



Telecom Regulatory Policy CRTC 2009-34

Route reference: Telecom Decision 2008-17

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Requests to review and vary directives in Telecom Decision 2008-17 related to the provision of central-office-based wholesale ADSL access service and aggregated ADSL access service

File number: 8662-B2-200807076 and 8662-M59-200807266

In this decision, the Commission amends aspects of the regulatory policy set out in Telecom Decision 2008-17.

The Commission approves an application by Bell Aliant, Bell Canada, SaskTel, and Télébec to review and vary the Commission's determinations in Telecom Decision 2008-17 regarding the configuration and classification of a central-office-based wholesale asymmetric digital subscriber line (ADSL) access service.

The Commission denies MTS Allstream's request to review and vary the determinations in Telecom Decision 2008-17 regarding the classification of aggregated ADSL access service but approves the company's request to include TCC's Network-to-Network Interface Service in the same category as aggregated ADSL access service.

Finally, the Commission initiates a proceeding to consider issues regarding the appropriate configuration, classification, and feasibility of an unbundled ADSL access service for use by competitors.

Introduction

1. The Commission received an application by Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, Saskatchewan Telecommunications (SaskTel), and Télébec, Limited Partnership (Télébec) [collectively, Bell Canada et al.], dated 15 May 2008, requesting that the Commission review and vary its determinations in Telecom Decision 2008-17 that require incumbent local exchange carriers (ILECs) to establish and submit proposed tariffs for a new wholesale asymmetric digital subscriber line (ADSL) access service that uses the ILECs' digital subscriber line access multiplexers (DSLAMs). In this Decision, the new wholesale service is referred to as central-office-based (CO-based) ADSL access service.
2. Bell Canada et al. argued that in reaching its determinations, the Commission had erred by directing ILECs to offer a CO-based ADSL access service to competitors and by classifying and pricing the service as conditional essential.

3. The Commission received an application by MTS Allstream Inc. (MTS Allstream), dated 21 May 2008, in which, among other things, it requested that the Commission review and vary its determinations in Telecom Decision 2008-17 regarding two aspects of aggregated ADSL access service. First, MTS Allstream requested that the Commission change its classification of aggregated ADSL access service from conditional mandated non-essential to conditional essential. It argued that the Commission had based its classification on erroneous factual assumptions about the extent of alternative sources of supply. Second, the company requested that the Commission change the classification of TCC's Network-to-Network Interface (NNI) Service from non-essential subject to phase-out to conditional essential. It argued that TCC's NNI Service is a component of aggregated ADSL access service and, therefore, the two services belong in the same category.
4. In a letter dated 11 June 2008, the Commission notified parties that it would address the issues raised in Bell Canada et al.'s application regarding the CO-based ADSL access service and in MTS Allstream's application regarding aggregated ADSL access service in a single proceeding.
5. The Commission received comments from the Canadian Association of Internet Providers (CAIP), the Coalition of Internet Service Providers (CISP), Cybersurf Corp. (Cybersurf), Distributel Communications Limited (Distributel), and Primus Telecommunications Canada Inc. (Primus) [collectively, the competitors]; and TELUS Communications Company (TCC). The public record of this proceeding, which closed on 7 July 2008, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
6. In Telecom Public Notice 98-6, the Commission set out the criteria to consider review and vary applications. Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision due, for example, to one or more of the following: i) an error in law or in fact, ii) a fundamental change in circumstances or facts since the decision, iii) a failure to consider a basic principle which had been raised in the original proceeding, or iv) a new principle which has arisen as a result of the decision.
7. The Commission has identified the following three issues to be addressed in this decision:
 - I. Is there substantial doubt about the correctness of the Commission's determination in Telecom Decision 2008-17 to require ILECs to configure and provide a CO-based ADSL access service?
 - II. Is there substantial doubt about the correctness of the Commission's determination in Telecom Decision 2008-17 to classify aggregated ADSL access service as conditional mandated non-essential?
 - III. Is there substantial doubt about the correctness of the Commission's determination in Telecom Decision 2008-17 to classify TCC's NNI Service as non-essential subject to phase-out?

I. Is there substantial doubt about the correctness of the Commission's determination in Telecom Decision 2008-17 to require ILECs to configure and provide a CO-based ADSL access service?

8. Bell Canada et al. requested that the Commission rescind the directives in Telecom Decision 2008-17 that require ILECs to establish and submit proposed tariffs for a new CO-based ADSL access service that would enable competitors to offer retail high-speed Internet access service to all end-users served from a central office (CO), including those served by ILEC DSLAMs in remote locations (ILEC remotes). Bell Canada et al. noted that it was not proposing any changes to the application of the above directives to the line-sharing service¹ element of the current wholesale ADSL access service, which is provided to co-located competitors at the ILEC CO.
9. Bell Canada et al. submitted that in classifying CO-based ADSL access service as conditional essential, the Commission had mistakenly assumed that ILECs were currently providing the service to competitors. Bell Canada et al. submitted that only SaskTel offered an ADSL access service and that it had a total of four end-user customers. They argued that given this low demand, it was incorrect for the Commission to have assumed that the state of competition in the retail market for Internet access was dependent on the availability of CO-based ADSL access service.
10. Bell Canada et al. also argued that the costs of implementing the CO-based ADSL access service required by Telecom Decision 2008-17 outweighed the benefits and, therefore, the Commission had failed to adhere to the Governor in Council's requirement, as set out in *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the Policy Direction), to use regulatory measures that are efficient and proportionate to their purpose and that interfere with competitive market forces to the minimum extent necessary to meet the policy objectives set out in section 7 of the *Telecommunications Act* (the Act).
11. The competitors provided several explanations as to why there was little or no demand for the existing ADSL access service. CAIP and CISP submitted that Bell Canada had denied competitor requests for the ADSL access service offered in its General Tariff 5400. CISP also submitted that Bell Canada had cited large deployment costs as the reason for denying the requests. Distributel submitted that even though aggregated ADSL access service includes both an ADSL access component and a component that transports and aggregates traffic across all COs in Bell Canada territory, its tariffed rates are generally lower than those for ADSL access service, which excludes transport and aggregation. Distributel submitted that, consequently, it has no choice but to rely on the aggregated ADSL access service.

¹ Line-sharing service is a wholesale service that provides access to the high-frequency band of the unbundled copper local loop. Under this service arrangement, the co-located competitor provisions its own DSLAM to offer high-speed Internet access service to its end-customers. This service differs from the CO-based ADSL access service in that the DSLAM functionality is provided by the competitor rather than the ILEC.

12. Primus submitted that the CO-based ADSL access service contemplated by the Commission in Telecom Decision 2008-17 would be attractive to competitors because it would provide competitors co-located at an ILEC CO with access to end-customers served by ILEC remotes, which would allow them to offer these end-customers higher bandwidth service offerings without ILEC-imposed traffic shaping restrictions.
13. The Commission notes that neither the classification of the line-sharing element as a conditional essential service nor its use by competitors to provision high-speed Internet service to their customers is in dispute or part of Bell Canada et al.'s review and vary application.
14. The Commission considers that its directives in Telecom Decision 2008-17 pertaining to the CO-based ADSL access service address many of the above-noted competitor concerns by making the service available to competitors co-located at the ILEC CO. The Commission notes, however, that in doing so it modified and expanded the CO-based ADSL access service that is offered by the current ILEC tariffs.
15. In Telecom Public Notice 2006-14, which initiated the proceeding leading to Telecom Decision 2008-17, the Commission noted that it would consider a revised definition of essential service and the classifications and pricing principles for essential and non-essential services made available by ILECs, cable carriers, and competitive local exchange carriers to other competitors at regulated rates (wholesale services). The Commission considers that its requirement in Telecom Decision 2008-17 for ILECs to provide a wholesale CO-based ADSL access service that includes access to end-users served by ILEC remotes – an aspect of the service that was not offered by the current ILEC tariffs – went beyond the scope of the Telecom Public Notice 2006-14 proceeding.
16. As a result, the Commission finds that in Telecom Decision 2008-17 it erred by requiring ILECs to configure and provide the CO-based ADSL access service.
17. Accordingly, the Commission rescinds its determination in paragraph 135 of Telecom Decision 2008-17 pertaining to the filing of cost studies and proposed tariffs for CO-based ADSL access service. The Commission also rescinds the inclusion of CO-based ADSL access service tariffs in the conditional essential category in the Appendix to Telecom Decision 2008-17. Specifically, the following tariff references in section b) of the Appendix are rescinded: MTS Allstream CRTC 24002, item 5800; SaskTel CRTC 21414, item 650.14; and Télébec CRTC 25140, item 7.9.
18. In light of all of the above, the Commission concludes that paragraphs 74 through 77 of Telecom Decision 2008-17 should be varied such that its determinations regarding the CO-based ADSL access service are removed and that they remain unchanged for the line-sharing service element offered by ILECs to competitors. The Commission therefore replaces paragraphs 74 through 77 of Telecom Decision 2008-17 with the following:
 74. The Commission notes that the service component that allows competitors to provision high-speed Internet access service using their own DSL equipment is known as “line-sharing” service.

75. The Commission notes that in many cases, however, the ILECs' distribution networks involve provisioning fibre optic facilities from their central offices to remote locations and copper facilities from the remote locations to the end-users' premises. To provide high-speed Internet access service to customers in such cases, the ILECs install DSL equipment at each remote location to access the high-frequency band of the copper portion of the ULL. The Commission notes that ADSL access service does not provide competitors with access to the copper portion of the ULL for customers served from remotes.

76. The Commission considers that, similar to the situation with respect to ULLs, there are not sufficient wholesale alternatives to the ILECs' line-sharing services. The Commission also considers that in the absence of wholesale alternatives, withdrawing mandated access to the ILECs' line-sharing services would likely result in a substantial lessening or prevention of competition in the retail high-speed Internet access service market and that this would be inconsistent with both the policy objectives set out in section 7 of the Act and the Policy Direction. The Commission further considers that, at a point in the future, technological advances and industry evolution may provide a wholesale alternative to the ILECs' line-sharing services.

77. Accordingly, and for reasons similar to those provided regarding ULLs, the Commission determines that the line-sharing service contained in the ILECs' tariffs, which are listed in the Appendix, is to be classified as a conditional essential service. This classification will continue until it is demonstrated that wholesale alternatives functionally equivalent to the ILECs' line-sharing services are sufficiently present such that withdrawing mandated access would not likely result in a substantial lessening or prevention of competition in the retail high-speed Internet access service market.

19. Further, given that the Commission has rescinded its determinations in relation to the CO-based ADSL access service, the Commission considers it unnecessary and inappropriate to address in this proceeding the correctness of its Telecom Decision 2008-17 findings regarding the classification, costing, and tariffing issues related to that service. Rather, the Commission will consider issues regarding the appropriate configuration, classification, and feasibility of an unbundled ADSL access service in the new proceeding outlined below.

New proceeding

20. The Commission notes that in 2001 Bell Canada filed Tariff Notice (TN) 6622 to revise the rates for its ADSL access services. In 2002 TCC filed TN 72 to introduce a wholesale ADSL access service.
21. In Telecom Order 2001-914 the Commission granted interim approval for the ADSL access service rates proposed by Bell Canada in TN 6622 and noted its intention to finalize those rates at a later date. Similarly, in Telecom Order 2002-458 the Commission granted interim approval for TCC's TN 72.

22. In 2002 the Commission combined Bell Canada's TN 6622 and TCC's TN 72 into a single proceeding (the 2002 proceeding) and expanded the scope to address the service configuration, classification, and pricing of a wholesale CO-based ADSL access service. The Commission included Aliant Telecom Inc. (now part of Bell Aliant), MTS Communications Inc. (now MTS Allstream), and SaskTel as part of the proceeding and addressed interrogatories to all five ILECs.
23. In response to those interrogatories, on 16 May 2003 Bell Canada filed cost studies and proposed tariff pages for a CO-based ADSL access service for competitors that included the following elements:
 - a) an ADSL-Host (ADSL-H) service to serve end-customers connected to the ILEC's DSLAM located at the CO;
 - b) an ADSL-Remote (ADSL-R) service to serve end-customers connected to the ILEC's remotes; and
 - c) a High-Speed Service Provider Interface (HSSPI) service at each CO, to provide competitors with an aggregated interface to all the ADSL-H and ADSL-R end-customers.
24. The Commission notes that the 2002 proceeding has not been concluded and a number of issues, including the above configurations, have not been resolved. Further, the Commission notes that there has been significant advancement in the provision of ADSL access service since the record of the 2002 proceeding was last updated. In addition, competitors have expressed a need for a properly configured and priced CO-based ADSL access service.
25. The Commission also notes that ILECs and competitors generally disagree about the appropriateness of implementing an unbundled wholesale ADSL access service. Therefore, the Commission considers that issues regarding the appropriate configuration, classification, and feasibility of an unbundled ADSL access service for competitor use should be reviewed and resolved in a new proceeding, as described below.
26. In light of the above, the Commission directs each of Bell Aliant, Bell Canada, MTS Allstream, SaskTel, TCC, and Télébec to file a submission regarding an unbundled ADSL access service that would allow competitors to offer retail high-speed Internet service to all end-customers that the ILEC is able to serve. Each company must file its submission with the Commission, serving a copy on all parties to Telecom Decision 2008-17, within 45 days of the date of this decision.
27. Each ILEC's submission is to include
 - a) a description of its proposed configuration(s) for a CO-based ADSL access service, illustrated with diagrams;

- b) a description of (i) how the service would be deployed within the ILEC's current architecture; (ii) any network additions or modifications that would be required; (iii) the activities, including estimated time frames, needed to deploy this service once a competitor request is received; and (iv) the technical and economic feasibility of deploying the service;
 - c) the proposed wholesale classification for the service or components of the service, with rationale; and
 - d) the ILEC's view about whether an alternative CO equipped with an Asynchronous Transfer Mode (ATM)/Ethernet switch should be designated as the competitor interconnection point for the ADSL access service when the serving CO is not equipped with an ATM/Ethernet switch; if so, the submission is also to include a detailed description of the service configuration, the designated interconnection COs, and associated serving COs.
28. Interested parties may file comments on the ILECs' submissions and provide alternative proposals, serving copies on all parties to Telecom Decision 2008-17, by **6 April 2009**. The ILECs may file reply comments, serving copies on all interested parties, by **22 April 2009**. Further process may be established after review of the ILECs' submissions pursuant to paragraph 26, interested parties' comments, and the ILECs' reply comments.

II. Is there substantial doubt about the correctness of the Commission's determination in Telecom Decision 2008-17 to classify aggregated ADSL access service as conditional mandated non-essential?

29. MTS Allstream submitted that aggregated ADSL access service is currently the only service alternative available to competitors to access customers served by ILEC remotes. It also submitted that given Bell Canada et al.'s submissions regarding the architectural complexities and high costs associated with deploying a CO-based ADSL access service, the aggregated ADSL access service would likely continue to be the only ILEC wholesale service available to competitors that would allow them to access all end-customers served by the ILEC, including those served by ILEC remotes.
30. MTS Allstream submitted that given the Commission's finding regarding access to customers served by ILEC remotes, the lack of wholesale alternatives for competitors, and the potentially long time it would take ILECs to deploy a workable CO-based ADSL access service, the aggregated ADSL access service must be classified as conditional essential. MTS Allstream also submitted that to be consistent with the Policy Direction, the application of the Commission's essentiality test in Telecom Decision 2008-17 must lead to the reclassification of the aggregated ADSL access service.

31. CAIP submitted that both the CO-based and aggregated ADSL access services should have been classified as conditional essential because the Commission made similar findings for both services in Telecom Decision 2008-17 – that is, that withdrawing them would likely result in substantial lessening or prevention of competition in the provision of retail high-speed Internet access service. CAIP also submitted that Bell Canada et al. had presented new evidence in its current application that the existing CO-based ADSL access service is outdated and that it would take Bell Canada and Bell Aliant 24 months to deploy a service in Ontario and Quebec that satisfied the Commission's directives in Telecom Decision 2008-17. CAIP further submitted that the Commission should address this situation by reclassifying the aggregated ADSL access service as conditional essential.
32. CISP, Primus, and Distributel submitted that should the Commission rescind the requirement for ILECs to offer competitors a CO-based ADSL access service, the aggregated ADSL access service would be the only option available to competitors and, therefore, it should be reclassified as conditional essential. CISP also submitted that classifying aggregated ADSL access service as conditional essential would serve as an incentive for ILECs to move quickly to implement the CO-based ADSL access service for competitors.
33. Bell Canada et al. submitted that MTS Allstream's request to reclassify the aggregated ADSL access service as conditional essential incorrectly assumes that this service is the only alternative for competitors seeking to provide retail Internet service. Bell Canada et al. argued that MTS Allstream's request is nothing more than a request for a mandated price reduction for the aggregated ADSL access service.
34. As the Commission noted in Telecom Decision 2008-17, the aggregated ADSL access service consists of both access and transport elements, of which the transport elements are duplicable by competitors. As the Commission also noted, competitors use third-party Internet access (TPIA) service to offer retail high-speed Internet access service.
35. In addition, the Commission considers that reclassifying aggregated ADSL access service to create an incentive for the ILECs to implement a CO-based ADSL access service, as requested by CISP, would be inconsistent with the Policy Direction, which requires that regulatory measures be efficient and proportionate to their purpose. The Commission notes that the current classification of aggregated ADSL access service does not preclude it from mandating rate adjustments for the service.
36. Consistent with the Policy Direction requirement that regulatory measures be efficient and proportionate to their purpose, the Commission finds that in Telecom Decision 2008-17 it correctly classified the aggregated ADSL access service as conditional mandated non-essential.
37. Accordingly, the Commission concludes that MTS Allstream has not established that there is substantial doubt about the correctness of the Commission's determination to classify aggregated ADSL access service as conditional mandated non-essential.

III. Is there substantial doubt about the correctness of the Commission's determination in Telecom Decision 2008-17 to classify TCC's NNI Service as non-essential subject to phase-out?

38. MTS Allstream noted that the Commission had classified a component of TCC's aggregated ADSL access service, namely the NNI Service component, as non-essential subject to phase-out. It also noted that for all other ILECs, the component equivalent to NNI Service was classified as conditional mandated non-essential, consistent with the classification of aggregated ADSL access service. MTS Allstream requested that the Commission reclassify NNI Service as conditional essential, as it had requested for aggregated ADSL access service since, in its view, the two services belong in the same category.
39. The Commission finds that its classification of TCC's NNI Service as non-essential subject to phase-out was inadvertent and incorrect. The Commission concludes that the service should be classified as conditional mandated non-essential, consistent with the classification of aggregated ADSL access service and the component equivalent to NNI Service for the other ILECs.
40. Accordingly, the Commission determines that TCC tariff items CRTC 21462, item 217, and CRTC 25082, item 4.08, which are listed under section f) of the Appendix to Telecom Decision 2008-17, are to be moved to section c) of the Appendix.

Conclusion

41. In light of the above, the Commission **approves** Bell Canada et al.'s application to review and vary the configuration and classification of the CO-based ADSL access service. The Commission varies Telecom Decision 2008-17 as set out above in paragraph 18 and removes the requirement to file cost studies and proposed tariff pages for that service.
42. The Commission **denies** MTS Allstream's request to change the classification of aggregated ADSL access service from conditional mandated non-essential to conditional essential but **approves** the company's request to reclassify TCC's NNI Service in the same category as aggregated ADSL access service.
43. Finally, the Commission initiates a proceeding to consider issues regarding the appropriate configuration, classification, and feasibility of an unbundled ADSL access service for use by competitors.

Secretary General

Related documents

- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008

- *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
- *Asymmetric digital subscriber line access service*, Order CRTC 2001-914, 21 December 2001
- *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998

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