



## Telecom Notice of Consultation CRTC 2012-168

PDF version

Ottawa, 22 March 2012

### Call for comments

#### Confidentiality of information used to establish wholesale service rates

File number: 8661-C12-201203546

#### Introduction

1. The Commission has mandated several incumbent telephone companies and cable carriers (incumbent carriers)<sup>1</sup> to provide certain services to competitors on a wholesale basis in order to foster retail service competition.
2. When establishing just and reasonable rates, as required by subsection 27(1) of the *Telecommunications Act* (the Act), the Commission generally uses an incremental costing approach, known as Phase II costing, to evaluate the incumbent carrier's costs of providing wholesale service to competitors. The Commission then applies a markup to these costs as a contribution to the incumbent carrier's fixed and common costs.
3. Accordingly, the costing information and assumptions underlying the cost study and the markup are key components in establishing wholesale service rates.
4. In support of their wholesale service filings, incumbent carriers submit regulatory economic studies that contain Phase II costing information and reflect the costs of prospective incremental resources used to provide the service. The cost elements in these studies are based on incumbent telephone companies' regulatory economic study manuals<sup>2</sup> and are listed in the Appendix. These manuals also identify cost

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<sup>1</sup> These companies include Bell Aliant Regional Communications, Limited Partnership, Bell Canada, Cogeco Cable Inc., MTS Allstream Inc. (now known as MTS Inc. and Allstream Inc.), Northwestel Inc., Rogers Communications Partnership, Saskatchewan Telecommunications, Shaw Communications Inc., Télécédé, Limited Partnership, TELUS Communications Company, and Videotron Ltd.

<sup>2</sup> Several incumbent telephone companies have filed, as approved in Telecom Order 2008-237, economic study manuals which describe the procedures, methods, and data sources used in conducting regulatory economic studies. Cost information to be filed in regulatory economic studies is to be consistent with that specified in the company's regulatory economic study manual. The Commission notes that, while incumbent cable carriers do not have regulatory economic study manuals, they apply the Phase II costing methodologies in the development of their regulatory economic studies in support of their wholesale third-party Internet access service.

study elements that the Commission expects to be filed on the public record.<sup>3</sup> In addition, an incumbent carrier may submit information with a designation of confidentiality.

5. When an incumbent carrier designates information as confidential, other parties, and the Commission, may challenge this designation and request that the information in question be filed on the public record. When an incumbent carrier's designation of information as confidential is challenged, the Commission addresses these disclosure requests on an individual basis, which may extend the length of that proceeding.
6. The Commission notes that in other proceedings it has received comments in which parties have submitted that they do not have sufficient access to incumbent carriers' costing information to permit them to participate fully in the regulatory process.
7. The Commission considers that it is in the public interest to obtain as full and complete a record as possible on which to base its decisions with respect to rates for wholesale services. It further considers that it is in the public interest that this information should be obtained on as timely a basis as possible.
8. Further, the Commission notes that parties other than the incumbent carriers may have expertise related to the evaluation of the incumbent carriers' cost studies. The Commission therefore considers that, to the extent these parties may have increased access to incumbent carrier information that is currently considered to be confidential, they may be able to contribute to the development of a more full and complete record.
9. Accordingly, the Commission is initiating this proceeding to consider if additional cost study elements and markups should be expected to be disclosed. The Commission notes that this proceeding does not preclude future consideration of other potential approaches to parties' access to incumbent carrier costing information.

## **Background**

10. Sections 38 and 39 of the Act and sections 30 to 34 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) address the filing by parties of information in confidence on the record of a public proceeding.
11. When filing information with the Commission, a party may designate it as confidential if it is
  - (a) information that is a trade secret;

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<sup>3</sup> The process for filing confidential information in Commission proceedings, including information associated with regulatory economic studies, is set out in Broadcasting and Telecom Information Bulletin 2010-961 (the Bulletin). The Bulletin indicates that cost study inputs to be placed on the public record are identified by the incumbent telephone companies in paragraphs 3-82 and 3-83 of their regulatory economic study manuals.

- (b) financial, commercial, scientific, or technical information that is confidential and that is treated consistently in a confidential manner by the person who submitted it; or
  - (c) information the disclosure of which could reasonably be expected
    - (i) to result in material financial loss or gain to any person,
    - (ii) to prejudice the competitive position of any person, or
    - (iii) to affect contractual or other negotiations of any person.
12. Generally, the Commission has found that the more the information is disaggregated or the greater the degree of competition, the more likely it is that the direct harm to the incumbent carrier will outweigh the public interest and that the information should not be disclosed. On the other hand, the Commission has found that the greater the importance of the information to the ability of the Commission to obtain a full and complete record on which to make its decision, the more likely it is that the direct harm will not outweigh the public interest and that the information should be disclosed.

### **Call for comments**

- 13. The Commission is seeking comments regarding the specific additional information that should be expected to be provided on the public record in the context of setting rates for wholesale services. The Commission notes that it will review the matters in this proceeding in light of the telecommunications policy objectives set out in section 7 of the Act and the Policy Direction.<sup>4</sup>
- 14. The Commission notes that the outcome of this proceeding may result in changes to the disclosure of confidential costing information for all incumbent carriers and for parties to future wholesale service proceedings.
- 15. Parties should address the following issues in their initial interventions, providing supporting rationale and all evidence on which they rely, and structure their submissions according to the issues identified below.

I. For each cost study element in the Appendix that is not currently disclosed:<sup>5</sup>

- a) Specify whether it should be expected to be placed on the public record, and describe fully how disclosure of this element would specifically serve the public interest.

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<sup>4</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

<sup>5</sup> This section applies to each cost study element where the column titled “Current Disclosure Policy” is identified as “Typically not disclosed,” “Typically disclosed,” or “Not disclosed for service rates other than those with 15% markup.”

- b) Specify whether it should be expected to be treated as confidential, and describe fully the specific harm, if any, that would be caused by disclosure of the element in question.
  - c) Specify whether and, if so, how disclosure of the element in question should depend on a specific level of aggregation and if so, identify, with reasons, the level of aggregation at which it would be appropriate to disclose the element.
- II. Describe fully whether and, if so, how the treatment of an element of costing information should differ according to the wholesale service category<sup>6</sup> of the service associated with that costing information. To the extent that different treatment of costing information is proposed, identify the proposed treatment clearly and provide full reasons for that treatment.
- III. Comment on the implications and other positive or negative consequences of increased disclosure of costing information in a proceeding. Include a discussion of the anticipated implications and consequences including such matters as regulatory costs and the length of proceedings.
- IV. Comment on the appropriateness of disclosing the markups included in rates for each wholesale service that is classified as a conditional mandated non-essential service,<sup>7</sup> identifying and discussing fully the specific circumstances in which such disclosure should occur.

Further, include a full discussion of whether and, if so, (i) how disclosure of the markup would serve the public interest, and (ii) how disclosure of the markup may result in specific harm.
- V. Without proposing changes to the designation and treatment of confidential information as set out in the Rules of Procedure or changes to the current regulatory economic study manuals, identify and describe fully other proposed changes, if any, that would increase the transparency of costing information. Include full reasons as to how each proposed change would serve the public interest more fully than the Commission's current approach.

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<sup>6</sup> In Telecom Decision 2008-17, the Commission assigned existing wholesale services to one of six categories: essential, conditional essential, conditional mandated non-essential, public good, interconnection, and non-essential subject to phase-out.

<sup>7</sup> Note that for co-location service, which is a conditional mandated non-essential service, the 15 percent markup included in the rates is already disclosed. The markups included in rates for remaining wholesale services, other than services in the non-essential subject to phase-out category, are also typically disclosed. Services in the non-essential subject to phase-out category are not included in this proceeding as their rates are not or will not be subject to prior Commission approval.

## **Procedure**

16. The Rules of Procedure, which came into force on 1 April 2011, apply to this proceeding.<sup>8</sup>
17. Interested persons who wish to become parties to this proceeding must file an intervention with the Commission regarding the above-noted issues, by **22 May 2012**. In accordance with section 26 of the Rules of Procedure, this intervention must explicitly state that the person wishes to be considered an intervener.
18. Shortly thereafter, the Commission will post the interventions on its website. All documents required to be served on a party or parties to the proceeding must be served using the contact information contained in the interventions.
19. All parties may file reply comments with the Commission, serving copies on all other parties, by **21 June 2012**.
20. The Commission expects to publish a decision on the issues raised in this notice within four months of the close of record.
21. The Commission will not formally acknowledge interventions or comments. It will, however, fully consider all submissions, which will form part of the public record of the proceeding.
22. Parties are reminded that, in accordance with the Rules of Procedure, if a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date. A document must be filed with the Commission by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due.
23. Parties may file their submissions electronically or on paper. Submissions longer than five pages should include a summary.
24. Electronic submissions should be in HTML format. Alternatively, Microsoft Word may be used for text and Microsoft Excel for spreadsheets. Each paragraph of all submissions should be numbered. In addition, the line \*\*\*End of document\*\*\* should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
25. The Commission encourages interested persons and 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.

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<sup>8</sup> The Rules of Procedure set out, among other things, the rules for the filing, content, format, and service of interventions and interrogatories; the procedure for filing confidential information and requesting its disclosure; and the conduct of the public hearing. Accordingly, the procedure set out in this notice must be read in conjunction with the Rules of Procedure and their accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure."

## **Important notice**

26. All information provided 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 includes personal information, such as full names, email addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information provided.
27. The personal information provided 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.
28. 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.
29. The information provided 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 the Commission's website with the help of either its search engine or a third-party search engine will not link directly to the information provided as part of this public process.

## **Location of CRTC offices**

30. 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  
Tel.: 819-997-2429  
Fax: 819-994-0218

## ***Regional offices***

Metropolitan Place  
99 Wyse Road, Suite 1410  
Dartmouth, Nova Scotia B3A 4S5  
Tel.: 902-426-7997  
Fax: 902-426-2721

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Montréal, Quebec H2Z 1G2  
Tel.: 514-283-6607

55 St. Clair Avenue East, Suite 624  
Toronto, Ontario M4T 1M2  
Tel.: 416-952-9096

360 Main Street, Suite 970  
Winnipeg, Manitoba R3C 3Z3  
Tel.: 204-983-6306  
Fax: 204-983-6317

2220 – 12th Avenue, Suite 620  
Regina, Saskatchewan S4P 0M8  
Tel.: 306-780-3422

100 – 4<sup>th</sup> Avenue SW, Suite 403  
Calgary, Alberta T2P 3N2  
Tel.: 403-292-6660  
Fax: 403-292-6686

858 Beatty Street, Suite 290  
Vancouver, British Columbia V6B 1C1  
Tel.: 604-666-2111  
Fax: 604-666-8322

Secretary General

### **Related documents**

- *Procedures for filing confidential information and requesting its disclosure in Commission proceedings*, Broadcasting and Telecom Information Bulletin CRTC 2010-961, 23 December 2010
- *Regulatory Economic Studies Manuals – Follow-up proceeding to Telecom Decision 2008-14*, Telecom Order CRTC 2008-237, 25 August 2008
- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008

## **Appendix**

### **Disclosure of Costing Information**

The following table sets out, for each Phase II cost study element, the current policy with respect to disclosure of the element on the public record. In addition to their comments as set out in paragraph 15 above, parties are to provide information to complete the table.

Refer to the Glossary of Terms following the table for the meaning of specific cost study terms.

<b>Cost Study Element</b>	<b>Current Disclosure Policy</b>	<b>Disclose? (yes or no)</b>	<b>Comments (with respect to specific harm, public interest, aggregation level, and service category)</b>
<b><i>Financial Parameters and Tax Rates</i></b>			
<b><i>Financial Parameters</i></b>			
<i>After-tax Weighted Average Cost of Capital, Cost of Debt, Debt Ratio, Return on Preferred Equity, Preferred Equity Ratio, Common Equity Ratio</i>	Disclosed	Not applicable	Not applicable
<b><i>Tax and Revenue-Percent Charge Rates</i></b>			
<i>Income Tax Rate, Large Corporations Tax Rate, Capital Miscellaneous Tax Rate, Revenue Miscellaneous Tax Rate, Other Tax Rate (specify), Revenue-Percent Charge Rate</i>	Disclosed	Not applicable	Not applicable
<b><i>Study Period</i></b>			
<i>Study Period</i>	Disclosed	Not applicable	Not applicable
<b><i>Demand Estimates</i></b>			
<i>Year-end or Average In-service Annual Wholesale Demand Forecasts, including In-service Wholesale Demand at the beginning of the study period (by band or speed if applicable)</i>	Typically disclosed		
<i>All-Carriers Year-end or Average In-service Annual Wholesale Demand Forecasts, including In-service Wholesale Demand at the beginning of the study period (by band or speed if applicable)</i>	Typically not disclosed		

<b><i>Study Cost Results (Present Worth of Annualized Costs (PWAC))</i></b>			
<b><i>Expenses Causal to the Service</i></b>			
<i>Advertising and Promotion</i>	Not disclosed for service rates other than those with 15% markup		
<i>Billing-related</i>	Not disclosed for service rates other than those with 15% markup		
<i>Other study results</i>	Not disclosed for service rates other than those with 15% markup		
<b><i>Capital Causal to the Service</i></b>			
<i>Hardware</i>	Not disclosed for service rates other than those with 15% markup		
<i>Software</i>	Not disclosed for service rates other than those with 15% markup		

<b><i>Capital Causal to Demand</i></b>			
<i>Outside Plant Equipment</i>	Not disclosed for service rates other than those with 15% markup		
<i>Switching Equipment</i>	Not disclosed for service rates other than those with 15% markup		
<i>Transmission Facilities</i>	Not disclosed for service rates other than those with 15% markup		
<i>Land, Building and Other</i>	Not disclosed for service rates other than those with 15% markup		
<b><i>Expenses Causal to Demand</i></b>			
<i>Maintenance</i>	Not disclosed for service rates other than those with 15% markup		
<i>Service Provisioning</i>	Not disclosed for service rates other than those with 15% markup		
<i>Advertising and Sales Management</i>	Not disclosed for service rates other than those with 15% markup		

<i>Billing</i>	Not disclosed for service rates other than those with 15% markup		
<i>Other</i>	Not disclosed for service rates other than those with 15% markup		
<b><i>Other</i></b>			
<i>Present Worth of Major Demand Units</i>	Not disclosed for service rates other than those with 15% markup		
<i>Present Worth of End of Study Value (included in the PWAC)</i>	Not disclosed for service rates other than those with 15% markup		
<i>Causal Acquisition costs (PWAC) by major 3<sup>rd</sup> party service component</i>	Not disclosed for service rates other than those with 15% markup		
<i>Causal Costs (PWAC) associated with major wholesale service component costs and other imputed costs</i>	Not disclosed for service rates other than those with 15% markup		

<b><i>Study Cost Inputs</i></b>			
<i>Vintage Year of each input data, Annual retrospective and prospective Productivity Improvement Factor (PIF)</i>	Disclosed	Not applicable	Not applicable
<i>Annual retrospective Capital Increase Factors by Asset Class (CIF)</i>	Typically not disclosed		
<i>Annual prospective Capital Increase Factors by Asset Class (CIF)</i>	Typically not disclosed		
<i>Annual retrospective Expense Increase Factors (EIF)</i>	Typically not disclosed		
<i>Annual prospective Expense Increase Factors (EIF)</i>	Typically not disclosed		
<b><i>Capital by Major Equipment</i></b>			
<i>Capital Unit Costs (installed first costs including Equipment Price, Engineering, and Installation Labour)</i>	Typically not disclosed		
<i>Capacity (if applicable), Survivor Curve, Life Estimate</i>	Disclosed	Not applicable	Not applicable
<i>Salvage Value</i>	Typically not disclosed		
<i>Capital Cost Allowance</i>	Disclosed	Not applicable	Not applicable
<i>Working Fill Factors</i>	Typically disclosed		
<i>Structure and Technology Cost Factors</i>	Typically disclosed		
<i>Other Capital Cost Loadings (e.g. Warehouse and Distribution)</i>	Typically not disclosed		

Expenses by Major Function			
<i>Corporate Average Operating Expense Unit Costs (e.g. Maintenance and Repair)</i>	Typically not disclosed		
<i>Service-specific Operating Expense Unit Costs (e.g. competitor digital network (CDN))</i>	Typically not disclosed		
<i>Corporate Average Factors (e.g. Information Systems/Information Technology (IS/IT)), Cost of Removal, Marketing and Sales)</i>	Typically not disclosed		
<i>Maintenance and Repair Factors</i>	Typically not disclosed		
<i>Labour Unit Cost by Major Function</i>	Typically not disclosed		
<i>Time Estimates</i>	Typically disclosed		
<i>Percentage Occurrence Rates (% of time function occurs)</i>	Typically disclosed		
<i>Acquisition Unit Costs by major third party service component</i>	Typically not disclosed		
<i>Tariffed Rates by Major Imputed Service Component</i>	Disclosed	Not applicable	Not applicable
<i>Other Expense Factors or Loadings</i>	Typically not disclosed		

## Glossary of terms

**After-tax Weighted Average Cost of Capital (ATWACC):** ATWACC is the after-tax cost of capital based on the average of the after-tax costs of debt and equity weighted by their respective proportions in a company's capital structure.

**All-carriers Approach:** This approach calculates the service cost as a weighted-average of the cost associated with providing a service to itself and to the competitor.

**Capital Cost Allowance (CCA):** A capital tax shield permitted under the Income Tax Act. CCA is claimed by applying a CCA rate to the undepreciated capital cost of an item which is capitalized for tax purposes. Items are grouped into CCA classes for which the same CCA rate applies. CCA is used in calculating the income tax payable cash flow.

**Capital Increase Factor (CIF):** Forecasts of year-over-year price level changes for capital equipment.

**Cost of Debt:** An estimate of the foreseeable debt interest rate that a company expects to pay to its debt holders when it issues new debt.

**Debt Ratio:** The ratio of debt to the value of total obligations comprising of debt plus equity (where equity refers to common and preferred equity).

**Demand:** A measure of the quantity of a service/product that consumers purchase under a particular set of circumstances.

**Expense Increase Factor (EIF):** Forecasts of year-over-year price level changes associated with expenses.

**Income Tax Rate:** The rate legislated by the federal or provincial governments for income tax purposes.

**Labour Unit Cost (LUC):** The cost of a productive hour for human resources involved in the performance of a particular function. LUCs typically include an activity rate (salary, training, supervision, etc.), associated indirect expenses (associate support, benefits & taxes, premises, etc.), and associated loadings (official telephone service, computer equipment and support, tools and furniture, etc.).

**Life Estimate (LE):** The period of time over which an asset is expected to be used by a company to provide service. Average Service Lives are used as life estimates in regulatory economic studies.

**Maintenance Costs:** The costs of maintaining equipment and plant in satisfactory operating condition to achieve a desired quality of service.

**Present Worth of Annual Costs (PWAC):** PWAC is the present worth of all causal costs (including taxes) typically at the beginning of the study period

**Productivity Improvement Factor (PIF):** Forecast of year-over-year productivity improvements in recognition of operational processes becoming more efficient over time.

**Regulatory Economic Study:** A framework for comparing the costs and revenues of “providing the individual service under the proposed course of action” with those of “not providing the service.”

**Removal Cost:** Cash outflow resulting from removing an asset at the end of its life estimate.

**Salvage Value:** The inward cash flow resulting from the disposition of a capital asset outside of the company.

**Study Period:** The period of time over which the causal revenues and costs associated with a service under the proposed course of action are estimated.

**Survivor Curve:** A mathematical function that, together with the life estimate, describes the retirement pattern of an asset over time.

**Unit Cost:** The total cost associated with a particular volume of output divided by the volume of output.

**Working Fill Factor (WFF):** The ratio of service-producing capacity to the total installed capacity of the shared facility.