environment where prior Commission tariff approval was no longer required, subscribers in non-equal access areas would not have the ability to switch to comparable services provided by competitive long distance telecommunications service providers, and thus required certain regulatory protection. Accordingly, the Commission determined that the retention of a ceiling would also provide consumers in the less competitive non-equal access areas with an additional safeguard against unjust or unreasonable rate increases in a de-tariffed environment.

25. To protect the interests of users, including users in high-cost remote areas, and in light of the Canadian telecommunications policy objectives, the Commission considered it appropriate in Telecom Decision 97-19 to adopt the conditions, as outlined in paragraph 5 above, that apply to the offering or provision of basic toll services for certain ILECs. The same conditions were extended to SaskTel in Decision 2000-150, while similar conditions were applied to Ontera in Decision 2001-583.

26. The Commission notes that, based on the information filed by the companies, the percentage of the ILECs' toll revenues that are attributable to basic toll services has decreased significantly since the issuance of Telecom Decision 97-19. The Commission considers that, given this, there is no incentive for the ILECs to engage in below-cost pricing, as they could not generate sufficient increased revenues from the basic toll sector to finance below-cost pricing in areas of the market that are highly competitive.

27. Regarding the availability of equal access, the Commission notes that it is available almost ubiquitously across each ILEC's operating territory.

28. In the Commission's view, the main reasons cited for retaining the cap on the basic toll schedule generally no longer exist. Therefore, the Commission considers that retaining the basic toll constraints, rather than relying on market forces in a forborne market, does not meet the policy objectives of the Act.

29. In regard to whether there are viable alternatives to the basic toll schedule, the Commission is of the view that there is a variety of cost-efficient alternatives available to consumers who do not wish to subscribe to a toll plan, including various dial-around services, prepaid calling cards, and toll plans of competitive long distance service providers. In many cases, these toll services are offered at lower rates than are available under the ILECs' toll plans and some do not have subscription or network access charges. In addition, there are alternatives that were not available when Telecom Decision 97-19 was issued, such as various Internet-based services.

30. The Commission also recognizes that there remains a small number of subscribers who reside in non-equal access areas. The Commission notes that substitutes, such as toll-free-based long distance services and prepaid calling cards, are available to these consumers and that most customers are generally aware of this fact. In addition, given the limited number of customers in these areas, increasing the rates for these customers would not provide the ILECs with significant additional revenues.

31. Regarding the Consumer Groups' concerns that the basic toll schedule could be eliminated, the Commission notes that most of the ILECs stated that they intended to retain the basic toll schedule, although TCC indicated that its basic toll schedule should only be retained for TTY users and in areas where equal access was not available.

32. In light of the above, the Commission concludes that it is appropriate to remove the basic toll schedule constraints, except for registered or certified hearing- or speech-impaired TTY users as discussed below. The Commission considers that such a determination contributes to the achievement of the objectives set out in paragraphs 7(*c*) and 7(*f*) of the Act.

II. The appropriateness of retaining the 50 percent discount for TTY users

Positions of parties

33. Bell Canada indicated that it would not be opposed to retaining the 50 percent discount for TTY users. Bell Canada submitted that, to be made compliant with the principles of symmetry and competitive neutrality, the 50 percent discount must apply to any telecommunications service provider offering or providing toll services within the company's operating territory. TCC also supported this view.

34. CAD, CHS and ARCH limited their comments to their support for retaining the 50 percent discount for hearing-impaired users. ARCH and CAD noted that this discount was to take account of the appreciably longer time required for the registered hearing- or speech-impaired subscriber to communicate over the telephone network.[5] ARCH also noted that this discount had been approved in an attempt to equalize communication costs between hearing- and speech-impaired customers and other customers.

35. ARCH submitted that there had been no change in circumstances since Telecom Decision 97-19 that would justify eliminating this requirement. ARCH also submitted that it was essential that the discount continue in order for the hearing- and speech- impaired to have equitable and affordable access to long distance services to meet their communication needs. ARCH further submitted that the TTY discount should be made a requirement for all providers of long distance services, while CAD indicated that the discount should be extended to wireless and other telecommunications services.

36. ARCH noted that the Telecommunications Policy Review Panel, in its Final Report 2006 (the TPR Panel), recognized the continued importance of social objectives in telecommunications policy. ARCH also noted that the TPR Panel found that the legislative policy objectives should include a stronger commitment to the goal of enhancing the social well-being of Canadians and the inclusiveness of Canadian society by facilitating access to telecommunications by persons with disabilities.

37. ARCH noted that the Commission recognized that market forces may not be sufficient to protect the interests of persons with disabilities. ARCH also noted that both the Commission and the TPR Panel recognized that social obligations, such as the TTY discount, should be applied in a competitively neutral fashion.

[5] Stated in Order 2000-17.

Commission's analysis and determinations

38. The Commission notes subparagraph 1(*b*)(iii) of the Policy Direction, which states that the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that

> (iii) if they are not of an economic nature, to the greatest extent possible, are implemented in a symmetrical and competitively neutral manner.

39. Given that the TTY discount addresses accessibility issues, the Commission agrees that such a requirement would help to meet the objectives of paragraph 7(*h*) of the Act by responding to the economic and social requirements of telecommunications service users.

40. The Commission notes that, in Order 2000-17, it extended the 50 percent discount on calls which originated from, and were billed to, the residence service of a registered or certified hearing- or speech-impaired TTY user to the following calls rated pursuant to the ILECs' basic toll schedule:

    1) all calls within Canada that originate from and are billed to the residence service of a registered or certified hearing- or speech-impaired TTY user;

    2) all calls within Canada that are routed through or by a message relay centre or service;

    3) all calls within Canada billed to the calling card of a registered or certified hearing- or speech-impaired customer;

    4) all calls within Canada that are made from dedicated lines used by registered or certified hearing- or speech-impaired TTY users at their place of employment and billed to the employer; and

    5) all calls within Canada made from a dedicated line leased by a business to offer TTY services to its customers.

41. The Commission notes that there are still a significant number of both residential and business TTY users that make calls using the basic toll schedule under the above-noted scenarios. The Commission also notes that the 50 percent discount was established to address inequality between hearing- and speech-impaired telecommunications users and other telecommunications users. Accordingly, the Commission is of the view that the basic toll schedule constraints, including the 50 percent discount for TTY users for the calls identified above, should be maintained.

42. However, the Commission considers that including the credit card surcharges for the limited number of TTY users would be onerous for the companies and would have little impact on the calculation of the average basic toll rate for TTY users. Accordingly, the Commission considers it reasonable to exclude credit card surcharges when calculating the average price of basic toll services.

43. The Commission notes the assertion of most of the parties that, should such a condition continue to apply, then it should apply to all long distance telecommunications service providers in respect of long distance services offered.

44. However, the Commission notes that the 50 percent TTY discount is applied in relation to the basic toll schedule, and in order to require all competitive long distance telecommunications service providers to provide such a discount, they would have to offer basic toll service. The Commission further notes that extending the 50 percent TTY discount to competitive long distance telecommunications service providers was not identified as an issue in this proceeding. Yak was the only competitive long distance telecommunications service provider to file comments in this proceeding but provided none related to this issue. Therefore, the Commission finds that it would not be reasonable to extend this requirement to all competitive long distance telecommunications service providers at this time. However, the Commission is of the view that it would be appropriate to consider this issue in respect of the planned proceeding to address unresolved accessibility issues for persons with disabilities that the Commission has identified in the second year of its three-year work plan, 2007 to 2010, dated 24 April 2007.

45. Accordingly, the Commission finds that, for registered or certified hearing- or speech-impaired TTY users, except for the inclusion of the credit card surcharges in the calculation of the average price of calls, the five basic toll constraints established in Telecom Decision 97-19, as modified by Order 2000-17, will continue to apply to Bell Aliant, Bell Canada, MTS Allstream, Ontera, SaskTel, Télébec, and TCC. Until the Commission issues its determination in the proceeding on accessibility issues noted above, it is prepared to consider proposals from these companies, in consultation with the various associations for hearing- and speech-impaired persons, for a mutually acceptable temporary alternative to maintaining the basic toll schedule and the TTY discount for these users.

Secretary General

Related documents

- *Continued need for the regulatory constraints applicable to toll and toll-free services*, Telecom Public Notice CRTC 2006-10, 7 July 2006

- *Forbearance – Regulation of toll services provided by incumbent telephone companies*, Telecom Decision CRTC 97-19, 18 December 1997, as amended by Telecom Decision CRTC 97-19-1 dated 9 March 1998

- *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994

- *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002, as amended by Telecom Decision CRTC 2002-34-1 dated 15 July 2002

- *SaskTel – Transition to federal regulation*, Decision CRTC 2000-150, 9 May 2000

- *O.N.Telcom – Implementation of toll competition and related matters*, Decision CRTC 2001-583, 13 September 2001

- Order CRTC 2000-17, 19 January 2000, as amended by Order CRTC 2000-17-1 dated 31 January 2000