



Telecom Decision CRTC 2009-802

Ottawa, 22 December 2009

MTS Allstream Inc. – Application regarding inter-exchange channel charges applied to Competitor Digital Network accesses

File number: 8661-M59-200902702

In this decision, the Commission finds that Bell Canada inappropriately charged for an interexchange (IX) channel when Competitor Digital Network access was provided to an end-customer premises located in a theoretical wire centre. The Commission directs Bell Canada to refund these charges in accordance with its Terms of Service and to cease applying such charges from the date of this decision. The Commission further directs Bell Canada to provide competitors, on request, information on the physical wire centre serving any end-customer. MTS Allstream's requests for a refund of intra-exchange channel charges incurred to avoid IX channel charges and for an attestation stating whether or not Bell Canada has treated other competitors in the same manner as MTS Allstream are denied.

Introduction

1. The Commission received an application by MTS Allstream Inc. (MTS Allstream), dated 3 February 2009, in which MTS Allstream alleged that Bell Canada has been inappropriately applying charges for interexchange (IX) channels since 1 June 2002, each time that MTS Allstream requested a Competitor Digital Network (CDN) access in order to serve end-customers located in an area served by a theoretical wire centre.
2. Specifically, MTS Allstream requested that the Commission direct Bell Canada to (a) cease applying charges on a going-forward basis for fictitious IX channels associated with CDN accesses in theoretical wire centres; (b) refund any and all IX channel charges that have been assessed on such channels since 1 June 2002; (c) cease applying charges on a going-forward basis for intra-exchange channels ordered by MTS Allstream solely for the purpose of avoiding the higher charge levied for fictitious IX channels, and refund charges for such intra-exchange channels retroactive to 1 June 2002; (d) identify to competitors, upon request, the wire centre that physically serves any CDN access, to enable the competitor to order the access in the most cost-effective manner for both Bell Canada and itself; and (e) attest whether or not Bell Canada has applied the rates requested by MTS Allstream in this application to any other competitor.
3. The Commission received comments from Bell Canada and Rogers Communications Inc. (RCI). The public record of this proceeding, which closed on 26 October 2009, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

4. The Commission has identified the following four issues to be addressed in this decision:
 - I. Should Bell Canada apply an IX channel charge to a CDN access that is located in an area served by a theoretical wire centre?
 - II. Should Bell Canada be directed to cease charging for intra-exchange channels associated with CDN accesses in theoretical wire centres and refund charges previously billed for such channels?
 - III. Should Bell Canada be directed to provide competitors information on the physical wire centre that serves an end-customer's premises?
 - IV. Should Bell Canada be required to attest whether it applies the rates requested by MTS Allstream in this application to services provided to other competitors?

I. Should Bell Canada apply an IX channel charge to a CDN access that is located in an area served by a theoretical wire centre?

5. MTS Allstream submitted that where CDN accesses are served by wire centres physically located outside of the exchange in which the end-customer is located, Bell Canada charges the competitor for a fictitious IX channel in addition to the charge for the CDN access. MTS Allstream further submitted that the charge for an IX channel is contrary to the terms and conditions of Bell Canada's CDN access tariff and, as such, constitutes overbilling. In this regard, MTS Allstream noted that Bell Canada's CDN tariffs define a CDN access as a service that provides an access from the end-customer premises to the physical serving wire centre.
6. In the case of an end-customer located in a theoretical wire centre, the serving wire centre is a physical wire centre located in another exchange. MTS Allstream submitted that the rates for CDN access arrangements, including those from a theoretical wire centre, recover all costs associated with the provision of that access; any additional charges for an IX channel represent overbilling.
7. MTS Allstream further submitted that, since Bell Canada does not actually provide the IX channel in this circumstance, the charge for an IX channel provides for the recovery of costs that are not actually incurred with respect to CDN accesses.
8. Finally, MTS Allstream submitted that the charge for an IX channel creates a competitive disadvantage for a competitor since Bell Canada's retail local exchange service end-customers located in theoretical wire centres do not pay for an IX channel, while competitor end-customers that are similarly situated would have to pay for such a channel when the circuit serves a competitive local exchange carrier (CLEC) customer located in an area served by a theoretical wire centre.
9. RCI submitted comments on this issue similar to those of MTS Allstream.

10. Bell Canada submitted that in the case of a digital network access (DNA) facility provided to an end-customer premises located in a theoretical exchange, it assumes the access extends from the end-customer's premises to the theoretical wire centre location. Furthermore, Bell Canada submitted that its retail local exchange service customers would not be charged for an IX channel in this situation. However, in the case of a private line service provided to an end-customer, Bell Canada submitted that it would apply a charge for an IX channel in addition to the DNA access.
11. Bell Canada submitted that its practice of charging for an IX channel in addition to the access in those situations contemplated by MTS Allstream's application is consistent with its tariff and with its treatment of retail DNA service customers whose premises are similarly located in a theoretical wire centre. In this regard, Bell Canada placed reliance on item 10 of its Access Services Tariff (AST)¹ and submitted that, since CDN access services are derived from retail DNA services, it is appropriate to charge for an IX access service when the end-customer premises served is located in a theoretical wire centre. Bell Canada further submitted that the loop lengths used to cost the provision of a CDN access in a theoretical wire centre were based on the distance between the end-customer and the theoretical wire centre. Therefore, in Bell Canada's view, the rates for CDN accesses do not recover the full costs associated with the provision of those accesses.

Commission's analysis and determinations

12. In Telecom Decision 2002-34, the Commission determined that the incumbent local exchange carriers (ILECs) should be directed to develop, and make available to competitors, DNA services customized for the use of CLECs. Further, in Telecom Decision 2005-6, the Commission determined the specific services that ILECs should provide to competitors, as well as the specific terms and conditions that would apply to these services.
13. The Commission notes that competitors use CDN access services for two purposes: to compete for end-customers served by the ILECs and to interconnect to ILEC networks. The Commission further notes that rates for CDN access services are based on the causal costs of providing the services plus a markup.
14. In the circumstances of this case, the charge for an IX channel that is not provided represents an increase in the charge for a CDN access that does not correspond to any increase in the cost of providing a CDN access. As such, the application of an IX channel charge to a CDN access provisioned in a theoretical wire centre would be a departure from the principles that have been used to establish CDN access services. Further, where the CDN access service is used to provide retail local exchange services to end-customers located in a theoretical wire centre, the application of a charge for an IX channel places the CLEC at a significant competitive disadvantage relative to Bell Canada, since the latter does not charge its retail local exchange service customers for an IX channel when those customers are located in a theoretical wire centre.

¹ Item 10 of Bell Canada's AST provides that "insofar as they are reasonably applicable and not inconsistent with this Tariff, the Company's General Tariff, CRTC 6716, and all of the Company's tariffs, including any amendment to or replacements of them, extend and apply to this Tariff."

15. The Commission notes Bell Canada's reference to item 10 of its Access Services Tariff. The Commission further notes that Bell Canada's CDN tariff specifies that CDN access provides an access from an end-customer premises - or competitor's point of presence (POP) – to the Bell Canada serving wire centre which is itself defined as constituting the first Bell Canada building from which an end-customer premises – or competitor POP – derives service. For the reasons provided above, the Commission considers that Bell Canada's approved CDN tariff(s) does not permit it to charge for an IX channel in addition to a CDN access charge when provisioning a CLEC with CDN access in order to serve an end-customer located in an area served by a theoretical wire centre.
16. In light of the above, the Commission directs Bell Canada to cease charging CLECs for an IX channel when a CLEC orders a CDN access in an area served by a theoretical wire centre.
17. The Commission notes that under article 19 of Bell Canada's tariffed Terms of Service, recurring charges that should not have been billed or that were overbilled must be credited, provided that the customer disputes them within one year of the date of the bill. Further, the customer must be credited with interest on that amount at the rate payable for interest on deposits that applied during the period in question.
18. The Commission further notes Bell Canada's submission that should the Commission determine that IX channel charges should not be applied to CDN accesses in theoretical wire centres, that determination would amount to a policy change that should only apply on a going-forward basis. For the reasons set out above in paragraphs 12 through 15, the Commission does not agree that its direction in this regard amounts to a policy change.
19. In light of the above, the Commission directs Bell Canada to refund charges applied to IX channels associated with CDN accesses provided in theoretical wire centres, in accordance with its Terms of Service.
20. The Commission notes Bell Canada's submission that, in the case of CDN access services provided in a theoretical wire centre, the rates for a CDN access do not recover the full costs of providing the CDN access. The Commission considers that Bell Canada may, should it so choose, submit revised cost studies for CDN accesses based on appropriately defined loop lengths.

II. Should Bell Canada be directed to cease charging for intra-exchange channels associated with CDN accesses in theoretical wire centres and refund charges previously billed for such channels?

21. MTS Allstream and RCI submitted that in view of Bell Canada's practice of applying a charge for an IX channel when a CDN access is provided in order to serve an end-customer premises located in an area served by a theoretical wire centre, CLECs prefer to require that the CDN access be terminated at a physical wire centre in the end-customer's exchange. These parties submitted, and Bell Canada agreed, that in such cases Bell Canada applies a charge for an intra-exchange channel with the CDN access. The Commission notes that these charges are set on the basis of causal costs plus a markup. MTS Allstream and RCI submitted that in such cases these intra-exchange channels have only been ordered to avoid IX channel charges.

Since the latter are inappropriate charges, the intra-exchange channel charges should cease to apply and previously billed charges should be refunded.

22. RCI further submitted that the intra-exchange channels are themselves fictitious facilities since the channel actually provided is an IX channel from the physical serving wire centre to a wire centre in the end-customer's exchange. Accordingly, the intra-exchange channel charges should not be permitted since no intra-exchange facility is provided.
23. Bell Canada submitted that its billing practices with regard to digital accesses provided from theoretical wire centres actually benefit CLECs since, when the CLECs request an intra-exchange channel, Bell Canada must provide an IX channel, but the CLECs are only charged for an intra-exchange channel.
24. The Commission notes that, in the case of a customer located in an area served by a theoretical wire centre, when Bell Canada provides connectivity to a physical serving wire centre in the end-customer's exchange, the facility is a real physical channel extending from the end-customer's physical wire centre to another wire centre. While the nomenclature applied by Bell Canada to the facilities is not an accurate reflection of the facilities provided, the facilities involved are not fictitious.
25. The Commission considers that MTS Allstream chose to order the intra-exchange channels required in order to avoid the charges associated with IX channels rather than contest these charges with the Commission at an earlier date. Further, Bell Canada incurs actual costs in providing the facilities required to provide the intra-exchange channels. In the circumstances, the Commission considers that MTS Allstream received the services that it ordered and the Commission does not consider that MTS Allstream is eligible for a refund of those charges.
26. In light of the above, the Commission **denies** MTS Allstream's request for a refund of intra-exchange channel charges associated with CDN accesses provided in a theoretical wire centre.

III. Should Bell Canada be directed to provide competitors information on the physical wire centre that serves an end-customer's premises?

27. MTS Allstream submitted that Bell Canada should be required to identify, upon request, the wire centre which physically serves any CDN access to enable the competitor to order the access service in the most cost-effective manner for both Bell Canada and itself. Bell Canada provided no comment on this matter.
28. The Commission notes that for a competitor to design its network in the most cost-efficient and effective manner possible, it is necessary for the competitor to know where any CDN access will be physically located. On this basis, the Commission directs Bell Canada to provide to CLECs, upon request, information on the wire centre that physically serves any CDN access required by that CLEC.

IV. Should Bell Canada be required to attest whether it applies the rates requested by MTS Allstream in this application to services provided to other competitors?

29. MTS Allstream submitted that Bell Canada should be required to attest whether or not it currently applies rates for services associated with CDN access services in theoretical wire centres provided to any other competitor in the manner that the Bell companies have repeatedly denied to MTS Allstream. Bell Canada provided no comments on this matter.
30. The Commission notes that, while RCI claimed to be aware of one instance where Bell Canada waived IX channel charges applied to CDN services, no party to the proceeding presented any substantive evidence that Bell Canada has rated CDN access services to other competitors differently from CDN access services provided to MTS Allstream. As such, the Commission considers that it is not necessary to require Bell Canada to attest to the rates that they have charged for such services in the case of other competitors.

Related documents

- *Competitor Digital Network Services*, Telecom Decision CRTC 2005-6, 3 February 2005, as amended by Telecom Decision CRTC 2005-6-1, 28 April 2006
- *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002, as amended by Telecom Decision CRTC 2002-34-1, 15 July 2002

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