



Telecom Decision CRTC 2007-76

Ottawa, 31 August 2007

Bell Canada and TELUS Communications Company – Applications to review and vary the Access Tandem, Direct Connection, and Co-location Power services Decisions

Reference: 8662-B2-200617219 and 8662-T66-200613671

In this Decision, the Commission denies applications by Bell Canada and TELUS Communications Company to review and vary Telecom Decisions 2006-22, 2006-23, and 2006-42 regarding certain costing determinations and retroactive rebate payments in connection with Access Tandem, Direct Connection, and Co-location Power services.

Introduction

1. The Commission received an application by TELUS Communications Company (TCC), dated 30 October 2006, and an application by Bell Canada, dated 6 December 2006,¹ in which the companies requested a review and variance of Telecom Decisions 2006-22, 2006-23, and 2006-42, wherein the Commission set the final rates for Access Tandem (AT), Direct Connection (DC), and Co-location -48 Volt DC power (co-location power) services, respectively.
2. TCC requested that the Commission revise the company's cost studies for AT, DC, and co-location power services to reflect its proposed maintenance expenses; further revise the company's cost studies for DC service to reflect its proposed switching technology; and approve revised rates for the above-noted services, reflecting the company's proposed costing adjustments, on a going-forward basis. Similarly, Bell Canada requested that the Commission approve revised rates for co-location power service, reflecting its proposed costing adjustments, on a going-forward basis.
3. Both TCC and Bell Canada requested that the retroactive rate rebates ordered in the above-noted Decisions be rescinded, or if not rescinded, be treated as an exogenous adjustment and compensated through the deferral account.
4. Bell Canada also requested that if the Commission were to rule that retroactive rates remained appropriate, the associated rebates not be applied for the period prior to the date of any available cost studies. Bell Canada also requested that any such rebates be adjusted for the costing errors identified by the company with respect to co-location power service and be compensated via the deferral account as an exogenous factor.

¹ Bell Canada served copies of its application on interested parties on 12 January 2007.

5. The Commission received comments, supplementary comments,² and/or reply comments on one or both applications from Bell Aliant Regional Communications, Limited Partnership (Bell Aliant); Bell Canada; MTS Allstream Inc. (MTS Allstream); Primus Telecommunications Canada Inc. (Primus); Rogers Communications Inc. (RCI); and Yak Communications (Canada) Inc. (Yak). The record of the proceeding initiated by TCC's application closed 5 February 2007, and the record of the proceeding initiated by Bell Canada's application closed 5 March 2007.
6. The Commission considers that the parties' submissions raise the preliminary issue of whether Bell Canada's application with respect to Telecom Decisions 2006-22 and 2006-23 should be considered in light of its filing date. Further, the Commission considers that the review and vary applications raise the issue of whether there is substantial doubt as to the correctness of the following determinations:
 - A. the costing determinations that are the subject of the review and vary applications;
 - B. the determination to order the retroactive application of the final rates for AT, DC, and co-location power services and attendant rebates;
 - C. the determination to order the retroactive application of the final co-location power service rates and attendant rebates for the period prior to the date of the relevant cost study; and
 - D. the determination to deny compensation for rebates from the deferral account.

Whether Bell Canada's application with respect to Telecom Decisions 2006-22 and 2006-23 should be considered in light of its filing date

7. MTS Allstream requested that the Commission strike from the record all arguments and requests made by Bell Canada in support of its application to review and vary Telecom Decisions 2006-22 and 2006-23. MTS Allstream submitted that Bell Canada's application was filed outside the six-month filing timeframe established in Telecom Public Notice 98-6 for the filing of review and vary applications; and further, Bell Canada had not justified the delay in its filing.
8. Bell Canada submitted that there was nothing in the *Telecommunications Act* (the Act) or the *CRTC Telecommunications Rules of Procedure* to prevent a party from seeking a change to a past decision regardless of the elapsed time since the decision in question was issued. Bell Canada further submitted that it would be neither efficient nor effective regulation and, hence, would be contrary to the Policy Direction for the Commission to consider TCC's, but not Bell Canada's application to review and vary Telecom Decisions 2006-22 and 2006-23 as to do so would result in multiple proceedings.

² The supplementary comments and reply comments addressed, at the Commission's invitation, the disposition of TCC's application in light of *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534 (the Policy Direction), which came into effect 14 December 2006. The Commission reopened the record of the proceeding for this purpose. In addition, at the Commission's invitation, Bell Canada provided supplementary comments to its application addressing the Policy Direction, which other parties had an opportunity to address.

Commission's analysis and determination

9. Given that Bell Canada raised the same issues, made similar arguments, and is essentially seeking the same relief with respect to Telecom Decisions 2006-22 and 2006-23 as TCC, the Commission finds it appropriate to consider Bell Canada's application, and to do so in this Decision.
10. The Commission notes that Bell Canada's application was initially filed as part of parties' comments on TCC's application and was served on TCC only. The Commission considers that while Bell Canada's application also provided comments on TCC's application, in the interests of fairness, transparency, and efficiency, Bell Canada should have filed its application separately from the proceeding to consider TCC's application, and served copies on all relevant parties. In this regard, by letter dated 11 January 2007, the Commission amended the dates by which parties had to file comments on Bell Canada's application and requested Bell Canada to serve its application on interested parties to Telecom Decisions 2006-22, 2006-23, and 2006-42 in order to seek comments regarding Bell Canada's application. The Commission is satisfied that this amended process provided parties with a full opportunity to make meaningful submissions on Bell Canada's application.

A. The costing determinations that are the subject of the review and vary applications

Positions of parties

(a) TCC-related issues

11. TCC submitted that the Commission's determinations in Telecom Decisions 2006-22, 2006-23, and 2006-42 to reject TCC's actual technology and maintenance expenses and instead use costs derived from other incumbent local exchange carriers (ILECs) raised substantial doubt as to the correctness of those Decisions. In this regard, TCC submitted that the Commission had erred in its calculation of TCC's company-specific maintenance expenses for AT, DC, and co-location power services, and switching technology costs for DC service. TCC submitted that, as a result, the Commission had not met its duty to set just and reasonable carrier-specific interconnection rates consistent with section 27 of the Act.
12. TCC further submitted that the determination not to accept its company-specific costs and technology choices was contrary to the Policy Direction as it interfered with market forces, risked promoting uneconomic entry, and did not constitute efficient and effective regulation. Bell Aliant supported TCC's position and submitted that the Commission's costing determinations were contrary to the Policy Direction because they prevented the recovery of TCC's actual costs and, hence, gave competitors a cost benefit that did not promote economically efficient entry.
13. With respect to its AT, DC, and co-location power maintenance expenses, TCC submitted that the Commission had erred in (a) rejecting the company's approach to estimating its proposed maintenance expenses for those services due to the significant differences in monthly maintenance expense estimates across the ILECs and (b) capping the maintenance expense component of TCC's Phase II costs based on factors unrelated to TCC's actual experience and costing data.

14. TCC submitted that it was an error to reject accounting-based data in favour of an expense cap derived from asset-based studies filed by other carriers because such a cap was not representative of TCC's costs and was an inferior method of determining forward-looking costs when the company had provided actual costs. TCC also submitted that the Commission was obligated to determine rates specific to a particular carrier, not an amalgam of carriers. TCC further submitted that the Commission's rationale for rejecting the company's actual accounting-based data on the grounds that the data principally relied on historical data was illogical.
15. With respect to its AT and DC services, TCC submitted that the company had determined its maintenance expense forecast, using as a proxy, maintenance expenses associated with its access lines. TCC submitted that its accounting data approach was based on information reported on an end-to-end service basis, as opposed to the more aggregated studies based on asset classes used by other ILECs. TCC submitted that its actual accounting-based data provided the most accurate picture of costs for a particular service.
16. MTS Allstream, RCI, Primus, and YAK (the Competitors) opposed TCC's application. The Competitors submitted that under the Act, the Commission had the authority to adopt the methodology that it considered to be appropriate in the determination of just and reasonable rates based on the projected costs of a telecommunications carrier filed in a proceeding. The Competitors also submitted that the Commission could question and modify the ILECs' costs when necessary, using the best available information on the record.
17. Primus submitted that TCC appeared to be suggesting that the Commission was obligated under section 27 of the Act to accept an ILEC's projected costs and that it had no authority to substitute more realistic and reasonable cost projections even where the proposed costs were inconsistent with previous costing methodologies used by the Commission. Primus further submitted that the Courts had consistently recognized that the Commission had considerable discretion in determining whether rates were just and reasonable under the Act.
18. RCI argued that the relief sought by TCC was contrary to the Policy Direction's criterion with respect to competitive neutrality as the ILECs would be allowed to overcharge competitors for the services at issue.
19. MTS Allstream submitted that TCC's maintenance expense estimates were based on new costing methodologies and were out of step with those of other carriers and previous estimates provided by TCC. MTS Allstream also submitted that while accounting-based data could sometimes provide a useful point for estimating forward-looking causal costs, there was a significant risk that it would also reflect past operational inefficiencies. MTS Allstream further submitted that TCC did not provide a satisfactory rationale for the significant cost differences between its 2004 and 2000 DC maintenance expenses per minute. MTS Allstream submitted that it was not clear why TCC's DC maintenance expenses estimates using TCC's Individual Business Line as a proxy were more accurate than those using maintenance factors applied to asset classes.

20. MTS Allstream and RCI submitted that the Commission had not adopted the actual cost estimates of any of the other ILECs as a proxy or as a substitute for TCC's specific costs. RCI further submitted that the Commission had not found that TCC's costs needed to be the same as those of other ILECs and, in fact, had, with respect to TCC, established a maintenance cap set at 11 percent of capital compared to 7.5 percent of capital for the other ILECs.
21. MTS Allstream submitted that in the case of the DC service, even after removing TCC's portfolio expenses, TCC's maintenance expenses were approximately two to three times greater than the estimates used in TCC's 2000 DC cost studies, despite the 2000 estimates reflecting portfolio expenses. MTS Allstream also submitted that TCC's maintenance expenses, excluding portfolio expenses, were triple those of Bell Canada.
22. Primus submitted that the Commission had, in fact, used TCC's projected costs where it considered that it was appropriate to do so but not when the costs proposed by TCC were unreasonable or inconsistent with previous costing determinations. Primus submitted that in those instances, the Commission, using its expertise, had established a costing structure that would more accurately reflect the actual costs that TCC would incur.
23. MTS Allstream submitted that the cap applied by the Commission in Telecom Decision 2006-42 to TCC's co-location power maintenance expenses was based on TCC's own estimates of annual maintenance and repair expenses.
24. In reply, TCC reiterated its submission that the Commission's rejection of the company's accounting-based data led to inaccurate costs being applied to the services in question, and was inconsistent with the principle of just and reasonable rates.
25. With respect to its switching technology costs for DC service, TCC submitted that the Commission had erred in denying TCC's investment decision to use spectrum peripheral modules (SPM) technology in its 2004 cost study to estimate trunk termination costs and in reducing TCC's switching capital costs by a factor of 11 percent. TCC indicated that the growth technology used in its 2004 DC cost study associated with trunk terminations was SPM because of, among other things, reliability and enhanced functionality. TCC submitted that it had deployed SPM technology on a network basis because it was the most economic and efficient solution. TCC also indicated that in its previous DC cost study, the growth technology used was digital trunk controller (DTC).
26. TCC argued that the purpose of the Commission's review of the proposed Phase II costs was not to second-guess the carrier's technology or management decisions but to determine the actual forward-looking company-specific Phase II costs. TCC questioned how a carrier could recover its costs if the Commission were permitted to set rates based on costs and technology not specific to that carrier.
27. MTS Allstream submitted that Bell Aliant, Bell Canada, and MTS Allstream had relied on a mix of SPM and DTC technologies in contrast to TCC's exclusive reliance on SPM. MTS Allstream submitted that TCC had not provided adequate rationale to justify the exclusive use of SPM technology given that the record of the proceeding that led to Telecom Decision 2006-23 indicated that the use of SPM technology had led to higher costs.

28. MTS Allstream also submitted that TCC had failed to provide sensitivity results with respect to the use of DTC. Further, MTS Allstream and RCI submitted that TCC had provided no valid basis for its position that SPM technology was more economic and efficient than DTC.
29. In reply, TCC submitted that competitors must take the company's network as it stands and that there was no policy or statutory basis for preventing TCC from recovering its actual technology costs.

(b) Bell Canada-related issues

30. Bell Canada submitted that the Commission's determination in Telecom Decision 2006-42 to remove the floor space costs and the associated heating, ventilation, and air conditioning (HVAC) costs (collectively, the floor space-related costs) from the company's proposed co-location power costs raised substantial doubt as to the correctness of that Decision. Bell Canada submitted that the floor space-related costs were causal to the co-location power service. Bell Canada further submitted that the removal of these causal costs amounted to an unjust preference to co-locators in the form of rates that did not reflect actual costs.
31. Bell Canada also submitted that the Commission's determination to remove the floor-space related costs was inconsistent with the Policy Direction's directive that regulatory measures should interfere with the operation of competitive market forces to the minimum extent necessary. Bell Canada submitted that under normal competitive market forces, all of the floor space-related costs would be recovered.
32. Bell Canada further argued that the above-noted determination was contrary to the Policy Direction as it encouraged uneconomic entry and deterred economically efficient entry and did not meet the directives regarding technological and competitive neutrality.
33. Bell Canada submitted that most of the previously-available central office (CO) space was now occupied by its next generation equipment. Bell Canada submitted that it had already expanded four COs and at least three other COs had been identified as being at risk due to insufficient space. Bell Canada further submitted that power equipment, which was usually installed in the basement, could be installed on another floor if required but only after the floor in question had been reinforced to meet weight design criteria and to do so would be very costly.
34. MTS Allstream submitted that Bell Canada had raised the issue of incremental HVAC costs in the proceeding that led to Telecom Decision 2006-42 and that the Commission had disagreed with Bell Canada's position, concluding that the incremental HVAC costs were expected to be minimal.
35. RCI submitted that Bell Canada's submission that the exclusion of floor space-related costs amounted to unjust preference was flawed in that it presumed that the Commission was required to approve whatever the ILECs estimated their costs to be. RCI further submitted that Bell Canada's identification of only four COs that had required expansion supported the Commission's determination that such incremental costs were minimal.

36. MTS Allstream submitted that it was not clear why the deployment of next generation equipment on higher floors within Bell Canada's COs would impact floor space in the basement of its COs. In MTS Allstream's view, the largest occupier of space within the ILECs' COs was copper plant. MTS Allstream submitted that since Bell Canada was deploying more and more remotes and abandoning copper plant in the process, more space would be available in the CO. MTS Allstream further submitted that accepted engineering practice was to design and place HVAC systems so as to accommodate future HVAC load.
37. In reply, Bell Canada submitted that the space occupied in its COs by competitors' equipment had impacted the company's costs as demonstrated by the fact that, at this time, it had actually performed five CO expansions and had identified an additional five COs at risk in 2007. Bell Canada submitted that it should be entitled to recover reasonable costs for any portion of any CO used to house facilities installed for the use of co-locators.
38. Bell Canada submitted that the installation of next generation equipment would not make more floor space available since existing voice facilities would remain in place for some time. Bell Canada explained that it was not doing away with this technology but was supplementing it with new data facilities. Bell Canada submitted that it was unreasonable to assume that the installation of new equipment and the many other initiatives undertaken by the company over time to maximize the use of its real estate assets had no impact on the availability of floor space and that assumptions made in the mid-90s regarding available space in COs remained valid.
39. Bell Canada submitted that the Commission's decision to exclude infrastructure costs such as floor space or HVAC was inconsistent with the principle of ensuring that rates recovered costs as emphasized by the Commission in its numerous decisions and orders. Bell Canada also submitted that the impact on the rates of excluding these costs was substantial.

Commission's analysis and determinations

(a) General analysis

40. The costing determinations under review in the review and vary applications stem from the Commission's exercise of its powers under section 27 of the Act to ensure that rates are just and reasonable and not unjustly discriminatory. The Commission's powers under section 27 of the Act are very broad and are subject to the Policy Direction.
41. The Policy Direction sets out, among others, the following directives:
- 1(a) ...the Commission should (i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives; and (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.
- 1(b) the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that (i) specify the telecommunications policy objective that is advanced by those measures and demonstrate their

compliance with this Order; (ii) if they are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry; ... (iv) if they relate to network interconnection arrangements or regimes for access to networks, buildings, in-building wiring or support structures, ensure the technological and competitive neutrality of those arrangements or regimes, to the greatest extent possible, to enable competition from new technologies and not to artificially favour either Canadian carriers or resellers.

42. The Commission notes that both Bell Canada and TCC submitted that the Commission was obliged to ensure that the companies' actual proposed costs were recognized and was not entitled to adjust a company's proposed costs based on other ILECs' proposed costing information. The Commission considers that in order to determine just and reasonable rates for a service, it is required to examine proposed costs from the standpoint of whether they constitute the appropriate economic service costs. Under subsection 27(5) of the Act, the Commission may adopt any method or technique that it considers appropriate when establishing just and reasonable rates. The Commission considers that in determining the appropriateness of specific costs proposed by an ILEC, it may have regard to all relevant factors to the extent that they pertain to the same service or to the same costing components, including previous costing studies and costing evidence submitted by this ILEC and by other ILECs. Further, the Commission considers that pursuant to section 27 of the Act, it has the power to make cost adjustments and to apply a different methodology than the methodology proposed by the ILEC in question.
43. With respect to the relationship between section 27 of the Act and the Policy Direction, the Commission considers that the question of whether the Commission has lawfully carried out its duties under section 27 of the Act must necessarily be informed by whether or not its determinations comply with the Policy Direction.
44. With respect to subparagraph 1(a)(i) of the Policy Direction, the Commission notes the following:
 - (a) AT and DC services enable toll competitors to interconnect their networks with the ILECs' networks in order to originate and terminate toll traffic and thereby provide long distance services to their customers.
 - (b) co-location power service provides competitors that are co-located at ILECs' COs with access to power at those COs.
 - (c) There are no alternatives to the ILECs' AT and DC services for toll competitors wishing to interconnect with the ILECs' networks in order to originate and terminate toll traffic to ILEC customers.
 - (d) There are no alternatives to the ILECs' co-location power services in the ILECs' COs.

45. With respect to subparagraph 1(a)(i) of the Policy Direction, in light of the above the Commission considers that market forces cannot be relied on to achieve the telecommunications policy objectives set out in paragraph 46 below and that regulation of AT, DC, and co-location power services is required. Given the absence of market forces, the Commission further considers that the Policy Direction's requirement that regulation minimally interfere with market forces as set out in subparagraph 1(a)(ii) of the Policy Direction is not applicable here.

46. With respect to subparagraph 1(b)(i) of the Policy Direction, the Commission considers that the costing determinations that are the subject of the review and vary applications advance the following policy objectives as set out in section 7 of the Act:

(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required is efficient and effective; and

(h) to respond to the economic and social requirements of users of telecommunications services.

(b) *Analysis specific to individual costing issues*

47. The Commission will now consider the individual issues raised by Bell Canada and TCC with respect to the Commission's costing determinations in the relevant Decisions.

(i) *TCC's DC maintenance expenses*

48. With respect to TCC's contestation of the Commission's determinations regarding maintenance expenses, TCC submitted, among other things, that the Commission had failed to recognize the company's actual accounting data. The Commission agrees with TCC that accounting (i.e. historical) data may be an appropriate basis to estimate the prospective incremental Phase II costs for a given service. However, in order for accounting expense data to be so used, the Commission considers that adjustments are needed to reflect ongoing changes that inevitably occur over time, for example, with respect to changes in service demand, changes in labour rates, changes in the company's operational processes and technological deployments. In addition, accounting expense data is generally tracked by function or activity grouping and is generally common to a number of services. In that event, adjustments are also required to reflect the appropriate expense estimates at the service level.

49. The Commission notes that TCC's DC maintenance expenses proposed in its January 2004 cost studies were approximately 0.040 cents per connect minute reflecting increases of over 1000 percent for TCC's operating territory in Alberta (TCC-AB) and about 400 percent for TCC's operating territory in British Columbia (TCC-BC) compared to its previous 2000 DC cost study maintenance expense estimates of 0.003 cents per minute and 0.008 cents per minute for TCC-AB and TCC-BC, respectively. The Commission notes that by comparison, Bell Canada's per-minute maintenance expense was estimated at 0.004 cents per connect minute in its 2003 DC study and did not increase from the estimate in its 2000 cost study.

50. The Commission notes that in the proceeding that led to Telecom Decision 2006-23, TCC indicated that its costing methodology had been revised from a maintenance expense factor by asset class approach in its 2000 cost studies to service-specific maintenance expenses based on the Individual Business Line service in its 2004 DC cost studies, and that this revised methodology was more accurate. TCC further explained that its 2004 DC cost study included all portfolio expenses, estimated at 67.1 percent of its 2004 DC maintenance expenses, while its 2000 DC maintenance expenses had only accounted for a portion of the company's portfolio costs. The Commission notes, however, that even if TCC's portfolio expenses are removed entirely from the 2004 cost studies, the per-minute DC maintenance expense estimates proposed in its 2004 DC cost studies are approximately 290 percent higher for TCC-AB and 70 percent higher for TCC-BC compared to those proposed in TCC's 2000 cost studies.
51. As noted above, the Commission considers that, subject to appropriate adjustments, an accounting-based costing approach may be capable of accurately estimating Phase II maintenance expenses. However, the Commission expects that when a change in methodology produces significantly higher cost estimates, as occurred as a result of TCC's change in methodology for estimating its DC maintenance expenses, the company would provide a detailed explanation and justification with respect to the cost estimate increases. The Commission notes that, despite being given the opportunity to do so, TCC failed to provide an adequate explanation and justification in either the proceeding that led to Telecom Decision 2006-23 or in this proceeding.
52. The Commission notes that the maintenance expense methodology it applied in Telecom Decision 2006-23 to estimate TCC's maintenance expenses was similar to the methodology that TCC used in its 2000 DC cost studies. The Commission also notes that the maintenance expense factor by asset class approach applied by the Commission in Telecom Decision 2006-23 is the same methodology that was applied by Bell Aliant, MTS Allstream, and SaskTel in that proceeding. Further, the Commission notes that this methodology is specifically documented in TCC's Phase II costing manual.
53. The Commission further notes that in Telecom Decision 2006-23, it took into account TCC's specific circumstances by adjusting the DC maintenance expense cap from the level found to be appropriate for other ILECs, namely 7.5 percent, to 11 percent of the associated capital, to reflect TCC's portfolio expenses.
- (ii) TCC's AT maintenance expenses*
54. The Commission notes that TCC's maintenance expenses proposed in its 2002 AT cost studies were 0.042 cents per connect minute and were significantly higher than those proposed by the other ILECs in their 2002 AT cost studies, which ranged between 0.007 and 0.012 cents per connect minute.
55. In Telecom Decision 2006-22, the Commission noted that TCC's maintenance expenses proposed in its 2000 cost studies for a comparable toll interconnection service, DC service, were significantly lower than TCC's maintenance expenses proposed in its 2002 AT cost studies. The Commission concluded that TCC's AT maintenance expenses were inappropriate and relied on an alternative methodology to estimate TCC's maintenance expenses. This

methodology consisted of establishing a maintenance expense cap based on a percentage of the associated capital. As noted previously, this methodology to determine maintenance expenses is specifically documented in TCC's Phase II costing manual.

56. The Commission notes that the maintenance expense factor by asset class approach applied by the Commission in Telecom Decision 2006-22 was the same methodology as that applied with respect to the establishment of DC maintenance expenses and was also applied by Bell Aliant, MTS Allstream, and SaskTel in that proceeding.
57. In the proceeding that led to Telecom Decision 2006-22, TCC indicated that it was unable to locate the original calculation of its per-minute maintenance expense estimate and provided instead alternate per-minute maintenance expense estimates based on the estimated hours reported to toll maintenance for switching and transport divided by TCC's total toll minutes. Under this expense calculation, the Commission notes that the maintenance expense per-minute of toll traffic estimated for TCC-AB was significantly lower than that proposed by TCC in its 2002 AT cost studies for TCC-AB, which, in the Commission's view, puts into question TCC's AT maintenance expenses proposed in its 2002 AT cost studies.
58. The Commission notes that TCC did not provide additional evidence to justify and explain the derivation of its proposed incremental maintenance expense estimates associated with the AT service.
59. The Commission further notes that in Telecom Decision 2006-22, it took account of TCC's specific circumstances by adjusting the AT maintenance expense cap from the level found to be appropriate for other ILECs, namely 7.5 percent, to 11 percent of the associated capital, to reflect TCC's portfolio expenses. In that Decision, TCC's AT rate reflected a maintenance expense of 0.015 cents per connect minute for each of TCC-AB and TCC-BC.

(iii) TCC's co-location power maintenance expenses

60. The Commission notes TCC's submission that in Telecom Decision 2006-42, the Commission set TCC's maintenance expenses associated with its co-location power service based on a maintenance expense cap. Contrary to TCC's position, the Commission notes that in Telecom Decision 2006-42, it set TCC's maintenance expenses based on a percentage of TCC's associated capital, using TCC's own circumstances.³
61. In the proceeding that led to Telecom Decision 2006-42, TCC's proposed co-location power maintenance expense was \$2.76 per fuse amp per month or 66 percent of the associated capital. By contrast, Bell Canada, the only other ILEC to have filed a cost study for this service, proposed co-location power maintenance expenses of \$0.06 per fuse amp per month or 0.9 percent of the associated capital. TCC's per fuse amp maintenance expense estimate was approximately 4500 percent higher than that of Bell Canada.
62. In Telecom Decision 2006-42, the Commission noted that Bell Canada's approach identified the resources and costs specific to its co-location power service while TCC's approach relied on aggregated accounting data.

³ Maintenance expense factors for the asset class including power plant equipment were submitted by TCC on 28 April 2000 as part of the revenue collection mechanism proceeding that led to Decision 2000-745.

63. Given the above methodology and results differences, the Commission considered that TCC's proposed methodology did not reflect an accurate estimate of the Phase II maintenance expenses for its co-location power service. As noted above, the Commission applied a different methodology which consisted of establishing maintenance expenses based on a percentage of the associated capital. Further, the Commission set TCC's maintenance expense estimates associated with its co-location power service based on TCC's own maintenance expense factors furnished in the proceeding that led to Decision 2000-745.
64. The Commission notes that in this proceeding TCC did not provide additional evidence to justify and explain the derivation of its proposed incremental maintenance expense estimates for its co-location power service.
65. The Commission further notes that, in Telecom Decision 2006-42, it took into account TCC's specific circumstances by adjusting the maintenance expenses to reflect the company's portfolio expenses. In that Decision, TCC's co-location power rate reflected a maintenance expense of 40.3 percent of the associated capital costs.

(iv) TCC's DC switching technology costs

66. As noted above, TCC submitted that given that its switching technology relied on the exclusive use of SPM technology, the Commission had incorrectly adjusted the company's costs to reflect a technology not deployed by the company.
67. The Commission notes that in Telecom Decision 2006-23, it denied the ILECs' proposed DC switching costs that reflected the use of the newer SPM technologies, in light of the DC cost sensitivity information submitted in that proceeding which demonstrated that the use of SPM technology increased costs compared to the previously-deployed DTC technology. This was in contradistinction to the ILECs' claim that SPM technology was more efficient and reduced overall operating costs. Further, TCC indicated that it was unable to provide the cost sensitivity information sought at that time because of a labour disruption.
68. In Telecom Decision 2006-23, in the absence of TCC's cost sensitivity information, the Commission applied an 11 percent reduction to TCC's DC switching costs using the average percent reduction of switching capital costs based on Bell Aliant's, Bell Canada's, and MTS Allstream's cost sensitivity results. The Commission further notes that even with the above adjustment, TCC's allowed switching costs were significantly higher than those of the other ILECs.
69. The Commission considers that the adjustment set out above for each ILEC, including TCC, allowed the Commission to establish the appropriate economic costs associated with the ILECs' switching technology. Further, the Commission considers that, despite having the opportunity to do so in this proceeding, TCC failed to provide any evidence to quantify the cost differences between the technology that the company used previously for this service (i.e. DTC) and the newer SPM technology proposed in the proceeding that led to Telecom Decision 2006-23.

(v) Bell Canada's co-location power costs

70. In Telecom Decision 2006-42, the Commission concluded that there were no incremental costs associated with the use of CO floor space to house incremental power equipment caused by co-locators. The Commission further concluded that the associated incremental HVAC costs were expected to be minimal. Consistent with TCC's position in the proceeding that led to Telecom Decision 2006-42, such costs were disallowed.
71. The Commission notes that Bell Canada submitted that it had already expanded five COs and had identified an additional five COs at risk in 2007 because of insufficient space. However, the Commission considers that Bell Canada has failed to demonstrate that these actual or potential CO expansions were caused by the need to meet co-locators' power requirements. Further, the Commission notes that the number of COs identified by Bell Canada is insignificant relative to the total number of relevant Bell Canada COs.
72. With respect to the HVAC costs, the Commission considers that Bell Canada has not provided evidence in this proceeding that brings into question the conclusion reached in Telecom Decision 2006-42 that such costs were expected to be minimal.
73. With respect to Bell Canada's submission that the Commission's exclusion of the floor space-related costs amounted to an unjust preference in favour of co-locators, the Commission considers that the disallowance of such costs was appropriate, and that hence no undue preference was conferred on co-locators.

(vi) Application of the remaining directives set out in the Policy Direction

74. The Commission will now examine the relevant directives set out in the Policy Direction not previously discussed.
75. The Commission notes that Bell Canada and TCC submitted that the impugned costing determinations were contrary to the Policy Direction because they promoted or risked promoting uneconomic entry and deterred economically efficient entry. Bell Canada further submitted that the costing determinations with respect to its co-location power costs were not technologically and competitively neutral to the greatest extent possible. TCC further argued that the costing determinations that were the subject of its application did not constitute efficient and effective regulation.
76. With respect to the market entry criterion set out in subparagraph 1(b)(ii) of the Policy Direction, the Commission considers that the costing determinations at issue represent accurate estimates of Bell Canada's and TCC's economic costs for the purpose of determining just and reasonable rates with respect to the services in question. Given this, the Commission considers that, with the adjustments made to Bell Canada's and TCC's costs, the resulting rates do not encourage uneconomic entry or deter economically efficient entry.
77. With respect to Bell Canada's submission regarding technological and competitive neutrality, the Commission disagrees that co-located competitors are receiving a subsidy because the floor space-related costs were excluded. As noted above, the Commission considers that such

costs were properly excluded from the cost studies. In light of this, the Commission considers that the relevant costing determinations are not inconsistent with the technological and competitive neutrality criteria set out in subparagraph 1(b)(iv) of the Policy Direction.

78. With respect to TCC's submission regarding efficient and effective regulation, the Commission disagrees that the Commission's costing determinations were made with the intention of benefiting competitors. Rather, the determinations were based on relevant costing methodologies that established the appropriate economic service costs, which were then used to determine just and reasonable rates. Given this, the Commission considers that the relevant costing determinations are not inconsistent with the efficient and effective regulation criterion set out in subparagraph 1(a)(ii) of the Policy Direction.
79. In light of the above, the Commission considers that the costing determinations that are the subject of the review and vary applications comply with the Policy Direction.

Commission finding

80. Accordingly, the Commission finds that no substantial doubt exists as to the correctness of Telecom Decisions 2006-22, 2006-23, and 2006-42 with respect to the costing determinations which are the subject of the review and vary applications. The Commission notes that this finding does not prejudice the outcome of any issue in the proceeding initiated by Telecom Public Notice 2006-14 to review the regulatory framework for wholesale services, including the definition of essential services.

B. The determination to order the retroactive application of the final rates for AT, DC, and co-location power services and attendant rebates

Positions of parties

81. Bell Canada and TCC submitted that as a matter of law, the Commission could not rely on its powers under subsection 61(2) of the Act to retroactively apply final rates to the date the rates in question were approved on an interim basis because of the delay in setting the final rates, which was due to the Commission's own making. Relying on jurisprudence, Bell Canada and TCC submitted that (1) the use of interim rates was not intended to remove the duty on the Commission to make timely decisions, and (2) the Commission's exercise of its interim rate-making powers was inconsistent with the purpose of these powers, which was to allay, not cause, as happened in this case, financial instability stemming from the duration of proceedings.
82. Bell Canada and TCC further submitted that the decision to retroactively apply rates in this case was contrary to the Act, including the telecommunications policy objectives set out in section 7 of the Act, and with the Commission's own publicly-stated standards.
83. Bell Canada and TCC further submitted that the requirement to pay retroactive rebates over a lengthy period was contrary to the Policy Direction because it (a) did not minimally interfere with market forces, (b) was not efficient or proportionate regulation, and (c) was not competitively neutral.

84. Bell Canada and TCC submitted that the retroactive rebates did not minimally interfere with the market forces because the market had adapted to the interim rates over the period during which rates were made interim. Bell Canada and TCC also submitted that the delay in finalizing rates did not constitute efficient, effective, timely, and proportionate regulation. Bell Canada and TCC further argued that the rebates were not competitively neutral because they provided a windfall to competitors.
85. MTS Allstream and Primus submitted that subsection 61(2) of the Act explicitly granted the necessary authority for the Commission to retroactively adjust rates established in an interim order effective from the date on which the interim order came into effect, and that, contrary to TCC's and Bell Canada's submissions, this authority was not fettered by time limitations. Primus and MTS Allstream submitted that the jurisprudence relied on by TCC and Bell Canada was not persuasive as it was readily distinguishable from the present facts.
86. MTS Allstream, Primus, and RCI submitted that TCC's interpretation of the Commission's powers under subsection 61(2) of the Act was inconsistent with the Commission's statutory obligations under section 27 of the Act that rates be just and reasonable and not unjustly discriminatory. Primus submitted that without the power to revisit interim rates retroactively, rates could be allowed to stand for the period during which they were interim, even if found to be unjust and unreasonable.
87. MTS Allstream and RCI submitted that TCC had not provided evidence to substantiate its allegations that the delay was imprudently caused by the Commission. MTS Allstream and RCI further submitted that much of the delay could be attributed to the ILECs. MTS Allstream also submitted that Bell Canada and TCC were aware that the Commission would make final rates retroactive to the date of the interim rate approvals in each of the three proceedings and did not question this at any point during the proceedings.
88. In reply, Bell Canada and TCC disagreed with the submission that the ILECs were significantly responsible for the delay in finalizing the rates in question. Bell Aliant submitted that the lengthy period over which rebates were to be paid did not constitute efficient and effective regulation, contrary to the Policy Direction.

Commission's analysis and determinations

89. The Commission will now consider Bell Canada's and TCC's submissions regarding the retroactive application of the final rates for AT, DC, and co-location power services and attendant rebates in light of the Commission's statutory authority and the Policy Direction.

(a) Statutory authority

90. Subsection 61(2) of the Act explicitly sets out the Commission's power to make final rates effective the date they were approved on an interim basis:

The Commission may make an interim decision and may make its final decision effective from the date on which the interim decision came into effect.

91. The Commission notes that its power under subsection 61(2) of the Act is not stated to be subject to temporal limitations.
92. To the extent that Bell Canada and TCC are suggesting that the Commission may exercise its powers under subsection 61(2) of the Act solely to address the potential for financial instability of an ILEC, the Commission considers that such an interpretation is unduly narrow.
93. The Commission notes that it is required by Parliament to ensure that at all times rates are just and reasonable and not unjustly discriminatory and that the Courts have recognized that the Commission has broad statutory powers to carry out Parliament's mandate in this respect. Absent the power to revisit interim rates retroactively, rates would remain in effect, notwithstanding that the Commission had found them not to be just and reasonable, and unjustly discriminatory. In the Commission's view, such a result would clearly be contrary to Parliament's intention that the Commission exercise its powers to ensure that at all times rates are just and reasonable and not unjustly discriminatory, and would be unlawful.
94. The Commission considers that as sophisticated and experienced parties before the Commission, Bell Canada and TCC must have been aware that the interim rates could be subject to retroactive adjustment to the date of interim approval of the rates for the services in question. The matter of prejudice resulting from delay, in this case from the length of time it took to finalize the rates, was not raised by either Bell Canada or TCC during the proceedings that led to the Decisions in question. Further, to the extent that there was prejudice, the Commission considers that it was the competitors, not the ILECs (including Bell Canada and TCC), that were most disadvantaged by the delay as they were required to pay higher rates than those eventually found to be just and reasonable, during the interim period. In this respect, the Commission notes that the rebates ordered to be paid by the ILECs for the period during which rates were interim did not include an interest component.
95. The Commission does not consider that the delay in the proceedings at issue can be attributed solely to any one source. In this regard, the Commission notes that the intervals during which there was little or no activity in the proceedings coincided with significant and complex Commission proceedings on related matters, including the major proceeding regarding Competitor Digital Network services that led to Telecom Decision 2005-6. The Commission also notes that during these proceedings, several delays can be attributed to parties, for example, parties requested extensions to filing deadlines, filed incomplete information or filed information in confidence which resulted in disclosure proceedings.
96. Accordingly, the Commission is not persuaded by the submissions of Bell Canada and TCC that it lacked jurisdiction to order the retroactive application of the final rates for the services in question and the attendant rebates, subject to the Policy Direction.

(b) Application of the Policy Direction

97. With respect to subparagraph 1(a)(i) of the Policy Direction, as discussed above, the Commission considers that market forces cannot be relied upon in this case to achieve the telecommunications policy objectives set out in paragraph 46 above, and that regulation of the AT, DC, and co-location power services is required.

98. The Commission notes Bell Canada's and TCC's submission that since the market had adapted to the interim rates over the period during which rates were made interim, the requirement to pay retroactive rebates was contrary to the Policy Direction's directive on minimal interference. The Commission considers that given the interim nature of the rates, both ILECs and competitors were on notice that the rates were subject to retroactive adjustment. Moreover, the Commission considers that since the rebates have already been paid and have had an impact on competitors, the rescission of the rebates at this time would give rise to market uncertainty and, as such, would be contrary to the minimal interference criterion set out in subparagraph 1(a)(ii) of the Policy Direction.
99. With respect to the submission that the requirement to pay rebates did not constitute efficient, effective, timely, and proportionate regulation, the Commission considers that in the circumstances of this case, absent that requirement, competitors would have paid rates that were not just and reasonable. Further, as noted above, the Commission considers that the rescission of the rebates would give rise to market uncertainty. In light of this, the Commission considers that the relief sought by Bell Canada and TCC would not constitute efficient, timely, effective, and proportionate regulation as required by subparagraph 1(a)(ii) of the Policy Direction.
100. With respect to Bell Canada's and TCC's submission that the requirement to pay rebates was inconsistent with the Policy Direction's directive on competitive neutrality, the Commission considers that the rebates ensure that competitors paid just and reasonable rates. Given this, the Commission considers that the rebates do not constitute a windfall to competitors. Accordingly, the Commission considers that the requirement to pay such rebates is not inconsistent with the competitive neutrality criterion as required by subparagraph 1(b)(iv) of the Policy Direction.
101. In light of the above, the Commission considers that the requirement to pay rebates is consistent with the Policy Direction.

Commission finding

102. Accordingly, the Commission finds that no substantial doubt exists with respect to the determination to order retroactive application of the final rates for the services in question, and the attendant rebates.

C. The determination to order the retroactive application of the final co-location power service rates and attendant rebates for the period prior to the date of the relevant cost study

Positions of parties

103. Bell Canada submitted that the Commission's determination to impose co-location power rebates for a period prior to the filing of the 2002 cost study on which the rates were based raised substantial doubt as to the correctness of Telecom Decision 2006-42. Bell Canada submitted that the Commission had no reason to assume it was appropriate to use costs filed by the company in 2002 in order to set rates for the company for any prior period.

104. Bell Canada further submitted that if the Commission were to determine that retroactive rates remained appropriate, the rebates should not be applied before the date of any available costing studies.
105. MTS Allstream submitted that Bell Canada should have objected to the use of its 2002 cost studies to establish rates for a prior period when the Commission ordered Bell Canada, in Telecom Decision 2004-18, to pay co-location power rate rebates retroactive to 29 November 2000, the date that the ILECs' rates were made interim. MTS Allstream also noted that Bell Canada had not objected when the Commission had made rates for other competitor services retroactive to a point in time prior to the filing of forward-looking cost studies by relying on the approach to apply an I-X factor.
106. MTS Allstream also submitted that Bell Canada's 2002 co-location power cost study covered a period of 18 years, which not only demonstrated the extremely long expected service life of CO power plant but also suggested that applying Bell Canada's co-location cost study by a retroactive period of 13 months did not have a substantial impact on the calculation of the co-location power costs.
107. In reply, Bell Canada submitted that although the Commission had broad statutory powers with respect to rate-making, such as to apply any method or technique under subsection 27(5) of the Act to establish just and reasonable rates, the Commission had in this case failed to apply a method or technique in establishing rates prior to the date of the cost studies.
108. Bell Canada further submitted that its cost study reflected costs as of the date of its issuance and on a prospective basis for the duration of the study; however, the cost study did not provide any costs and could not be relied on for any prior period.

Commission's analysis and determinations

109. The Commission notes that the rates for co-location power service made interim on 29 November 2000 were based on a cost study filed in the proceeding that led to Telecom Decision 97-15.
110. In Telecom Decision 2004-18, the Commission ordered Bell Canada to pay rebates for co-location power services to eligible competitors in its territory for the period 29 November 2000 to 11 September 2002, based on Bell Canada's proposed rates set out in Tariff Notice 6653, dated 15 February 2002. The Commission notes that no party to the proceeding that led to that Decision, including Bell Canada, challenged the above-noted retroactive application of rates.
111. In Telecom Decision 2006-42, the Commission approved revised rates for Bell Canada's co-location power services based on Bell Canada's 2002 cost estimates as adjusted to reflect the costing determinations in that Decision. In Telecom Decision 2006-42, the Commission also applied the revised rates retroactively to 29 November 2000, consistent with the approach taken in Telecom Decision 2004-18.

112. The Commission considers that the retroactive application of Bell Canada's co-location power cost study for a period of 13 months would not have a substantial impact on the calculation of co-location power costs. The Commission further considers that the 2002 cost study provides a more accurate estimate of the co-location power costs with respect to the 29 November 2000 to 1 June 2002 period than the previous cost study⁴ and that continued reliance on the previous cost study would have resulted in rates for the period in question that would not have been just and reasonable.
113. With respect to the application of the Policy Direction, the Commission considers that, for the same reasons given in connection with the immediately previous issue, the determination to order the retroactive application of the final co-location power service rates, and attendant rebates, for the period prior to the relevant cost study, is consistent with the Policy Direction.

Commission finding

114. In light of the above, the Commission finds that no substantial doubt exists as to the correctness of its determination that final rates for co-location power apply with respect to the period prior to the filing of the company's 2002 cost study.

D. The determination to deny compensation for rebates from the deferral account

Positions of parties

115. TCC, supported by Bell Canada, submitted that if the Commission were to determine that it had been justified in ordering retroactive rebates, substantial doubt as to the correctness of Telecom Decisions 2006-22, 2006-23, and 2006-42 would remain as a result of the Commission's determination not to allow deferral account compensation for the rebates in question.
116. TCC submitted that the rebates satisfied the requirements for deferral account compensation as follows: (a) the adjustments were administrative actions beyond the control of the company; (b) the costing determinations and consequent rebates specifically addressed the telecommunications industry; and (c) the amount of the rebates, in excess of \$20 million, had a material impact on the company.
117. TCC submitted that the Policy Direction's directives on competitive neutrality and minimal interference required that the rebates be compensated from the deferral account. TCC submitted that the Policy Direction supported the least possible disruption to market forces and that the deferral account was the appropriate vehicle for addressing refunds.
118. RCI submitted that the Commission's costing determinations in the relevant Decisions were not administrative actions that gave rise to eligibility for deferral account compensation. MTS Allstream and RCI also submitted that the rebates did not qualify for deferral account compensation since they resulted from cost reductions.

⁴ Co-location power cost study filed in the co-location services proceeding that led to Decision 97-15.

119. MTS Allstream and RCI submitted that the final rates for AT, DC, and co-location power services had provided the ILECs with appropriate compensation for their costs. MTS Allstream and RCI submitted that, as such, it would be contrary to the Policy Direction and would set an inappropriate precedent for the Commission to further compensate the ILECs from the deferral accounts.

Commission's analysis and determinations

120. In Telecom Decisions 2006-22, 2006-23, and 2006-42, the Commission determined that the ILECs' revenue losses due to cost reductions were not eligible for compensation from the deferral accounts, consistent with its determination set out in paragraph 235 of Telecom Decision 2002-34.
121. Further, as noted above, the Commission considers that the final rates for AT, DC, and co-location power services adequately compensated the ILECs for the appropriate economic service costs. Given this, the Commission considers that use of the deferral account would constitute excess compensation for the ILECs in the circumstances of this case. The Commission also considers that it would be contrary to the Policy Direction's directives on competitive neutrality and minimal market interference to compensate the ILECs from the deferral account, as to do so would result in the ILECs being unduly overcompensated for their costs.

Commission finding

122. In light of the above, the Commission finds that no substantial doubt exists as to the correctness of its determination in the relevant Decisions to deny deferral account compensation.

Conclusion

123. In light of all of the above, the Commission finds that no substantial doubt exists as to the correctness of
- (a) the costing determinations that are the subject of the review and vary applications;
 - (b) the determination to order retroactive application of the final rates for the AT, DC, and co-location power services, and the attendant rebates;
 - (c) the determination to order the retroactive application of the final co-location power service rates, and attendant rebates, for the period prior to the date of the relevant cost study; and
 - (d) the determination in the relevant decisions to deny deferral account compensation.

124. Accordingly, the Commission **denies** Bell Canada's and TCC's review and vary applications.

Secretary General

Related documents

- *Review of regulatory framework for wholesale services and definition of essential service*, Telecom Public Notice CRTC 2006-14, 9 November 2006 as amended by Telecom Public Notices CRTC 2006-14-1, 15 December 2006; 2006-14-2, 15 February 2007; 2006-14-3, 16 March 2007, and 2006-14-4, 20 March 2007
- *Bell Canada and TCC – Co-location power service rates*, Telecom Decision CRTC 2006-42, 30 June 2006 as amended by Telecom Decision CRTC 2006-42-1, 25 August 2006
- *Aliant Telecom, Bell Canada, MTS Allstream, SaskTel and TCI – Approval of rates on a final basis for Direct Connection service*, Telecom Decision CRTC 2006-23, 27 April 2006
- *Aliant Telecom, Bell Canada, MTS Allstream, SaskTel and TCI – Approval of rates on a final basis for Access Tandem service*, Telecom Decision CRTC 2006-22, 27 April 2006
- *Competitor Digital Network Services*, Telecom Decision CRTC 2005-6, 3 February 2005
- *FCI Broadband's request for co-location power rebates*, Telecom Decision CRTC 2004-18, 18 March 2004
- *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002 as amended by Telecom Decision CRTC 2002-34-1, 15 July 2002
- *Changes to the contribution regime*, Decision CRTC 2000-745, 30 November 2000
- *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998
- *Co-location*, Telecom Decision CRTC 97-15, 16 June 1997

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