



Telecom Regulatory Policy CRTC 2013-70

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Disposition of review and vary applications with respect to wholesale high-speed access services: Introductory statement

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In this introductory statement, the Commission frames a series of decisions on wholesale high-speed access services being issued today in regard to a number of applications from incumbent carriers and independent service providers to review decisions made in Telecom Regulatory Policies 2011-703 and 2011-704 and related matters.

Background

1. As retail Internet service demand has evolved to higher speeds, the Commission has required the large telephone companies and cable carriers (collectively, the incumbents) to make some of their high-speed access (HSA) services available to competitors to ensure that these services remain subject to competition and thus protect consumers' interests.
2. The Commission is issuing today a series of decisions on wholesale HSA services in regard to a number of applications submitted by incumbents and independent service providers. The Commission notes that while it regulates these wholesale HSA services, it does not regulate retail Internet services because there are multiple service providers bringing competition, pricing discipline, innovation, and consumer choice to the retail Internet services market. As such, the decisions being issued today relate solely to the services provided by the incumbents to independent service providers and not to their retail customers.
3. In 2011, the Commission established a new regulatory framework for wholesale HSA services that was based on the cost of providing the service, and sought new proposals for billing models for wholesale HSA services. These models were assessed in order to ensure that the independent service providers were provided with greater flexibility to address the needs of consumers while not interfering with the incumbents' incentives to continue to invest in their networks. In Telecom Regulatory Policy 2011-703 issued on 15 November 2011, the Commission decided that there were two acceptable wholesale HSA billing models.

4. The first billing model is called the capacity-based billing model.¹ Under this model, independent service providers pre-purchase the amount of capacity that they expect to need to serve their own end-users on a monthly basis. If demand exceeds the capacity an independent service provider has initially purchased, the provider must manage its capacity until it can buy more. Independent service providers must also pay a monthly access fee for each of their own retail customers.
5. The second billing model is a flat rate model, historically used by the incumbents, where independent service providers are charged a flat monthly fee to provide network access to their own end-users. The independent service providers then determine their retail pricing strategy, which may or may not allow for unlimited use by their own end-users.
6. The Commission approved rates for each incumbent, using the model that most closely corresponded to the model each incumbent had proposed for itself in the proceeding. The rates were based on the incumbents' costs to provide the service plus a 30 percent or 40 percent markup.² Bell Aliant in its territory in Ontario and Quebec and Bell Canada (collectively, the Bell companies in Ontario and Quebec), Cogeco Cable Inc. (Cogeco), MTS Inc.,³ Rogers Communications Partnership (RCP), and Videotron Ltd. (Videotron) adopted the new capacity-based billing model. Bell Aliant in its Atlantic Canada territory (Bell Aliant in Atlantic Canada), Shaw Communications Inc. (Shaw), and TELUS Communications Company (TCC) continue to use the flat rate model.
7. In Telecom Regulatory Policy 2011-704, also issued on 15 November 2011, the Commission approved rates for the business wholesale HSA services of the Bell companies and TCC, the only incumbents that offer separate business and residential wholesale HSA services. The Commission decided that the flat rate model for business services was appropriate, and set rates based on the costs of providing the service plus a reasonable markup. The markup for business was set higher than for residential as the Commission considered that retail business Internet services typically include a number of additional features such as multiple addresses, business websites, customized email addresses, and technical support. Further, business

¹ The capacity-based billing model was formerly defined as the "approved capacity model" (in Telecom Regulatory Policy 2011-703 and Telecom Decision 2012-60). The capacity-based billing model requires each independent service provider to pay a monthly capacity rate for network capacity, in increments of 100 megabits per second (Mbps), to recover network transport costs, and a separate monthly access rate on a per end-user basis to recover access costs.

² In Telecom Regulatory Policy 2010-632 the Commission decided that it is appropriate that markups be comparable for incumbents' wholesale HSA services, with the exception of the new higher-speed fibre-based wholesale HSA services of the large telephone companies. The Commission approved a supplementary markup of 10 percent for the large telephone companies' higher-speed fibre-based wholesale HSA services given that, unlike the cable carriers, the large telephone companies had provided evidence to demonstrate that the matching speed requirement would increase the risk and create disincentives to invest in their new higher-speed fibre-based networks.

³ MTS Allstream Inc. was the entity that participated in the proceeding that led to Telecom Regulatory Policies 2011-703 and 2011-704. However, as of early January 2012, MTS Allstream Inc. became known as two separate entities, namely, MTS Inc. and Allstream Inc.

wholesale HSA service rates had historically been set at higher levels compared to the residential service. The Commission also considered that this rate-setting approach had not hindered the independent service providers' growth in the retail business market.

Requests regarding Telecom Regulatory Policies 2011-703 and 2011-704

8. The wholesale Internet market has been transformed as a result of recent Commission proceedings dealing with the review of the wholesale HSA service billing models. Wholesale HSA service rates are now based on costs and reflect the complex network infrastructure and operations, and processes of each incumbent. Independent service providers now benefit from active wholesale competition between the incumbents and different billing models are used by the incumbents. This evolution has led to conflicting viewpoints and debate between the incumbents, who seek a price for their wholesale services that fairly compensates them for the investments they must make to develop and maintain their networks, and the independent service providers, who seek wholesale service prices that allow them to compete in the marketplace.
9. Following Telecom Regulatory Policies 2011-703 and 2011-704, the incumbents and independent service providers were faced with the challenges of adapting to and implementing new models, and modifying their business plans.
10. In early 2012, the Commission received an application from the Canadian Network Operator's Consortium (CNOC) raising several concerns regarding implementation of the capacity-based billing model. The Commission also received seven applications from the incumbents and independent service providers, asking the Commission to review and vary certain decisions made in Telecom Regulatory Policies 2011-703 and 2011-704.
11. More specifically, the applicants requested that the Commission reconsider: the need to separate residential and business traffic; certain costs and cost study assumptions; the assumptions used to set wholesale HSA service markups for the cable carriers; the need for annual cost study reviews; the distinction between residential and business wholesale HSA service rates; the level of transparency in the rate-setting process; and transition periods for changes required to the cable carriers' wholesale HSA services to make them more equitable with the wholesale HSA services of the large telephone companies.
12. In its application requesting that the Commission review and vary Telecom Regulatory Policies 2011-703 and 2011-704, CNOC also requested that the Commission examine certain outstanding wholesale HSA service-related matters that remained unaddressed or were not updated as part of those decisions.

The Commission's decisions and impacts

Commission's objectives

13. While the Commission understands the complexity of the previous processes and the rationale for the numerous requests, the Commission's objective is to offer Canadians a choice in service providers that provide innovative services at reasonable prices. By finalizing wholesale HSA rates, the Commission seeks to remove any remaining uncertainty, allowing all service providers to move forward to the benefit of all current and future consumers and the Canadian economy.
14. Accordingly, in reviewing this set of interrelated requests, the Commission has sought to ensure that there is a competitive wholesale market that accurately compensates each incumbent for the costs incurred to make those wholesale services available to the independent service providers and, at the same time, to allow for effective and efficient competition to the benefit of Canadians.
15. In light of the above, the Commission is issuing today eight decisions that simplify the implementation of the new wholesale HSA service billing models, make adjustments to the wholesale HSA service rates to reflect cost adjustments, and create a uniform pricing approach for business and residential wholesale HSA services. The Commission notes that it has denied many of the requests made by the incumbents and the independent service providers, and has provided rationale for these denials in the decisions issued today. The Commission is also issuing two Telecom Notices of Consultation⁴ asking for parties to comment on the last outstanding wholesale HSA service matters that were not examined in the proceeding leading to Telecom Regulatory Policies 2011-703 and 2011-704.

Key outcomes

16. The key outcomes of the decisions being issued today can be summarized as set out below.

Revised residential wholesale HSA service rates⁵

17. As a result of the applications received by CNOC, RCP, and Shaw, the Commission has undertaken a detailed review of all incumbents' residential wholesale HSA service costs, and made corresponding adjustments to the rates. The residential wholesale HSA service rates of RCP, Shaw, and Videotron have increased and those of Cogeco have decreased due to the correction of certain cost methodology assumptions. In addition, costing errors have been discovered in the cost studies of the Bell companies in Ontario and Quebec and TCC in its territory in Alberta and British Columbia (TCC in Alberta and British Columbia). The correction of these costing errors results in revised rates that are significantly lower than those initially approved in Telecom Regulatory Policy 2011-703. No adjustments were made to the residential wholesale HSA service rates of Bell Aliant in Atlantic Canada, MTS Inc., or SaskTel.

⁴ Telecom Notices of Consultation 2013-79 and 2013-80

⁵ Telecom Decisions 2013-73, 2013-76, and 2013-77

Changes to business wholesale HSA service rates and billing models⁶

18. Significant changes have been made by the Commission to its approach regarding business wholesale HSA services. The Commission recognizes that residential and business wholesale HSA services are essentially the same and that most incumbents do not distinguish between residential and business wholesale HSA services. It has therefore modified its policy with respect to business markups and decided that the rates for business wholesale HSA services should equal the rates for comparable residential wholesale HSA services. As a result of the applications by CNOC and Telesave Communications Ltd., the business wholesale HSA service rates of the Bell companies and TCC in Alberta and British Columbia set in Telecom Regulatory Policy 2011-704 have been lowered to reflect this decision. The Commission has also decided that each of the incumbents should use a single billing model, either capacity-based billing or flat rate, for both residential and business wholesale HSA services.

Transparency of rate-setting process⁷

19. In response to CNOC's concerns regarding procedural fairness, the Commission has held that (i) the confidentiality and disclosure process set out in the *Telecommunications Act* (the Act) and the *Canadian Radio-Television and Telecommunications Commission Rules of Practice and Procedure* was followed in the proceedings leading to Telecom Regulatory Policies 2011-703 and 2011-704, and (ii) the interests of CNOC and other parties in having an opportunity to scrutinize confidential information was considered as part of that process. The Commission has also found that it would be neither necessary nor appropriate to initiate another proceeding to reconsider the rates for wholesale HSA services using a different process for the disclosure of confidential information. The Commission notes as a result of the new disclosure guidelines issued in Telecom Regulatory Policy 2012-592, the markups of wholesale HSA services are placed on the public record, providing independent service providers more insight into wholesale HSA service costs.

Transition period for migration to the cable carriers' aggregated points of interconnection⁸

20. Cable carriers were required, in Telecom Regulatory Policy 2011-703, to make changes to their wholesale HSA services to make them more viable alternatives to the large telephone companies' wholesale HSA services. These changes included reducing the number of points of interconnection. The Commission considered that this change required a transition period to give independent service providers sufficient time to fulfill or modify their existing contracts and to adapt their business plans. The Commission has decided based on a request by CNOC to extend, on a limited basis, the originally approved two-year transition period by a period of six months to alleviate the financial impact on certain independent service providers who were subject to related contractual obligations at specific points of interconnection beyond the end of the transition period.

⁶ Telecom Decisions 2013-73 and 2013-78

⁷ Telecom Decision 2013-73

⁸ Telecom Decision 2013-73

Markup for wholesale HSA services provided by the cable carriers⁹

21. In their applications, RCP and Shaw requested a review of the decisions made in Telecom Regulatory Policy 2010-632 and Telecom Regulatory Policy 2011-703 that denied the cable carriers an extra 10 percent markup on their wholesale HSA services to match the additional markup approved for the large telephone companies' higher-speed fibre-based wholesale HSA services. The Commission has denied these requests since the cable carriers did not demonstrate that circumstances have changed warranting the additional compensation requested.

Retroactivity¹⁰

22. CNOC and Shaw requested that wholesale HSA service rates, both residential and business, for certain incumbents be made interim, pending adjustments. They also requested that final rates be retroactive to the date the rates were made interim. The Commission has decided that, for the Bell companies in Ontario and Quebec, Cogeco, RCP, Shaw, TCC in Alberta and British Columbia, and Videotron, changes to the rates for residential wholesale HSA services should be applied retroactively to the extent that the revised rates were based on incorrect costs. The Commission has also decided that for Bell Aliant in Atlantic Canada and TCC, it is not appropriate to retroactively apply the changes to the business wholesale HSA service rates since these changes were not the result of costing errors.

Conclusion

23. With these decisions, the Commission has sought to ensure that individual and business consumers in Canada have a choice of service provider while fairly compensating incumbents for their network costs.
24. The revised rates for both residential and business wholesale HSA services better reflect the costs of each incumbent, and the Commission expects that, with these changes, many independent service providers will be in a position to compete more effectively and on a more equitable basis in each market. In addition, the Commission expects that the symmetry between residential and business billing models for each incumbent will simplify ongoing administration for both the incumbents and the independent service providers by eliminating the need to separate residential and business traffic.
25. The applications of all parties have been thoroughly examined, and the Commission expects that with these new wholesale HSA service decisions both the incumbents and the independent service providers will recognize the need to move away from regulatory processes into a period of certainty that will benefit the industry, their customers, and the Canadian economy as a whole.

⁹ Telecom Decisions 2013-76 and 2013-77

¹⁰ Telecom Decisions 2013-73 and 2013-77

Policy Direction

26. The Policy Direction states that the Commission, in exercising its powers and performing its duties under the Act, shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(a), (b), and (c) of the Policy Direction.
27. The Commission considers that this set of decisions advances the telecommunications policy objectives set out in paragraphs 7 (a), (b), (c), (f), and (h)¹¹ of the Act. The Commission further considers that these decisions are consistent with the Policy Direction requirements that (a) the measures in question be efficient and proportionate to their purpose and interfere with competitive market forces to the minimum extent necessary to meet the above policy objectives, and (b) the measures neither deter economically efficient competitive entry into the market nor promote economically inefficient entry.

Secretary General

Related documents

- *Review of outstanding wholesale high-speed access service issues related to interface rates, optional upstream speed rates, and modem certification requirements*, Telecom Notice of Consultation CRTC 2013-80, 21 February 2013
- *Review of rate principles for legacy business wholesale high-speed access services*, Telecom Notice of Consultation CRTC 2013-79, 21 February 2013
- *Telesave Communications Ltd. – Application to review and vary certain elements of Telecom Regulatory Policies 2011-703 and 2011-704 related to the wholesale access services of TELUS Communications Company*, Telecom Decision CRTC 2013-78, 21 February 2013
- *Shaw Cablesystems G.P. – Application to review and vary certain aspects of Telecom Regulatory Policy 2011-703*, Telecom Decision CRTC 2013-77, 21 February 2013

¹¹ The cited policy objectives of the Act are:

7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;
7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;
7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;
7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and
7(h) to respond to the economic and social requirements of users of telecommunications services.

- *Rogers Communications Partnership – Application to review and vary Telecom Regulatory Policy 2011-703*, Telecom Decision CRTC 2013-76, 21 February 2013
- *Quebecor Media Inc. and Videotron G.P. – Application to review and vary the approach used to establish capacity rates in Telecom Regulatory Policy 2011-703*, Telecom Decision CRTC 2013-75, 21 February 2013
- *MTS Inc. and Allstream Inc. – Application to review and vary certain rate elements of Telecom Regulatory Policy 2011-703 related to wholesale high-speed access services*, Telecom Decision CRTC 2013-74, 21 February 2013
- *Canadian Network Operators Consortium Inc. – Application to review and vary Telecom Regulatory Policies 2011-703 and 2011-704*, Telecom Decision CRTC 2013-73, 21 February 2013
- *Canadian Network Operators Consortium Inc. – Application requesting relief to address implementation of the capacity model approved in Telecom Regulatory Policy 2011-703*, Telecom Decision CRTC 2013-72, 21 February 2013
- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application to review and vary Telecom Regulatory Policy 2011-703*, Telecom Decision CRTC 2013-71, 21 February 2013
- *Confidentiality of information used to establish wholesale service rates*, Telecom Regulatory Policy CRTC 2012-592, 26 October 2012
- *Implementation date for the wholesale high-speed access services capacity model approved in Telecom Regulatory Policy 2011-703*, Telecom Decision CRTC 2012-60, 27 January 2012
- *Billing practices for wholesale business high-speed access services*, Telecom Regulatory Policy CRTC 2011-704, 15 November 2011
- *Billing practices for wholesale residential high-speed access services*, Telecom Regulatory Policy CRTC 2011-703, 15 November 2011, as amended by Telecom Regulatory Policy CRTC 2011-703-1, 22 December 2011
- *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010