



Telecom Decision CRTC 2009-280

Ottawa, 15 May 2009

MTS Allstream Inc. - Application regarding the appropriate one-time service charge associated with the installation of CDN DS-1 accesses

File number: 8661-M59-200813445

In this decision, the Commission finds that Bell Aliant and Bell Canada (collectively, the Bell companies) inappropriately charged the B8ZS service rate set out in item D21 of the Special Facilities Tariff to Competitor Digital Network (CDN) DS-1 accesses provided to competitors, and directs the Bell companies to refund these charges in accordance with their respective Terms of Service. Further, the Commission determines that any costs associated with B8ZS service are to be properly recovered through the one-time service charge of the CDN DS-1 access tariff and directs the Bell companies to file revised tariff pages to reflect this determination.

Introduction

1. The Commission received an application by MTS Allstream Inc. (MTS Allstream), dated 3 October 2008, in which MTS Allstream alleged that Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (collectively, the Bell companies) have been inappropriately applying a B8ZS¹ charge, provided for in a retail service tariff, since 1 June 2002, each time that MTS Allstream requested B8ZS line coding on a new DS-1 access circuit under the Bell companies' respective tariffs for wholesale Competitor Digital Network (CDN) accesses. MTS Allstream requested that the Commission direct the Bell companies to (a) cease applying this charge on a going-forward basis and (b) refund any and all charges that have been assessed on CDN DS-1 access services for B8ZS signalling since 1 June 2002.
2. The Commission received comments from the Bell companies, Primus Telecommunications Canada Inc. (Primus), and Rogers Communications Inc. (RCI).² The public record of this proceeding, which closed on 28 January 2009, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.
3. The Commission has identified the following four issues to be addressed in this decision:
 - I. Should B8ZS line coding be included in the Bell companies' tariffs for CDN DS-1 access services?

¹ B8ZS, commonly referred to as either bipolar with 8-zeros substitution, or binary 8-zero substitution, is a line coding technology used for digital transmission of data (a sequence of binary ones and zeros) that incorporates a mechanism for maintaining synchronization when the data to be sent includes a long sequence of zeros. When used in DS-1 applications, B8ZS line coding allows use of the full data capacity of a DS-1 channel (1.536 megabits per second (Mbps)).

² As part of this process, the Bell companies also provided responses to Commission interrogatories on 12 January 2009.

- II. Are there additional costs to provision B8ZS line coding which are not recovered through the Bell companies' tariffs for CDN DS-1 access services?
- III. Did the Special Facilities Tariff (SFT) rate for B8ZS line coding allow for its application to CDN DS-1 access facilities?
- IV. Should the Bell companies refund the charges applied to CDN DS-1 accesses with B8ZS line coding?

I. Should B8ZS line coding be included in the Bell companies' tariffs for CDN DS-1 access services?

- 4. MTS Allstream submitted that since the Bell companies do not charge for alternate mark inversion (AMI)³ line coding, the default line coding currently provided by the Bell companies on a CDN DS-1 access service, there is no justification for an additional charge for B8ZS line coding.
- 5. The Bell companies submitted that the tariffs for CDN DS-1 access service provide only for a DS-1 access capable of providing 64 kilobits per second (Kbps) per DS-0 and that this speed is only attained if the customer requests and pays for the additional B8ZS line coding. They further submitted that, like CDN channelization, competitors are capable of provisioning this full speed by establishing the appropriate controls on their own equipment and therefore the service should not be included in the tariffs for CDN DS-1 access service.
- 6. In Telecom Decision 2002-34, the Commission determined that the incumbent local exchange carriers (ILECs) should be directed to develop and make available to competitors digital network access services customized for the use of competitive local exchange carriers. Further, in Telecom Decision 2005-6, the Commission determined the specific services that should be provided by ILECs to competitors as well as the specific terms and conditions that would apply to these services. This included DS-0 level CDN services capable of providing 64 Kbps of bandwidth.
- 7. Based on the record of this proceeding, the Commission considers that AMI line coding does not provide the 64 Kbps per DS-0 as required by Telecom Decision 2005-6. This full capacity is only available with B8ZS line coding.
- 8. The Commission does not agree with the Bell companies that competitors could avoid the B8ZS line coding charges by providing their own equipment. Line coding is a basic requirement for any access and it is not reasonable or efficient to expect competitors to invest in additional equipment when the necessary line coding can be provided appropriately by the ILEC. Moreover, based on the evidence provided by the Bell companies, the Commission is not persuaded that the competitor self-supplied alternatives that they proposed could actually work.

³ AMI is a line coding technology used for digital transmission of data (a sequence of binary ones and zeros) that uses periodic insertion of binary ones into the transmitted data stream to maintain synchronization. When used in DS-1 applications, AMI line coding reduces the available data capacity of a DS-1 channel to 1.344 Mbps.

9. As such, the Commission considers that the one-time service provisioning charge for CDN DS-1 accesses should be set at a level sufficient to provide B8ZS line coding to a competitor, and that ILECs should not require competitors to acquire additional non-CDN services to receive B8ZS line coding.
10. Accordingly, the Commission directs the Bell companies to modify their respective tariffs for CDN DS-1 access service within 10 days from the date of this decision to clarify that B8ZS line coding is available under these tariffs.

II. Are there additional costs to provision B8ZS line coding which are not recovered through the Bell companies' tariffs for CDN DS-1 access services?

11. MTS Allstream submitted that the costs of providing a CDN DS-1 circuit with B8ZS line coding are the same as the costs of providing a CDN DS-1 circuit with AMI line coding. MTS Allstream further submitted that a recent cost study filed by the Bell companies relied upon corporate average labour unit costs to identify the one-time costs associated with the provisioning of a CDN DS-1 access. In this regard, MTS Allstream submitted that corporate average labour unit costs should reflect, at least in part, the costs associated with B8ZS line coding.
12. The Bell companies indicated that the incremental costs associated with B8ZS line coding were not included in the cost studies used to establish the cost-based rates for one-time service provisioning associated with CDN DS-1 access service.
13. The Commission accepts the evidence provided by the Bell companies that the current one-time service provisioning rate for a CDN DS-1 access is based on a cost study that does not include all of the costs incurred when a CDN DS-1 access is provisioned with B8ZS line coding. As such, the Commission considers that the Bell companies may file revised cost studies for a one-time service charge rate for CDN DS-1 accesses to support any additional incremental costs not included in the current one-time service charge. Until such time that any revision to the one-time service provisioning charge is approved, the Commission directs that the current approved rate for one-time service provisioning for CDN DS-1 accesses should continue to apply to CDN DS-1 accesses, and that those accesses should provide B8ZS line coding.
14. Further, since the Bell companies have until now been providing CDN DS-1 accesses using AMI line coding, the Commission directs that the Bell companies should continue to make AMI line coding available as an option to competitors at no additional cost.

III. Did the SFT rate for B8ZS line coding allow for its application to CDN DS-1 access facilities?

15. MTS Allstream, Primus, and RCI submitted that the Bell companies improperly charged the rate for one-time costs required to provision B8ZS line coding pursuant to item D21 of their SFTs in association with CDN DS-1 access.

16. The Bell companies submitted that item D21 of the SFT, a retail tariff that applies to a Digital Exchange Access facility or to a Digital Private Line channel that requires B8ZS line coding, was appropriate since it applied to Digital Private Line service, a generic term that applies to services such as CDN access services.
17. The Commission notes that there is no reference in the Bell companies' tariffs for CDN DS-1 access service that indicates that the SFT rate for B8ZS line coding would apply to a CDN DS-1 access, nor is there any reference in the SFT for B8ZS line coding that the service would apply to a CDN DS-1 access. Acceptance of the argument that the term "Digital Private Line" in the SFT for B8ZS line coding is a generic term would not be consistent with past Commission practice of interpreting tariffs in a manner that ensures predictability and fairness. The SFT rate identified in item D21 should not have been applied to CDN DS-1 since CDN DS-1 accesses are not specifically referenced in that tariff.
18. The Commission finds that the Bell companies inappropriately charged the rate set out in item D21 of their respective SFTs when providing CDN DS-1 access service and directs them to no longer apply such charges as of the date of this decision.

IV. Should the Bell companies refund the charges applied to CDN DS-1 accesses with B8ZS line coding?

19. As noted above, the Bell companies have until now been charging competitors for B8ZS line coding using the rate set out in item D21 of their respective SFTs in respect of CDN DS-1 access. According to the Bell companies' submission, these charges have been applied to more than 40,000 CDN DS-1 access arrangements since Telecom Decision 2005-6 was issued.
20. MTS Allstream, Primus, and RCI submitted that the charges for B8ZS line coding applied to CDN DS-1 access arrangements should be refunded in their entirety back to 1 June 2002 when the interim CDN regime was put in place, with applicable interest. RCI further submitted that refunds should be required of any ILEC that is charging for B8ZS line coding on a CDN DS-1 access.
21. Under article 19 of the Terms of Service for Bell Aliant and Bell Canada, non-recurring charges that should not have been billed or that were overbilled must be credited, provided that the customer disputes them within 150 days of the date of the bill. Further, the customer must be credited with interest on that amount at the rate payable for interest on deposits that applied during the period in question.
22. Therefore, the Commission directs the Bell companies to refund all competitors for rates improperly charged pursuant to item D21 of the SFT in relation to CDN DS-1 access service in accordance with these Terms of Service.

23. The Commission notes that MTS Allstream submitted unchallenged evidence that it disputed the application of the B8ZS line coding charge at least as early as 24 July 2008. The Commission also notes that Primus disputed these charges at least as early as 3 November 2008, the date of its submission in this proceeding. The record of this proceeding does not contain information related to whether or when other parties may have disputed these charges.
24. The Bell companies are directed to file with the Commission a document setting out the earliest date of dispute and the resulting amounts to be refunded for each competitor charged for B8ZS line coding in relation to CDN DS-1 access within 30 days of the date of this decision. At the same time, the Bell companies should serve on each affected competitor a document which indicates the refund to be paid to it.
25. The Commission notes RCI's request that other ILECs should be directed to provide refunds for similar charges. The Commission considers that the record of this proceeding is insufficient to warrant such a directive.

Secretary General

Related documents

- *Competitor Digital Network Services*, Telecom Decision CRTC 2005-6, 3 February 2005, as amended by Telecom Decision CRTC 2005-6-1, 28 April 2006
- *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

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