



Telecom Order CRTC 2007-23

Ottawa, 25 January 2007

MTS Allstream Inc.

Asymmetric Digital Subscriber Line (ADSL) Data Access Service

Reference: Tariff Notices 565, 565A, and 588

In this Order, the Commission renders its determinations on a final basis with respect to a number of MTS Allstream Inc.'s (MTS Allstream) competitor asymmetric digital subscriber line (ADSL) service tariff applications. The Commission also confirms the final classification of MTS Allstream's competitor ADSL Service as a Category II competitor service. The Commission notes that, in finalizing the tariffs under review in this Order, it considered the importance of providing comparable competitor ADSL access services across the incumbent local exchange carriers' operating regions.

Introduction

1. The rates, terms, and conditions of the proposed tariffs of the major incumbent local exchange carriers' (ILECs)¹ asymmetric digital subscriber line (ADSL) services provided to competitors have been the subject of a lengthy industry consultation and negotiation process. As a result of this process, each ILEC, including MTS Allstream Inc. (MTS Allstream), filed tariff applications for its competitor ADSL service. The Commission has approved these applications on an interim basis for all ILECs except Bell Canada, which has received final approval, to allow the services to be introduced on an expedited basis.
2. The Commission has not approved tariffs for MTS Allstream's ADSL Data Access Service on a final basis, due in part to results of the industry consultation and negotiation process, which resulted in a number of unresolved issues with respect to the rates, terms, and conditions for these services, as well as disparities between MTS Allstream's services and other ILECs' competitor ADSL services.
3. This Order disposes of the outstanding issues related to the above-referenced tariff applications for MTS Allstream's ADSL Data Access Service.

Process

Applications and interim orders

4. The Commission received an application by MTS Allstream dated 1 June 2005, under Tariff Notice 565 (TN 565), as amended by Tariff Notice 565A (TN 565A), dated 1 December 2005, to introduce, as a Category II competitor service, Supplementary Tariff Special Services and Facilities item 5820 – ADSL Data Access Service (item 5820).

¹ In this Order, the term "ILECs" refers to Bell Aliant Regional Communications, Limited Partnership, Bell Canada, MTS Allstream Inc., Saskatchewan Telecommunications, and TELUS Communications Company.

5. MTS Allstream submitted that its proposed broadband access service, based on ADSL technology, would enable a high-speed service provider (HSSP) to establish a high-speed data access path between its end-user's premises and an MTS Allstream serving wire centre.
6. The Commission approved on an interim basis the introduction of the ADSL Data Access Service proposed in TN 565, as amended by TN 565A, in Telecom Order CRTC 2005-406, 12 December 2005 (Order 2005-406).
7. The Commission received an application by MTS Allstream dated 12 May 2006, under Tariff Notice 588 (TN 588), proposing a revision to item 5820. This revision changed the monthly rate charged for Type A local loops when they are used in conjunction with the company's ADSL Data Access Service.
8. The Commission approved on an interim basis the revision to the ADSL Data Access Service proposed in TN 588 in Telecom Order CRTC 2006-124, 26 May 2006.

Process related to comments and reply comments

9. With respect to TN 565, the Commission received comments dated 27 June 2005 from Cybersurf Corporation (Cybersurf), 20 and 22 June 2005 from Bell Canada, and 20 June 2005 from the Independent Members of the Canadian Association of Internet Providers (IMCAIP). No reply comments were filed by MTS Allstream.
10. With respect to TN 565A, the Commission received comments dated 12 December 2005 from Bell Canada, 4 January 2006 from Cybersurf, and 4 January 2006 from Primus Telecommunications Canada Inc. (Primus). No reply comments were filed by MTS Allstream.
11. No comments were received regarding TN 588.

Positions of parties

12. Cybersurf submitted that MTS Allstream's proposed rates contained excessive mark-ups that should be reduced. Cybersurf also disagreed that these ADSL services should be classified as Category II competitor services.
13. Cybersurf submitted that it was concerned with the rates proposed by MTS Allstream for its ADSL Data Access Service. Cybersurf submitted that in addition to the ADSL access charges, the associated service charges and the monthly rates for the aggregated high-speed service provider interface (AHSSPI) made it difficult for MTS Allstream's competitors to provide an alternate service. This view was shared by Bell Canada and Primus.
14. Bell Canada noted that MTS Allstream had proposed to provide a single ADSL Data Access Service for \$24 per month, regardless of the speed provided. Bell Canada submitted that this rate structure made it very hard for competitors to offer a viable basic or "lite" version of the service.

15. Bell Canada noted that MTS Allstream had not given HSSPs any flexibility in terms of payment options for its ADSL Data Access Service charge of \$100. Bell Canada also noted that this service charge was double what Bell Canada charged in its comparable tariff for competitor ADSL services. Bell Canada further noted that in its own comparable ADSL tariff, it offered wholesale customers three payment options for the service charge.
16. Primus agreed with the submissions by Bell Canada and Cybersurf. In addition, Primus submitted that the issue of the \$100 service charge for new installations, moves, and transfers was the most important issue from its point of view. Primus submitted that MTS Allstream should propose alternative payment options for its \$100 service charge.
17. Bell Canada noted that MTS Allstream's proposed ADSL Data Access Service tariff did not offer a bridged ADSL service equivalent to Bell Canada's High Speed Access (HSA) service, which used dedicated permanent virtual circuits (PVCs) rather than shared PVCs for the underlying data transport of the ADSL accesses. Bell Canada submitted that in order to ensure that competitors were not disadvantaged, MTS Allstream should make a service comparable to Bell Canada's HSA available to HSSPs.
18. MTS Allstream did not file any reply comments with respect to either TN 565 or TN 565A.

Commission's analysis and determinations

19. The Commission notes that it has recently initiated a proceeding to review the regulatory issues related to competitor services in *Review of regulatory framework for wholesale services and definition of essential service*, Telecom Public Notice CRTC 2006-14, 9 November 2006 (Public Notice 2006-14). The Commission also notes that, for reasons discussed in Public Notice 2006-14, it expects to issue a decision on issues in that proceeding by mid-2008. In view of this, and the period of time during which the competitor ADSL service issues under consideration in this Order have been outstanding, the Commission considers it appropriate to dispose of these issues on a final basis.
20. The Commission notes that, as with other services provided by ILECs, cable carriers, and competitive local exchange carriers at regulated rates to other competitors, the regulatory status of the competitor ADSL services approved in this Order is within the scope of the proceeding begun in Public Notice 2006-14.

Service classification

21. The Commission notes that MTS Allstream's ADSL Data Access Service was proposed under the company's Supplementary Tariff as a Category II competitor service and that this service, including the proposed classification, was granted interim approval in Order 2005-406.
22. The Commission notes that Cybersurf requested that MTS Allstream be directed to lower the rates for its ADSL Data Access Service through re-classification of its ADSL Access Service to a Category I competitor service. The Commission notes that it considers the nature of the facility in question and circumstances relevant to its supply by competitors and third parties

when it assesses whether to classify a competitor service as a Category I competitor service. A competitor service that does not meet the criteria for a Category I competitor service is classified as a Category II competitor service.

23. The Commission considers that competitors have other service alternatives to MTS Allstream's competitor ADSL services. The Commission notes that these other options for providing retail high-speed Internet services include co-locating their own ADSL equipment in MTS Allstream's central offices and using unbundled local loops, or using an incumbent cable carrier's third-party Internet access services.
24. In light of the above, the Commission **denies** the request by competitors to reclassify MTS Allstream's ADSL Data Access Service as a Category I competitor service and determines that the interim Category II competitor service classification of MTS Allstream's ADSL Data Access Service should be approved on a final basis.

Issues related to rates, terms, and conditions

25. The Commission notes that its interim orders with respect to MTS Allstream's ADSL Data Access Service have addressed a number of significant issues with respect to rates. The Commission also notes, however, that MTS Allstream's interim rate structure for its ADSL Data Access Service contains certain terms and conditions, as discussed below, that are either inconsistent with those offered by other ILECs or, in the Commission's view, unduly restrict a competitor's ability to provision services in the retail market. In finalizing the tariff for MTS Allstream's ADSL Data Access Service, the Commission has had regard to various considerations, including the need to approve similar rates, terms, and conditions for comparable competitor ADSL services across ILECs so that competitors in all parts of the country have the same range of options available to them and can compete in multiple markets.

Availability of additional speed offerings

26. The Commission notes that there are currently two forms of competitor ADSL tariffs provided by the ILECs: one in which distinct rates are provided by access speed, and a second, used by MTS Allstream and Saskatchewan Telecommunications, in which monthly rates are provided for the maximum available speed and which covers all classes of customers. The Commission further notes Bell Canada's concerns regarding the difficulties competitors face in competing in the low-speed retail market under the single-rate approach that MTS Allstream proposed for its ADSL Data Access Service.
27. The Commission notes that under MTS Allstream's single-rate approach, a competitor can acquire the ADSL Data Access Service from MTS Allstream for a rate of \$24 per month and provide service in any of the retail Internet markets – whether high-speed or low-speed, business or residential. The Commission considers that while a single-rate approach provides competitors with some flexibility in developing and pricing their retail services, this flexibility occurs where higher margins exist – for example, with higher access speed or in the business market, where MTS Allstream's retail rates are significantly higher than the \$24 per month competitor ADSL service rate. By contrast, MTS Allstream's low-speed retail service is priced at a level that is not appreciably higher than the \$24 per month rate and contains mark-ups that

are significantly lower than MTS Allstream's higher-speed services. The Commission considers that the availability of a service that more closely matches the speed of MTS Allstream's low-speed retail Internet service would be in the public interest, since it would enable competitors to compete with MTS Allstream on a more equitable basis.

28. In light of the above, the Commission determines that MTS Allstream is to revise its competitor ADSL tariffs to introduce a low-speed ADSL Data Access Service that has the same speed as MTS Allstream's low-speed retail offering.

Service charges

29. With respect to interveners' concerns that MTS Allstream does not offer any term payment options to recover the service charge for its ADSL Data Access Service, the Commission notes that other ILECs offer term payment options associated with their comparable competitor ADSL services. The Commission also notes that one of the challenges faced by competitors is the overall cost of providing service to their retail customers. The Commission considers it appropriate to include the option of paying service charges in smaller monthly instalments for the ADSL Data Access Service, as proposed by several interveners, since this would lower a competitor's upfront costs associated with providing service to its retail customers.
30. Accordingly, the Commission concludes that MTS Allstream should file a tariff proposal introducing monthly payment options for its service charge associated with the ADSL access components of its ADSL Data Access Service.

Availability of a bridged ADSL service option

31. With respect to Bell Canada's request that MTS Allstream be required to provide a bridged ADSL service, the Commission notes that all other ILECs offer a service to competitors that is comparable to a bridged ADSL service as referenced by Bell Canada. The Commission also notes that such a service may be preferable to certain competitors, in order to provide differentiated services to their customers, therefore enabling increased competition in the retail market. The Commission further notes that MTS Allstream has provided no comments regarding why it should not make such a service available. In light of the above, the Commission considers that MTS Allstream should provide a bridged ADSL.

Final approval and direction

32. In light of the above, the Commission **approves on a final basis** MTS Allstream's TNs 565, 565A, and 588, effective the date of this Order. In addition, the Commission directs MTS Allstream to:
 - file, as part of its Supplementary Tariff Special Services and Facilities tariff item 5820 – ADSL Data Access Service, within 30 days of the date of this Order, proposed tariff pages and proposed rates for a low-speed ADSL Data Access Service that has the same speed as MTS Allstream's retail lower-speed offering;

- file, within 30 days of the date of this Order, a tariff proposal to introduce monthly payment options for the service charge associated with the ADSL access components of its Supplementary Tariff Special Services and Facilities tariff item 5820 – ADSL Data Access Service; and
- file, within 90 days of the date of this Order, a tariff proposal with supporting costing information, to introduce a bridged ADSL service, similar to Bell Canada's HSA offering.

Secretary General

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