



## Telecom Notice of Consultation CRTC 2009-432

Ottawa, 21 July 2009

### Call for comments – Review of the large incumbent local exchange carriers' support structure service rates

File number: 8690-T66-200814774 and 8690-C12-200910408

*With this notice, the Commission initiates a proceeding to examine the support structure service rates of TELUS Communications Company, Bell Aliant, Bell Canada, and MTS Allstream. The Commission also approves these companies' existing support structure service rates on an interim basis.*

### Introduction

1. The Commission received an application by TELUS Communications Company (TCC), dated 30 October 2008, requesting that the Commission review the rates, terms, and conditions of the support structure service tariffs of the large incumbent local exchange carriers (ILECs).<sup>1</sup> TCC also requested that the Commission
  - direct the ILECs to file cost studies to establish revised rates,
  - declare current support structure service rates interim, and,
  - when revised support structure service rates are finalized, apply these rates retroactively to the date of TCC's application.
2. The Commission received comments from Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, and Télébec, Limited Partnership (Télébec) [collectively, Bell Canada et al.]; Bragg Communications Inc. (Bragg), the Canadian Cable Systems Alliance (CCSA), Cogeco Cable Inc. (Cogeco), Rogers Communications Inc. (RCI), Shaw Communications Inc. (Shaw), and Quebecor Media Inc. on behalf of its affiliate Vidéotron Ltd. (Vidéotron) [collectively, the cable carriers]; L'Association des Compagnies de Téléphone du Québec (ACTQ); MTS Allstream Inc. (MTS Allstream), Maskatel Inc. (Maskatel) and Téléphone Drummond Inc. (Drummond); MTO Telecom Inc. (MTO Telecom); and Xittel telecommunications inc. (Xittel).
3. Bell Canada et al. and MTS Allstream generally supported TCC's application. The cable carriers and other parties commenting generally opposed TCC's application and are referred to collectively as the interveners.

<sup>1</sup> Each ILEC's telecommunications poles, conduits, and aerial strands are available for use by other companies, subject to the terms and conditions in its tariffs.

4. The public record of this proceeding, which closed on 16 April 2009, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings," or by using the file number provided above.
5. In order to determine whether and, if so, how it should review the ILECs' support structure service tariffs, the Commission has considered the following issues:
  - I. Should the ILECs' support structure service rates be reviewed and, if so, on what basis?
  - II. If the support structure service rates are to be reviewed, should current rates be declared to have interim approval?
  - III. Should the associated support structure service terms and conditions be reviewed?

**I. Should the ILECs' support structure service rates be reviewed and, if so, on what basis?**

6. The Commission considers that parties' submissions raise issues regarding (a) whether support structure service rates, which are capped at existing levels, can be reviewed; (b) whether rates should be reviewed; and (c) the appropriate pricing approach.

*(a) Can the capped support structure service rates be reviewed?*

7. The cable carriers noted that in Telecom Decision 2002-34, the Commission had capped support structure service rates at existing levels. They submitted that, as a result, rates may decrease, but cannot increase.
8. Conversely, TCC, Bell Canada et al., and MTS Allstream submitted that capped rates can increase. TCC and Bell Canada et al. also submitted that the Commission has a duty to ensure that rates are just and reasonable at all times.
9. The Commission notes that in Telecom Decision 2002-34, it capped the ILECs' support structure service rates at existing levels as a substitute for the application of an I-X factor.<sup>2</sup> The Commission finds that a capped service rate can be reviewed based on changes in service costs, consistent with section 27 of the *Telecommunications Act* (the Act).

*(b) Should support structure service rates be reviewed?*

10. The Commission notes that each ILEC filed an updated cost study for its support structure service tariff, as requested by a Commission staff letter dated 6 February 2009.

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<sup>2</sup> I-X, which stands for "inflation less productivity," is a factor applied to some wholesale service rates. In such cases, in each year that I-X does not equal zero, the rate changes automatically.

11. TCC and Bell Canada et al. submitted that support structure service costs for items such as material and labour have increased since the Commission approved the current support structure service rates in Telecom Decision 95-13. MTS Allstream submitted that TCC's application to review rates based on cost changes is consistent with Telecom Decisions 95-13, 97-9, and 2002-34, as confirmed in Telecom Decision 2008-17. The interveners generally submitted that support structure service rates should not be reviewed.
12. The Commission's preliminary assessment of the cost studies filed by Bell Aliant, Bell Canada, MTS Allstream, Télébec, and TCC indicates that costs have increased since current support structure service rates were approved in 1995.
13. Accordingly, the Commission considers that the ILECs' support structure service rates should be reviewed. It anticipates that, consistent with recent determinations regarding the ILECs' Phase II costing manuals, any revised rates would be company-specific.

*(c) What is the appropriate pricing approach?*

14. Bell Canada et al., MTS Allstream, and TCC submitted that Telecom Decision 95-13 had established the pricing principles for support structures that were confirmed in Telecom Decision 2008-17. TCC and Bell Canada et al. also referred to the existence of higher rates for support structures, such as hydro structures, that are under the jurisdiction of other regulatory bodies. They noted that the Ontario Energy Board had approved a hydro pole rate of \$22.35 per year, which is greater than the current ILEC rate of \$9.60 per year.
15. TCC and Bell Canada et al. submitted that the Commission should consider such other rates when reviewing the ILECs' support structure service rates and that doing so would represent a market-based approach. They submitted that failure to do so would violate paragraph 1(a)(ii) of the Governor in Council's *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the Policy Direction). TCC and Bell Canada et al. also submitted that the pricing approach confirmed in Telecom Decision 2008-17 does not preclude such an approach.
16. TCC and Bell Canada et al. noted, further, that Telecom Decision 95-13 referred to competitive equity as a factor in setting support structure service rates and to the limited extent of retail service competition at that time. They submitted that competition has since increased significantly. They also submitted that current support structure service rates were approved at an artificially low level to promote the development of the cable industry. They submitted, further, that such an approach would violate the Policy Direction, as it would not represent maximum reliance on market forces and would not be competitively neutral or symmetrical.
17. The cable carriers submitted that because the support structure service pricing approach confirmed in Telecom Decision 2008-17 does not take into account rates charged by non-ILEC support structure providers, TCC's request to do so is not consistent with that decision. The cable carriers and Xittel also submitted that support structure service rates approved by other regulatory bodies, which have different regulatory frameworks, are not necessarily an appropriate benchmark for the ILECs' support structure service rates.

18. The cable carriers submitted that Telecom Decision 95-13 does not suggest that current rates were approved at an artificially low level. They also submitted that in Telecom Decision 95-13, the Commission had rejected Stentor's cost-sharing proposal because ILECs would have priority access to the structures they owned in order to meet their current and anticipated future needs. They noted that, in contrast, competitors only have a right of access to an ILEC's structure if spare capacity is available.
19. The Commission notes that, in the proceeding leading to Telecom Decision 2008-17, Bell Canada et al. and Saskatchewan Telecommunications (SaskTel) proposed that support structure service rates take into account rates charged by other support structure providers such as electrical utilities. The Commission did not adopt that approach; rather, it determined that support structure services would be priced in accordance with existing pricing principles. The Commission notes that it did not consider rates approved by other regulatory bodies or rates otherwise established when it approved the ILECs' current rates. The Commission notes that the existing pricing approach was initially established in Telecom Decision 95-13.
20. The pricing approach adopted in Telecom Decision 95-13 requires that ILEC support structure service rates must, at a minimum, exceed the ILEC's causally attributable prospective incremental costs and make a reasonable and appropriate contribution to the associated fixed structure costs. The Commission notes that it found in Telecom Decision 2008-17 that its determination to use the existing pricing approach for support structure services is consistent with the Policy Direction.
21. In Telecom Decision 95-13 the Commission rejected Stentor's cost-sharing proposal, noting that the telephone companies would have priority access to their support structures to meet current and anticipated future needs. The Commission also notes that the pricing approach used in Telecom Decision 95-13 includes an assessment of the contribution that support structure service rates make to the ILECs' fixed structure costs in order that, consistent with section 27 of the Act, approved rates are just and reasonable.
22. Accordingly, the Commission finds that the pricing approach adopted in Telecom Decision 95-13, discussed above, is the approach that applies with respect to the ILECs' support structures.

### ***Conclusion***

23. In light of the above, the Commission determines that it will conduct a proceeding to review the ILECs' support structure service rates based on updated costs. Consistent with its determinations in Telecom Decision 2008-14, the Commission anticipates that any revised rates will be ILEC-specific.

### **II. Should current support structure service rates be declared to have interim approval?**

24. Bell Canada et al. supported TCC's request that current support structure service rates be declared to have interim approval, with revised final rates to apply retroactively to the date of TCC's application. MTS Allstream and other interveners generally opposed TCC's request.

25. Based on the Commission's preliminary review of each ILEC's cost study, it appears that costs have increased and that rates may therefore increase. Consequently, the Commission considers it appropriate to approve the current support structure service rates on an interim basis.
26. Accordingly, the Commission declares that each ILEC's current support structure service rates have interim approval effective the date of this notice.

### **III. Should the associated support structure service terms and conditions be reviewed?**

27. Bell Canada submitted that a review of support structure service terms and conditions (terms) would likely be a complex and lengthy process, and submitted that the Commission should review only support structure service rates. TCC did not object.
28. While opposed to a review of rates, certain interveners, including the cable carriers and MTO Telecom, submitted that they experience difficulties in their support structure dealings with the ILECs. The cable carriers submitted that they experience what they characterized as significant challenges regarding the ILECs' interpretation and application of certain terms. These interveners submitted that, therefore, the Commission should also review support structure service terms, or that terms but not rates, should be reviewed.
29. The Commission considers that the concerns described by interveners relate principally to the implementation of the ILECs' support structure service tariffs. The Commission also considers that it would be more effective and efficient to examine these issues if and when they arise. A company with a specific concern regarding an ILEC's implementation of its support structure service tariff may apply to the Commission for a determination in accordance with existing procedures.
30. Accordingly, the Commission will review each ILEC's support structure service rates, based on existing terms, according to the procedure below.

### **Procedure**

31. Bell Aliant, Bell Canada, MTS Allstream, Télébec, and TCC (collectively, the ILECs);<sup>3</sup> Bragg; the CCSA; Cogeco; RCI; Shaw; Vidéotron; ACTQ; Maskatel and Drummond; MTO Telecom; and Xittel are made parties to this proceeding.
32. Parties other than those identified in paragraph 31 above that are interested in participating in this proceeding (including receiving copies of all submissions) must notify the Commission of their intention to do so by filling out the online form; or by writing to the Secretary General, CRTC, Ottawa, Ontario, K1A 0N2; or by faxing to: 819-994-0218 by **4 August 2009** (the registration date). Parties are to provide their email address, where available. If parties do not have access to the Internet, they are to indicate in their notice whether they wish to receive disk versions of hard-copy filings.

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<sup>3</sup> SaskTel requested that it be excluded from a review of the ILECs' support structure service rates.

33. As soon as possible after the registration date, the Commission will post on its website a complete list of interested parties, their mailing addresses, and, if available, their email addresses, identifying those parties who wish to receive disk versions.
34. The record developed to date regarding the application that led to this notice is made part of the record of this proceeding.
35. The Commission and the parties may address interrogatories to the ILECs regarding their submissions and cost studies. Any such interrogatories must be filed with the Commission and served on the relevant party or parties by **11 August 2009**.
36. Responses to interrogatories are to be filed with the Commission and served on all parties by **8 September 2009**.
37. Requests by parties for further responses to their interrogatories, specifying in each case why a further response is both relevant and necessary, and requests for public disclosure of information for which confidentiality has been claimed, setting out in each case the reasons for disclosure, must be filed with the Commission and served on the relevant party or parties by **22 September 2009**.
38. Written responses to requests for further responses to interrogatories and for public disclosure must be filed with the Commission and served on the party or parties making the request by **29 September 2009**.
39. Determinations will be issued regarding requests for further information and public disclosure as soon as possible. Any information to be provided pursuant to such determinations must be filed with the Commission and served on all interested parties by **16 October 2009**.
40. The Commission may address further interrogatories to the ILECs by **23 October 2009**.
41. Responses to the Commission's further interrogatories are to be filed with the Commission and served on all parties by **10 November 2009**.
42. All parties may file written comments with the Commission on any matter within the scope of this proceeding, serving copies on all other parties, by **25 November 2009**.
43. All parties may file reply comments with the Commission, serving copies on all other parties, by **4 December 2009**.
44. The Commission expects to publish a decision on the issues raised in this notice of consultation within 120 days of the close of record.
45. Where a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date.
46. Parties may file their submissions electronically or on paper. Submissions longer than five pages should include a summary.

47. Electronic submissions should be in HTML format. As an alternative, those making submissions may use Microsoft Word for text and Microsoft Excel for spreadsheets.
48. Each paragraph of all submissions should be numbered. In addition, the line \*\*\*End of document\*\*\* should be entered following the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
49. The Commission encourages parties to monitor the record of this proceeding and/or the Commission's website for additional information that they may find useful when preparing their submissions.

### **Important notice**

50. Note that all information that parties provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, email, or through the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca), becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, email addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information parties provide.
51. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
52. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
53. Please note that the information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of our website with the help of either our own search engine or a third-party search engine will not link directly to the information that was provided as part of this public process.

### **Location of CRTC offices**

54. Submissions may be examined or will be made available promptly upon request at Commission offices during normal business hours.

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

Central Building  
Les Terrasses de la Chaudière  
1 Promenade du Portage, Room 206  
Gatineau, Quebec J8X 4B1  
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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 certain Phase II costing issues*, Telecom Decision CRTC 2008-14, 21 February 2008, as amended by Telecom Decision CRTC 2008-14-1, 11 April 2008.
- *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
- *Price cap regulation and related issues*, Telecom Decision CRTC 97-9, 1 May 1997
- *Access to telephone company support structures*, Telecom Decision CRTC 95-13, 22 June 1995

*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>*