



Telecom Order CRTC 2011-377

PDF version

Ottawa, 15 June 2011

Interim rates for wholesale residential and business high-speed access services

File numbers: 8661-C12-201102350 and 8638-C12-201016882

Introduction

1. In December 2010, the incumbent local exchange carriers (ILECs)¹ and the cable companies² filed proposed tariffs and costs to implement speed matching and point of interconnection (POI) aggregation services, as required by the Commission in Telecom Regulatory Policy 2010-632. Associated with those tariff filings, the Commission initiated two separate proceedings to review the rates for wholesale high-speed access services: one for residential services and one for business services.
2. The Commission recognizes the importance of providing competitors with access to higher-speed and increased POI aggregation services as soon as possible in order to respond to the needs of consumers. Therefore, in a letter dated 20 May 2011, Commission staff proposed a simplified approach to establish interim rates for both residential and business wholesale high-speed access services until the final rates are determined (the proposed interim approach). In that letter, parties to the proceedings for residential and business services were invited to provide their views on this proposed interim approach.
3. The Commission received comments from the ILECs and the cable companies, as well as from various competitors,³ Jatinder Bhullar, and the Public Interest Advocacy Centre. The submissions are available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file numbers provided above.
4. The Commission notes that its determinations in this order only address the ILECs' proposed new higher matching speeds and the cable companies' proposed aggregated POIs. The Commission considers that it is important to minimize any

¹ The ILECs are: Bell Aliant Regional Communications, Limited Partnership (Bell Aliant); Bell Canada; MTS Allstream Inc.; Saskatchewan Telecommunications; and TELUS Communications Company.

² The cable companies are: Cogeco Cable Inc.; Quebecor Media Inc., on behalf of Videotron Ltd.; Shaw Communications Inc.; and Rogers Communications Partnership.

³ The competitors are: the British Columbia Broadband Association; the Canadian Association of Internet Providers; the Canadian Network Operators Consortium Inc.; the Peace Region Internet Society; Primus Telecommunications Canada Inc.; and Vaxination Informatique.

disruption in the competitive market during the interim period. As such, all rates for the ILECs' existing speeds and the cable companies' existing POIs are to remain as currently approved. Specifically, during the interim period, the cable companies are to maintain their existing POIs. In addition, TELUS Communications Company (TCC) is to maintain its existing legacy matching speeds.⁴

5. The Commission has identified the following issues to be addressed in this order:
 - I. What is the appropriate interim approach for wholesale access monthly rates?
 - II. Should the interim wholesale access monthly rates be allowed to vary as retail rates vary?
 - III. What are the appropriate interim rates for other fees and charges?
 - IV. What should be the implementation date for the interim rates?

I. What is the appropriate interim approach for wholesale access monthly rates?

6. In the 20 May 2011 letter, Commission staff proposed the following approach to provide competitors access to higher-speed and increased POI aggregation services with as little delay as possible:
 - Set interim wholesale access monthly rates for the ILECs' new higher matching speeds and the cable companies' aggregated POIs based on the company's lowest retail access rates⁵ for the corresponding speed options, minus \$7.50 to recognize activities pertaining to retail that either do not apply, or do not apply to the same extent, to wholesale (e.g. back-end Internet connectivity, billing, help desk, advertising and sales, offset by additional costs which would apply only to wholesale). Where this resulting wholesale access rate is higher than the company's proposed wholesale access rate, the company is to set the interim wholesale access rate equal to its proposed wholesale access rate.⁶
 - No usage rates will apply during the interim period. The wholesale access monthly rates are based on retail access rates, which are set to recover usage-driven costs.

⁴ TCC submitted a request for interim approval of tariffs for new legacy matching speeds that would replace its tariffs for existing legacy speeds.

⁵ Where a company offers retail rates through contracts or bundles that are lower than its stand-alone rates, the lower rates are the applicable rates. Promotional rates are not considered to be included in a company's "lowest retail access rates."

⁶ This condition does not apply to the services provided by Bell Aliant in Ontario and Quebec and by Bell Canada (collectively, the Bell companies). Unlike the other ILECs and the cable companies, the Bell companies have not filed a proposed wholesale access rate that includes usage costs.

7. The ILECs, Rogers Communications Partnership (RCP), Shaw Communications Inc. (Shaw), the Canadian Association of Internet Providers (CAIP), and Jatinder Bhullar submitted that the Commission should rely on cost-based rates to determine the interim rates. While no party supported the proposed interim approach, a few parties indicated that they would be willing to accept some form of a “retail minus” approach on a short-term interim basis. The Canadian Network Operators Consortium Inc. (CNOc) stated that it would accept such an approach only on very specific terms, including the requirement that no retroactive adjustments should apply. Further, all parties made suggestions in the event that the Commission approves a “retail minus” approach for the interim rates.
8. Bell Canada submitted that its proposed Aggregated Volume Pricing (AVP) usage rates should be approved for the interim regime.⁷ Primus Telecommunications Canada Inc. (Primus) argued that, if Bell Canada’s proposed AVP is approved on an interim basis, competitors would have to expend significant resources without knowing whether or not the Commission’s final determinations would include the AVP pricing model.
9. The cable companies submitted that existing approved usage-based billing (UBB) rates should continue to be applied during the interim regime. CNOc submitted that no parties are proposing this UBB model for the future and that no new end-user-based UBB charges should be introduced on an interim basis.
10. CNOc and Primus proposed to set interim wholesale access monthly rates based on stand-alone retail rates as opposed to rates for service bundles or for services provided under contract. Most of the ILECs supported this proposal. One of the concerns identified with the use of the lowest retail rate was that it would be difficult to quantify the rate for a service offered as part of a bundle or provided under contract.
11. CAIP submitted that retail rates should exclude any monthly modem fees charged by the ILECs to their retail customers.
12. CNOc, the British Columbia Broadband Association (BCBA), and Jatinder Bhullar submitted that a percentage discount applied to retail rates would be more appropriate than a dollar amount, to keep discounting fair and consistent between speeds. The BCBA proposed a discount of 60 percent, while CNOc and Primus proposed 50 percent. Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron) submitted that there is no justification for the proposed 50 percent, and CNOc replied that it represents the average ratio of wholesale rates to retail rates for existing services.

⁷ The Bell companies proposed their AVP rates in their 28 March 2011 tariff filing. Under the AVP proposal, a competitor would be charged for two components: (1) a flat-rate access fee by speed, and (2) the AVP. The AVP, which is based on the total monthly volume usage generated by all the competitor’s customers, could be pre-purchased in blocks of single terabytes. If the competitor’s total aggregate monthly traffic volume exceeds the level of pre-purchased terabytes, that competitor would be charged for the excess gigabytes.

13. Bell Canada submitted that, in the absence of wholesale AVP usage rates during the interim period, its wholesale customers should not be permitted to market their Internet services as “unlimited.” Videotron supported Bell Canada’s position. CNOC submitted that this approach would amount to unjustified interference in the forborne market for high-speed Internet services.

Commission’s analysis and determinations

14. The Commission recognizes the importance of providing competitors with access to higher-speed and increased POI aggregation services as soon as possible.
15. The Commission notes that, for the interim period, Bell Canada proposed AVP usage rates for its new higher matching speeds, and most of the cable companies proposed to use the existing approved end-user-based usage rates for their new aggregated POIs. Further, the Commission notes that in the submissions to the Telecom Notice of Consultation 2011-77 proceeding, the ILECs, the cable companies, the competitors, and associations representing competitors, while disagreeing on the specifics, were not opposed to the concept of an aggregated usage model. However, the Commission considers that, until it makes its final determinations, it would not be appropriate to approve any usage model on an interim basis.
16. Accordingly, the Commission finds it inappropriate to approve the tariffs as filed for the interim period.
17. Due to the absence of an alternative acceptable to all parties and the conditional acceptance by some parties, including CNOC, of a “retail minus” approach, the Commission considers that it would be both simple and expedient to establish interim rates based on a “retail minus” approach.
18. The Commission also notes the concern raised by several parties regarding the potential difficulty of quantifying the lowest retail access rates, and considers that setting interim wholesale access monthly rates based on stand-alone rates would simplify the interim process.
19. The Commission considers that, as suggested by some parties, applying a percentage discount to stand-alone retail rates, rather than using a dollar amount, would recognize differences between speeds. In setting the appropriate percentage, the Commission has considered the appropriate balance between the needs of incumbents and the needs of competitors during the interim period. In the Commission’s view, a discount of 35 percent for the ILECs’ new higher residential matching speeds and the cable companies’ aggregated POIs is reasonable for the interim period. With regard to the ILECs’ new higher business matching speeds, the Commission considers that a discount of 15 percent is appropriate.
20. Since wholesale access monthly rates do not include the provision of modems, the Commission considers that the stand-alone retail rates in the “retail minus” approach should exclude any charges for modems. If an incumbent’s stand-alone retail rate includes the provision of a modem, the incumbent is to reduce this rate by an amount it deems appropriate, before applying the percentage discount identified above.

21. In light of the above, the Commission is setting interim wholesale access monthly rates for the ILECs' new higher matching speeds (residential and business) and for the cable companies' aggregated POIs based on stand-alone retail rates, excluding monthly modem charges, minus 35 percent for residence and 15 percent for business. In addition, the Commission considers that imposing restrictions on Bell Canada's wholesale customers for the marketing of their retail Internet services would amount to unjustified interference in that forborne market.
22. It should be noted that the interim rates approved in this order do not reflect a final determination by the Commission but rather an expedient approach to provide competitors with access to higher-speed and increased POI aggregation services with as minimal a delay as possible. In particular, the Commission has taken note of the fact that, in submissions to the Telecom Notice of Consultation 2011-77 proceeding, the ILECs, the cable companies, the competitors, and associations representing competitors were not opposed to the concept of an aggregated usage component for capacity provided between the underlying carriers (i.e. the ILECs and the cable companies) and the competitors.
23. The July hearing regarding billing practices for wholesale residential high-speed access services, which was initiated by Telecom Notice of Consultation 2011-77, will examine the issue of a separate usage component and how such a component would be calculated if it is to be implemented. No inferences of any kind should be drawn from the fact that this interim tariff, given its short and transitory nature, contains no separate usage component.
24. The Commission notes that its final decisions with respect to both residential and business wholesale access monthly rates, as well as other fees and charges, will be based on its full review of the proposed pricing methodologies and costs for those services. At this point in time, the Commission is of the view that, in its final decisions, it will likely make retroactive adjustments to the interim access rates as well as to the other fees and charges. The Commission will, however, make its decision on any retroactive adjustments in light of the submissions of the parties. As such, the Commission notes that parties will have a further opportunity to include their views on retroactive adjustments in their final written arguments.

II. Should the interim wholesale access monthly rates be allowed to vary as retail rates vary?

25. Bell Canada submitted that, to minimize the interference of a "retail minus" approach on market forces, wholesale rates should not be fixed during the interim period but should fluctuate with the retail market. CAIP, CNOC, Primus, and Shaw submitted that wholesale rates should be determined and fixed at the beginning of the interim period to provide pricing certainty and administrative simplicity.
26. The Commission agrees that a fixed rate will provide pricing certainty and administrative simplicity. Further, it considers that, given that these rates are interim, the risk of interfering with market forces is minimal.

27. Accordingly, the Commission concludes that retail rates used to determine the interim wholesale access monthly rates should be those in effect as of the date of this order. The rates will be used for the entirety of the interim period and will not fluctuate.

III. What are the appropriate interim rates for other fees and charges?

28. The ILECs proposed other fees and charges for their new matching speeds for residential and business services that were different from their existing ones. The cable companies proposed other fees and charges for their POI aggregation services that were the same as their existing ones.
29. CNOC and Primus submitted that the wholesale installation charges proposed by the ILECs are significantly higher than the ILECs' current retail installation charges, which constitutes a significant barrier to entry. They proposed that the interim rates for these wholesale charges be set at a percentage of the corresponding fees that ILECs charge their own retail end-users.
30. Vaxination Informatique proposed that the interim rates for wholesale service charges be set close to the equivalent retail service charges, while CAIP proposed that they be set at current tariffed rates for legacy wholesale high-speed access services.

Commission's analysis and determinations

31. The Commission notes that the other fees and charges are for elements that are integral to the provision of the new matching speed and POI aggregation services. In order to (a) ensure that incumbents are still able to charge some fees, (b) ensure that these fees do not constitute a barrier to entry, and (c) minimize disruption to the competitive market during the interim period, the Commission has established the following general principles regarding these fees and charges:
- if the equivalent functionality exists for legacy speeds, the interim rate will be set at the existing rate unless the rate proposed by the ILEC is lower;⁸ and
 - if the equivalent functionality does not exist for legacy speeds, the interim rate will be set at the rate proposed by the ILEC.
32. With respect to service charges, the interim access service charges for the ILECs' new higher matching speeds will be set at \$100, the lowest amount proposed by the ILECs, unless the existing service charge is higher than \$100, in which case the lower of the existing or the proposed service charge will apply.

⁸ The Commission considers that the functionalities associated with MTS Allstream's service charges for its Very High-Speed Aggregated High-Speed Service Provider Interface and its Access Profile Change Fee are equivalent to those associated with the service charges for its legacy Aggregated High-Speed Service Provider Interface and its legacy Administration Fee.

IV. What should be the implementation date for the interim rates?

33. The ILECs and the cable companies submitted that implementation of the interim rates, based on the proposed interim approach, would take anywhere from ten days to six months. RCP submitted that it has not started to implement aggregated POIs and indicated that a minimum of four months will be required to implement POI aggregation once it has been confirmed that existing POIs will cease to be mandated.
34. The Commission notes that, in Telecom Regulatory Policy 2010-632, all ILECs and cable companies were directed to implement speed matching and POI aggregation services. Given that nine months have elapsed since that direction and given that all the ILECs and cable companies, except Bell Aliant Regional Communications, Limited Partnership,⁹ stated in their original tariff filings that they would be ready to offer service no later than 1 July 2011, the Commission considers that the companies have had ample opportunity to prepare for the implementation.
35. Accordingly, the Commission directs the ILECs and the cable companies to implement the interim rates within **30 days** of the date of this order. If a company currently has no wholesale customers for its existing speeds, it is directed to implement the interim rates within **90 days** of receiving a request for service.

Conclusion

36. The Commission directs the ILECs and the cable companies to issue, by **23 June 2011**, tariff pages for residential and business services that correspond to the Commission's determinations in this order, serving copies on all other parties to the proceedings.

Secretary General

Related documents

- *Review of billing practices for wholesale residential high-speed access services*, Telecom Notice of Consultation CRTC 2011-77, 8 February 2011, as amended by Telecom Notice of Consultation CRTC 2011-77-1, 17 March 2011, and Telecom Notice of Consultation CRTC 2011-77-2, 8 April 2011
- *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010

⁹ Bell Aliant proposed to implement its new matching speeds six months from expression of firm demand.