



Telecom Decision CRTC 2014-4

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Ottawa, 8 January 2014

Review of rates for certain incumbent local exchange carriers' legacy wholesale high-speed access services

File number: 8661-C182-201310177

In this decision, the Commission finds that the current rates for certain wholesale high-speed access services provided by Bell Aliant in Atlantic Canada, MTS, and SaskTel may no longer be just and reasonable, and should be reviewed. Accordingly, the Commission makes the current rates for these services interim, and directs these companies to file cost studies for these services within 90 days of the date of this decision.

Introduction

1. Wholesale high-speed access (HSA) services provided by large incumbent local exchange carriers (ILECs) and cable carriers enable independent service providers to offer retail Internet and other services to their own end-users. As a result of the availability of wholesale HSA services, residential and business end-users have greater choice of service providers. Wholesale HSA services are provided under terms and conditions that must be approved by the Commission. However, the Commission has refrained from regulating the rates and most terms and conditions applicable to retail Internet services because there are multiple service providers bringing competition, pricing discipline, innovation, and consumer choice to the retail Internet services market.
2. In Telecom Regulatory Policies 2011-703 and 2011-704, the Commission approved the rates, terms, and conditions applicable to the legacy wholesale HSA services offered by Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, and TELUS Communications Company (TCC).¹ In these decisions, the Commission also approved the rates, terms, and conditions applicable to the non-legacy wholesale HSA services provided by the large ILECs and cable carriers, but excluded the legacy wholesale HSA services offered by Bell Aliant in its Atlantic Canada operating territory (Bell Aliant in Atlantic Canada), MTS Inc. (MTS), and Saskatchewan Telecommunications (SaskTel).

Application

3. The Commission received an application from the Canadian Network Operators Consortium Inc. (CNOc), dated 10 July 2013, in which CNOc submitted that there was *prima facie* evidence that the rates for certain legacy wholesale HSA services

¹ Legacy wholesale HSA services are those services that were on the market prior to July 2011.

are no longer just and reasonable. CNOC therefore requested that the current rates for these services be made interim pending a review of the costs of these services. Specifically, CNOC identified the following service rates, referred to hereafter as “the legacy wholesale HSA service rates:”^{2,3}

- the access service rate⁴ charged by Bell Aliant in Atlantic Canada, MTS, and SaskTel;
 - the interface service rate⁵ charged by MTS, SaskTel, and TCC; and
 - the service charges by Bell Aliant in Atlantic Canada and SaskTel for their legacy wholesale HSA services.
4. The Commission received interventions regarding CNOC’s application from Bell Aliant in Atlantic Canada, MTS, SaskTel, TCC, and Vaxination Informatique (Vaxination). The public record of this proceeding, which closed on 29 August 2013, is available on the Commission’s website at www.crtc.gc.ca under “Public Proceedings” or by using the file number provided above.
5. The Commission has identified the following issues to be addressed in this decision:
- I. Does the record of this proceeding indicate that the legacy wholesale HSA service rates in question may no longer be just and reasonable?
 - II. If yes, should the Commission undertake a review of the costs for these legacy wholesale HSA services?

² CNOC also originally requested that the Commission review the rates charged for dry loops by Bell Aliant and Bell Canada in Ontario and Quebec. However, by letter dated 15 August 2013, CNOC withdrew this part of its application.

³ As well, CNOC requested that the Commission review the rates for TCC’s interface services in Quebec. In response, TCC filed Tariff Notice 595, dated 14 August 2013, in which the company proposed to decrease the rate for its interface service in Quebec to be consistent with the rate for its interface service in Alberta and in British Columbia. The Commission has addressed TCC’s application in Telecom Decision 2013-659.

⁴ In Telecom Regulatory Policy 2011-703, the Commission established two acceptable billing models for residential wholesale HSA services: (1) a capacity-based billing model, whereby independent service providers pay a monthly access rate per end-user (excluding usage) and a rate for the capacity they require to support the usage demand of their end-users; and (2) a flat rate model, whereby independent service providers pay a flat monthly rate per end-user that includes some usage.

⁵ An interface is an interconnection point at which an independent service provider connects its network to an ILEC’s network to gain access to and exchange traffic with its own retail customers through high-speed access paths on the ILEC’s network.

I. Does the record of this proceeding indicate that the legacy wholesale HSA service rates in question may no longer be just and reasonable?

6. CNOC, supported by Vaxination, submitted that the legacy wholesale HSA service rates have not been updated in quite a few years and that these rates are now most likely too high. CNOC further submitted that these rates included markups that were higher than the 30-percent markup approved for legacy wholesale HSA services in Telecom Regulatory Policy 2011-703 and that, therefore, the markups should be adjusted accordingly.
7. Bell Aliant, supported by MTS and SaskTel, submitted that a review of the legacy wholesale HSA service rates might result in an increase in these rates. Bell Aliant noted that the demand for legacy wholesale HSA services is significantly lower than what was forecast in its original cost studies for the services, and that, therefore, there may be a significant level of unrecovered start-up costs that would need to be included in any revised rates.
8. MTS submitted that although certain cost study elements for its legacy wholesale HSA services may have decreased, the overall impact of a revised cost study may not result in rate reductions, since MTS's legacy wholesale HSA services are evolving towards the use of newer technologies, with different cost structures from those originally used to set the rates.

Commission's analysis and determinations

9. Based on the parties' submissions, the Commission considers that the cost study elements for the legacy wholesale HSA services referred to in paragraph 3 have likely changed significantly since the Commission approved the original cost studies. The Commission notes that the markups associated with the original cost studies for these legacy wholesale HSA services are higher than the markups approved for these services in Telecom Regulatory Policy 2011-703. Accordingly, the Commission considers that there is sufficient evidence on the record of this proceeding to indicate that the rates for the legacy wholesale HSA services referred to in paragraph 3 may no longer be just and reasonable.

II. If yes, should the Commission undertake a review of the costs for these legacy wholesale HSA services?

10. SaskTel, supported by Bell Aliant, submitted that a full review of the cost studies for the legacy wholesale HSA services referred to in paragraph 3 is not warranted at this time in light of the Commission's proceeding to review wholesale services and associated policies initiated by Telecom Notice of Consultation 2013-551 (the wholesale services proceeding). The companies added that independent action regarding CNOC's application would only create confusion and consume resources that could be better used in the wholesale services proceeding.

11. Bell Aliant, supported by MTS and SaskTel, submitted that a review of the costs for the legacy HSA services in question is not warranted given the low demand for these services.
12. CNOC submitted that, while it is logical to conclude that demand for the legacy wholesale HSA services in question is lower than that for comparable fibre-to-the-node-based services, demand for the former is suppressed because the rates of these services are unduly high. CNOC argued that because of these rates, it is uneconomic for competitors to enter the markets of Bell Aliant in Atlantic Canada, MTS, or SaskTel, or to expand competitor presence in these markets.

Commission's analysis and determinations

13. Given the Commission's determination that there is sufficient evidence on the record of this proceeding to indicate that the legacy wholesale HSA service rates may no longer be just and reasonable, the Commission considers it appropriate to initiate a review of the costs for these services. The Commission also considers that such a review would not constitute an undue burden, even in light of the wholesale services proceeding. A decision to place the issue on hold would result in a material delay, which could create significant issues regarding the retroactive application of revised rates.
14. The Commission further considers that making the current legacy wholesale HSA service rates interim would be consistent with its statutory obligation to ensure that rates are just and reasonable at all times, and would allow the Commission, if it so chooses, to make the revised final rates retroactive to the date they were made interim.
15. In light of the above, the Commission makes interim the current rates for the legacy wholesale HSA services provided by Bell Aliant in Atlantic Canada, MTS, and SaskTel referred to in paragraph 3, effective the date of this decision. The Commission directs these companies to issue revised tariff pages within **10 days** of the date of this decision. Further, the Commission directs these companies to file cost studies for these services within **90 days** of the date of this decision.

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 Decision CRTC 2013-659, 6 December 2013
- *Review of wholesale services and associated policies*, Telecom Notice of Consultation CRTC 2013-551, 15 October 2013, as amended by Telecom Notice of Consultation CRTC 2013-551-1, 8 November 2013

- *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