Canadian Radio-television and Telecommunications Commission | Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2005-23

Ottawa, 14 April 2005

Follow-up to *Access to pay telephone service*, Telecom Decision CRTC 2004-47, 15 July 2004: Requests to recover costs associated with upgrading pay telephones with teletypewriter units

Reference: 8678-B2-200410564, 8678-M59-200410746, 8678-T66-200411364 and 8678-T69-200415663

In this Decision, the Commission ***approves*** *for Bell Canada, MTS Allstream Inc. and TELUS Communications Inc. the recovery of certain costs associated with upgrading pay telephones with teletypewriter units through draw downs from the companies' deferral accounts.*

The application

1. The Commission received applications by Bell Canada, MTS Allstream Inc. (MTS Allstream), and TELUS Communications Inc. (TCI), separately for its operating territories of Alberta and British Columbia (B.C.) and Quebec, dated 17 September 2004, 1 October 2004, 15 October 2004, and 22 December 2004, respectively. Bell Canada, MTS Allstream and TCI (collectively, the companies) requested exogenous adjustments, to be recovered through a draw down from their respective deferral accounts, to compensate them for the costs of upgrading certain pay telephones with teletypewriter (TTY) units.

2. The companies submitted that they filed these applications pursuant to *Access to pay telephone service*, Telecom Decision CRTC 2004-47, 15 July 2004 (Decision 2004-47). The companies noted that in Decision 2004-47, the Commission had invited them to file requests for an exogenous factor to recover the costs of upgrading their pay telephones with TTY units, if they were of the view that the TTY upgrade program qualified for such treatment. The companies submitted that the costs of the TTY upgrade program would qualify for such treatment, given that the program met all the criteria for an exogenous factor identified in *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002 (Decision 2002-34). Specifically, the companies noted that the program was mandated by the Commission, it was specific to the telecommunications industry and it would have a material impact on them.

3. The companies submitted that, since the Commission established the deferral account mechanism, in part, as a means of dealing with such regulatory adjustments, the recovery of the costs associated with upgrading pay telephones with TTY units should be accomplished through a draw down from their respective deferral accounts.

4. Bell Canada requested an annual draw down from the deferral account of $12.4 million per year for four years to recover estimated costs of $42.4 million. MTS Allstream requested an annual draw down of $0.812 million per year for four years to recover estimated costs of $2.79 million. TCI requested an annual draw down of $1.42 million per year for four years to recover estimated costs of $4.74 million in its Alberta and B. C. operating territory and an annual draw down of $0.11 million per year for four years to recover estimated costs of $0.35 million in its Quebec operating territory.

Canada

5. In support of their applications, the companies filed Phase II cost studies.

Process

6. The Commission received comments specific to Bell Canada's proposal from the Public Interest Advocacy Centre, on behalf of the Consumer Groups (Consumer Groups), dated 15 October 2004 and 1 November 2004. Bell Canada filed reply comments dated 26 October 2004 and 15 November 2004.

7. The Commission did not receive comments on the applications filed by MTS Allstream and TCI.

8. The Commission addressed interrogatories to Bell Canada, MTS Allstream and TCI on 10 November 2004 and 13 January 2005. Additional interrogatories were addressed to TCI with respect to its Quebec operating territory on 2 February 2005. Responses to these interrogatories were filed by Bell Canada, MTS Allstream and TCI.

Background

9. In *Price cap regulation and related issues*, Telecom Decision CRTC 97-9, 1 May 1997 (Decision 97-9), the Commission determined that an exogenous factor would be a component of the price cap formula in the initial price cap regime. An exogenous factor flows through the impact associated with events not captured by other elements of the price cap formula, provided the events or initiatives:

   a) are legislative, judicial or administrative actions which are beyond the control of the company;

   b) are addressed specifically to the telecommunications industry; and

   c) have a material impact on the Utility Segment of the company.

10. In Decision 2002-34, the Commission concluded that the criteria for exogenous events set out in Decision 97-9, modified to measure materiality in relation to the total company, remained appropriate.

11. In Decision 2002-34, the Commission also concluded that in non-high cost serving areas (non-HCSAs) it would be appropriate to create a deferral account in conjunction with the application of a basket constraint equal to inflation less a productivity off-set to all revenues from residential local services, including service bundles that include a residential local exchange service or a residential optional local service.

12. The Commission considered that the creation of the deferral account for residential services would assist in achieving the objective of balancing the interests of the three main stakeholders in telecommunications markets: customers, competitors and incumbent local exchange carriers (ILECs). The Commission was of the view that the deferral account would be an efficient means of addressing regulatory adjustments.

13. In Decision 2004-47, the Commission directed Aliant Telecom Inc., Bell Canada, MTS Allstream, Saskatchewan Telecommunications, Société en commandite Télébec, and TCI to upgrade certain pay telephones with TTY units over a period from 2004 to the end of 2010. In that decision, the Commission stated that these companies could file a request for an exogenous factor to recover the costs of upgrading their pay telephones with TTY units if they were of the view that it qualified for such treatment.

14. In the following sections the Commission sets out the position of parties and its assessment of the following issues:

a) Eligibility of TTY upgrade costs for treatment as an exogenous adjustment; and

b) The Phase II cost studies filed by Bell Canada, MTS Allstream, and TCI in support of their requests.

Eligibility of TTY upgrade costs for treatment as an exogenous adjustment

Comments

15. The Consumer Groups requested that Bell Canada's application for an exogenous factor adjustment to recover the costs of TTY upgrades on pay telephones be dismissed, given that it failed to meet the current criteria for an exogenous adjustment. The Consumer Groups were of the view that any expenditure on TTY upgrades should only be considered as part of a proceeding to set rates for pay telephone services.

16. The Consumer Groups submitted that, while the necessity to expend funds resulted from the Commission's determinations in Decision 2004-47, the particular facts giving rise to that decision stemmed from circumstances of Bell Canada's operation that were found to constitute discrimination against hearing impaired consumers, contrary to section 27(2) of the *Telecommunications Act* (the Act). The Consumer Groups further submitted that the expenditures had hardly been brought about by unanticipated events beyond the control of Bell Canada.

17. The Consumer Groups were of the view that, as Bell Canada's request had failed the test of being an exogenous adjustment, it would be premature to determine that payment should be made from the deferral account on any other basis advanced by Bell Canada, pending the Commission's determination in the proceeding initiated by *Review and disposition of deferral accounts for the second price cap period*, Telecom Public Notice CRTC 2004-1, 24 March 2004 (Public Notice 2004-1). The Consumer Groups claimed that there was currently no authority or regulatory principle for Bell Canada to access money in the deferral account for the TTY upgrades in the absence of a finding that such upgrades met the definition of an exogenous adjustment to the price cap formula applicable to basic residential services.

18. The Consumer Groups submitted that Bell Canada wished to categorize the expenditures on TTY pay telephone upgrades as an exogenous adjustment for the purpose of raiding the deferral account, which was established from the operation of the price cap formula on the basic residential services basket. The Consumer Groups noted that in the proceeding leading to Decision 2004-47, it had opposed a general rate increase to fund the TTY upgrades and

had submitted that the deferral account money rightfully belonged to the subscribers that had contributed to the deferral account. The Consumer Groups submitted that the TTY expenditures had no relationship to basic residential services. The Consumer Group further submitted that the fact that some of the contributors to the deferral account could also be users of the pay telephone service was not sufficient to conclude that these contributors must be allocated the costs associated with TTY system upgrades.

19. The Consumer Groups argued that pay telephone services were excluded from the operation of the price cap regime since they were assigned to a special category at their existing rates until issues of a public policy nature could be examined. The Consumer Groups were of the view that expenditures for a service that was excluded from the application of price caps could not be eligible for treatment as an exogenous adjustment.

20. The Consumer Groups submitted that, as a potential exogenous adjustment, the TTY upgrades could only affect the category of pay telephone services. The Consumer Groups submitted that a full review should be conducted of the revenue requirement of pay telephone service with a view to determining both the reasonableness of the expenditures and the need for any adjustment to rates given the current and projected levels of pay telephone revenues and expenses.

Reply comments

21. Bell Canada submitted that the Consumer Groups' position was without merit and should be rejected.

22. Bell Canada stated that it interpreted the Commission's invitation to apply for an exogenous adjustment as an indication that the Commission was unclear as to the materiality of the cost of the TTY upgrade program, not that it questioned whether the program would fail to qualify on other grounds. Bell Canada further submitted that its proposal would achieve the Commission's requirement that the TTY upgrade program be implemented in a manner that minimized the risk that more pay telephones would become non-compensatory and, therefore, would be removed from operation.

23. With respect to the Consumer Groups' position that the exogenous adjustment should not be permitted because the events giving rise to the expenditures were a result of discrimination against hearing impaired consumers, Bell Canada submitted that the Act addressed unjust discrimination, not discrimination. Bell Canada further submitted that the "unjustness" found by the Commission in Decision 2004-47 was with respect to hearing impaired pay telephone users who relied on TTY units and were expected to provide a portable TTY unit, when a TTY-equipped pay telephone would better accommodate their needs. Bell Canada claimed that there was nothing in prior Commission decisions to indicate that the accommodations that Bell Canada had previously made for the needs of hearing impaired consumers could be deemed unjustly discriminatory. Bell Canada further submitted that the Commission's criteria established in Decision 2002-34 for exogenous factors did not include a requirement that the event be unanticipated.

24. Bell Canada submitted that the Consumer Groups' claim relied on incorrect assumptions. Bell Canada submitted that pay telephones rates were not excluded from the price cap regime, rather the Commission included them in the price cap regime with the pricing rule that capped these rates at existing levels.

25. With respect to the pricing of pay telephone services, Bell Canada submitted that the notion of "revenue-requirement" was relevant only in an earnings-based regulatory regime and that the Consumer Groups' request for a revenue-requirement review should be rejected.

26. Bell Canada noted that the Commission had stated in Decision 97-9 that exogenous adjustments should, where possible, be assigned on a cost-causal basis. Bell Canada submitted that the Consumer Groups had apparently assumed that the TTY upgrade program was causal to pay telephone users generally. Instead, Bell Canada submitted that it was causal to the users of the TTY units at TTY-equipped pay telephones. Bell Canada claimed that it was not possible to recover the cost of the TTY upgrade program from those who have caused the program to be implemented.

27. Bell Canada submitted that the Commission had recognized that there were circumstances, such as the mandatory TTY upgrade program, where it was neither feasible nor good public policy to attempt to recover the costs from those who were causing them to be incurred. Bell Canada further submitted that, in those cases, an alternative means of recovery to defray the costs of the TTY upgrade program was a matter of public policy.

28. Bell Canada submitted that the Commission contemplated that the deferral account could be a means of dealing with exogenous events. Bell Canada claimed that the Commission had not limited such events to those that related to basic residential services and that the deferral account was not an entitlement of users of basic residential services.

29. Bell Canada noted that in the proceeding that led to Decision 2004-47, the Consumer Groups had not challenged the legitimacy of the costs to upgrade pay telephones for the TTY units. Bell Canada submitted that the Consumer Groups had stated that accommodation of hearing impaired consumers' pay telephone needs should not be funded via an increase in the price of pay telephone services, since this would make pay telephone service less accessible and affordable, nor should it result in an increase in basic service rates. Bell Canada submitted that the Consumer Groups had concluded that, from the consumer's perspective, recovery from the deferral account would be a preferable approach to rate increases or end-user surcharges should there be sufficient funds in the deferral account. Bell Canada submitted that the Commission should not wait for the outcome of the proceeding initiated by Public Notice 2004-1 to determine the means of cost recovery for the TTY upgrade program.

30. As noted earlier, the companies submitted that the costs of the TTY upgrade program would qualify for treatment as an exogenous factor, given that the program met all the criteria identified in Decision 2002-34. The companies noted that the program was mandated by the Commission, it was specific to the telecommunications industry and it had a material impact on them.

31. In response to a Commission interrogatory requesting that the companies address the materiality criteria in relation to the total company, the companies noted that the Commission had not set any minimum threshold for materiality. They submitted that the Commission had permitted them to recover lesser amounts than those requested in their TTY upgrade applications, either as exogenous factor adjustments or as draw downs from their deferral accounts. Bell Canada noted, for example, that the Commission had treated its reduction to the Ontario gross receipts tax (i.e., an annual amount of $11.7M) as an exogenous adjustment, and the companies noted that the Commission had permitted them to draw down from their deferral accounts to fund service improvement plans (SIPs) in non-HCSAs (i.e., $3.8M for Bell Canada, $1.0M for TCI (Alberta and B.C.) and $0.09M for MTS Allstream).

32. MTS Allstream submitted that the TTY upgrade costs represented a significant investment and a material undertaking in Manitoba. MTS Allstream submitted further that it would be unreasonable to expect that it would implement these expenses without a reasonable opportunity to recover the costs associated with these initiatives. MTS Allstream argued that to do so without assurance of recovery, through either a deferral account draw down or an exogenous factor treatment, would place an undue burden on the company. MTS Allstream stated that the required expenses would otherwise be directed to revenue generating activities. MTS Allstream noted that there were no additional revenues associated with the Commission-directed upgrades that would allow for the recovery of the costs of these upgrades, and the recovery of these costs was not accounted for in the price cap parameters.

33. TCI noted that the Commission's determinations in Decision 2004-47 did not direct competitive pay telephone service providers to upgrade their pay telephones. TCI submitted that this had placed a significant social and financial obligation on the ILECs, but had failed to place similar obligations on competitors in the pay telephone market. TCI submitted that consumer and social obligations were typically assigned symmetrically to incumbent and competitive service providers because, by definition, these social obligations were intended to serve the greater public interest. TCI further submitted that Decision 2004-47 deviated from this norm and created a significant inequity among pay telephone service providers. TCI argued that the qualitative circumstances to be weighed in the current proceeding pointed to a significant public interest in the broader availability of TTY units, but also in the continued availability of pay telephone service.

Commission's analysis and determinations

34. As established in Decision 2002-34, the following criteria apply in determining which events qualify for exogenous treatment:

a) they are legislative, judicial or administrative actions which are beyond the control of the company;

b) they are addressed specifically to the telecommunications industry; and

c) they have a material impact in relation to each total company.

35. The Commission notes the Consumer Groups' submitted that the TTY upgrade costs did not qualify for exogenous treatment. The Commission notes that in Decision 2004-47, it invited the ILECs to file requests for an exogenous factor to recover the costs of upgrading their pay telephones with TTY units if they were of the view that it qualified for such treatment. The Commission considers that it clearly identified the venue through which it anticipated the TTY upgrade costs could be recovered by the ILECs if they were significant.

36. The Commission is of the view that the requirement for the companies to upgrade pay telephones with TTY units meets the first two exogenous factor criteria, since they are legislative, judicial or administrative actions which are beyond the control of the company, and they are addressed specifically to the telecommunications industry.

37. Given the magnitude of the costs associated with this initiative, the Commission is of the view that the companies' costs of upgrading pay telephones with TTY units are significant and material in relation to each company. Accordingly, the Commission finds that the proposals meet the three criteria for exogenous treatment.

38. As noted previously, in Decision 2004-47, the Commission invited the companies to file a request for an exogenous factor to recover the costs of upgrading their pay telephones with TTY units if the companies were of the view that it qualified for such treatment. The Commission notes that, generally, exogenous factors have operated through an adjustment to the price cap constraints.

39. In Decision 2002-34, the Commission determined that the impact of an exogenous event was to be determined on a company-wide basis and assigned between the Capped and Uncapped Services on a cost-causal basis. In addition, the Commission assigned public and semi-public pay telephone service to a separate category and stated that the rates for these services should remain at their current levels until the Commission considered policy issues related to these services. The Commission notes that, if the TTY exogenous adjustment was assigned on a cost-causal basis, the costs of the TTY upgrades would be assigned to pay telephone services. The Commission further notes that the rates for these services remain frozen and considers that, given the concerns with the long term viability of pay telephone operations, it would not be appropriate to assign these costs to this service.

40. The Commission notes that the companies have proposed to fund this initiative through draw downs from their respective deferral accounts. As noted above, the Commission established the deferral account mechanism in Decision 2002-34 and stated that use of the deferral account would be an efficient means of addressing regulatory adjustments. The Commission stated that it intended to clear the amounts in the deferral accounts in a manner that would contribute to achieving the Commission's objectives for the next price cap framework, including balancing the interests of the three main stakeholders in the telecommunications market.

41. Considering that the TTY upgrades will benefit consumers in general, the Commission is of the view that the use of the deferral account to fund the TTY upgrade program would be consistent with its determinations in Decision 2002-34. The Commission, therefore, finds that it is appropriate that the companies be compensated for the costs associated with their TTY upgrades through draw downs from their deferral accounts.

The Phase II cost studies filed by Bell Canada, MTS Allstream, and TCI in support of their requests

42. As noted earlier, the companies filed costs studies in support of their proposals, estimating their costs to upgrade their payphones with TTY units pursuant to the TTY upgrade program detailed in Decision 2004-47. In those cost studies, the companies included the installed equipment costs for the TTY upgrades along with the associated operating expenses (i.e., one-time expenses such as service provisioning and ongoing expenses such as maintenance and operator service costs). These costs were developed based on TTY demand estimates resulting from the directives set out in Decision 2004-47 specifying the locations where TTY units would be required.

43. Bell Canada and TCI submitted that significant modifications to outdoor pay telephone furniture would be required to accommodate TTY units at outdoor locations. These companies further submitted that they expected significantly higher costs for outdoor locations compared to indoor locations, due to climatic conditions and vandalism. Bell Canada and TCI submitted, therefore, that the estimates of the installation costs and maintenance expenses used for outdoor locations were conservative and that it might be necessary to upwardly revise the cost estimates for outdoor units, which could potentially require additional draw down amounts.

44. The companies proposed to recover the costs of equipping pay telephones with TTY units through draw downs from their deferral accounts over a period of four years. Bell Canada stated that the four-year recovery period was reasonable, since its benchmark for internal investment decisions was three years.

Commission's analysis and determinations

45. As noted previously, in Decision 2004-47, the Commission invited the ILECs to file requests for an exogenous factor to recover the costs of upgrading their pay telephones with TTY units if they were of the view that it qualified for such treatment. On the basis of this directive, the Commission considers that the TTY upgrade costs should only reflect the installed TTY equipment costs and the associated one-time service provisioning costs. The Commission further considers that the operating expenses proposed by the companies in their TTY cost studies associated with the ongoing incremental operation of the TTY service are not costs to upgrade pay telephones with TTY units. Accordingly, in determining the amounts that the companies will be permitted to draw down from their deferral accounts, the Commission has omitted the ongoing incremental TTY operating expenses. With respect to the companies' demand estimates, the Commission is of the view that these estimates meet the requirements set out in Decision 2004-47.

Upgrade costs

46. The Commission notes that the TTY cost studies filed by the companies relied on different study periods. Bell Canada and MTS Allstream proposed the use of a 20-year study period while TCI proposed the use of four-year study periods. The Commission notes that, by itself, the use of different study periods will lead to differences in the present worth of annual cost results. The Commission, therefore, considers it preferable to rely on a common study period length. In response to a Commission interrogatory, each company provided cost sensitivity

results using a 10-year study period, which the Commission considers to be an appropriate study period in this case. Accordingly, the Commission has relied on the 10-year study period results, with appropriate adjustments, to develop each company's permitted annual draw down associated with the TTY upgrade costs.

47. With respect to the companies' proposed TTY equipment costs, the Commission notes that the costs of the TTY units varied between outdoor and indoor units and among the companies. The Commission notes that the differences in TTY equipment costs among ILECs are not significant and appear to be due to the types of units selected and the suppliers used.

48. The Commission notes, however, that there were large discrepancies in the proposed TTY installation cost estimates among the companies. Notably, Bell Canada's and MTS Allstream's proposed costs were significantly higher than those proposed by TCI for its Alberta and B.C. and Quebec operating territories. The Commission expects that the procedures to install TTY equipment will be similar across the companies. The Commission notes that since these companies have comparable expertise in equipment installation and comparable labour rates, their installation cost estimates should be similar. In light of the above, the Commission finds that it is appropriate to reduce Bell Canada's and MTS Allstream's installation costs by 50 percent.

49. With respect to one-time service provisioning expenses, the Commission notes that Bell Canada has defined these expenses to be related to the issuance of service orders and the dispatch of technicians to equip existing payphones with TTY units. The Commission considers that such expenses should be considered as part of the TTY upgrade costs. The Commission notes, however, that there are wide discrepancies in the companies' proposed one-time service provisioning expenses. In light of the information filed, the Commission considers it appropriate to rely on Bell Canada's expense estimate to approximate the costs associated with each company's order fulfilment process. The Commission finds it appropriate to include the corresponding annual service provisioning expense in the annual draw down amounts for each of the companies.

Tracking of information

50. The Commission notes the companies' statements with respect to tracking installation and other costs, which could possibly result in the companies revising their cost estimates and filing requests for additional draw down amounts. The Commission considers that, while it may be desirable to obtain defensible data to more precisely estimate costs of a particular resource item or service, the practice of revising a service's costs and rates based on tracked data once that service is implemented is generally not used, except for SIPs. The Commission notes that it will typically mandate tracking, and subsequently adjust the cost study and rates based on this tracking information, if the resource items and associated costs are significant and are difficult to estimate. For example, tracking would be required where the cost data is either not available or unknown, or where the company has no prior experience with respect to the operation of that resource. The Commission does not consider this to be the case with respect to TTY units. The Commission considers it likely that the companies have had sufficient experience in installing TTY units in their territories in the past. The Commission also notes that, based on the companies' submissions, the installation and service provisioning costs are small relative to the total capital costs.

51. Based on the record of this proceeding and the companies' prior experience in provisioning TTY units, the Commission concludes that tracking of installation or other costs as suggested by the companies is not warranted. The Commission also finds that the proposed TTY capital costs and service provisioning, as adjusted above, represent appropriate estimates of the TTY upgrade costs.

Recovery period

52. As noted above, the companies have proposed to recover the costs of the TTY upgrades through annual draw downs from their deferral accounts over a period of four years. The Commission notes that it has directed the companies to install TTY units over a period of seven years, from 2004 to 2010. In the Commission's view, recovery of the associated costs should not be assessed by the companies in a manner that is used for internal investments. The Commission notes that a seven-year period to recover these costs would be comparable to the life expectancy of similar equipment. Therefore, the Commission considers that it would be more appropriate for the companies to recover the costs of equipping pay telephones with TTY units over a seven-year period.

Annual draw down amounts to the companies' deferral accounts

53. In light of the above, the Commission **approves** the following annual draw down amounts for each company, for a period of seven years, for the purpose of recovering the costs associated with upgrading pay telephones with TTY units.

Company	Annual drawn down amount
Bell Canada	$4,687,000
MTS Allstream	$329,000
TCI (Alberta and B.C.)	$794,000
TCI (Québec)	$58,000

Secretary General

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