



## Telecom Decision CRTC 2010-302

Ottawa, 21 May 2010

### Application to review and vary Telecom Order 2009-497 regarding 800/888 Carrier Identification service

File number: 8662-R2-200911744

*In this decision, the Commission determines that (1) the higher rates for the 800/888 Carrier Identification service approved on a final basis in Telecom Order 2009-497 for the period from 12 September 2006 to 13 August 2009 are not just and reasonable; and (2) the lower final rates approved in Telecom Order 2009-497 are just and reasonable for that period, and, accordingly, are to be applied for that period. The incumbent local exchange carriers are to reimburse or credit relevant competitors accordingly.*

#### Introduction

1. The Commission received an application by Rogers Communications Inc. (RCI), dated 19 August 2009, requesting that the Commission review and vary Telecom Order 2009-497 by rescinding its determination not to apply the lower final rates approved in that order for 800/888 Carrier Identification service (Carrier ID service) retroactively to 12 September 2006. RCI requested that these rates be applied retroactively to 12 September 2006. It requested that, in the alternative, the rates submitted by the incumbent local exchange carriers (ILECs)<sup>1</sup> with their October 2006 cost studies be applied retroactively to 12 September 2006.
2. The Commission received comments from Bell Aliant Regional Communications, Limited Partnership; Bell Canada; and Saskatchewan Telecommunications (collectively, Bell Canada et al.); as well as from TELUS Communications Company (TCC) and MTS Allstream Inc. (MTS Allstream). Bell Canada et al. and TCC opposed the application, while MTS Allstream supported it. The public record of this proceeding is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings" or by using the file number provided above.

#### Background

3. The Commission received an application by MTS Allstream, dated 8 June 2006, requesting that it reduce the ILECs' rates for Carrier ID service on an interim basis while it reviewed the costs associated with this service.

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<sup>1</sup> In this decision, "ILECs" refers to the companies listed in paragraph 2.

4. In Telecom Decision 2006-57, which disposed of MTS Allstream's application, the Commission made the rates interim, effective 12 September 2006, and directed the ILECs to file proposed amended tariff pages with supporting cost studies for their Carrier ID service. The ILECs filed this material with the Commission on 27 October 2006.
5. On 30 March 2007, the Commission issued Telecom Public Notice 2007-4 to initiate a proceeding to review certain Phase II costing issues (the Phase II costing review proceeding).
6. By letter dated 22 June 2007, the Commission deferred further consideration of a number of applications before it, including the Carrier ID service applications, pending the completion of the Phase II costing review proceeding. In that letter, the Commission noted that the proposed amended tariff pages raised issues that could be materially affected by the Commission's determinations in the Phase II costing review proceeding. The Commission also stated that it expected that the rates would not be applied retroactively when approved on a final basis.
7. The Commission set out its determinations regarding Phase II costing issues in Telecom Decision 2008-14. Subsequent to the issuance of that decision, the ILECs filed revised cost studies and proposed tariff pages.
8. In Telecom Order 2009-497, issued 14 August 2009, the Commission approved lower rates on a final basis for Carrier ID service, effective the date of the order. The Commission determined, however, that these rates should not apply retroactively. As a result, the rates approved in Telecom Order 2009-497 were higher for the period prior to 14 August 2009.

## **Issues**

9. In Telecom Public Notice 98-6, the Commission outlined the criteria to consider review and vary applications filed pursuant to section 62 of the *Telecommunications Act* (the Act). Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision.
10. The Commission considers that this proceeding raises the following issues:
  - I. Did the Commission fetter its discretion?
  - II. Is the Commission's determination legally deficient because its reasons were not sufficient?
  - III. Does the Commission have jurisdiction to grant the relief sought and, if so, should it do so?

### **I. Did the Commission fetter its discretion?**

11. RCI and MTS Allstream submitted that the Commission had fettered its discretion, and had effectively prejudged the matter, when it stated in its 22 June 2007 letter that it did not expect that the final rates would be applied retroactively.
12. The Commission notes that it expressed an expectation in its letter but did not make a determination, let alone a final determination, as submitted by RCI and MTS Allstream. The Commission therefore considers that it did not fetter its discretion when it stated that it did not expect the final rates to be applied retroactively.

### **II. Is the Commission's determination legally deficient because its reasons were not sufficient?**

13. RCI and MTS Allstream submitted that in Telecom Order 2009-497, the Commission had failed to give sufficient reasons for its determination not to make the lower final rates retroactive. RCI submitted that this constitutes a fundamental error in law and in fact and, accordingly, the determination should be rescinded.
14. The Commission considers that if the determination in question was not supported by sufficient reasons in Telecom Order 2009-497, any insufficiency has been adequately addressed by the reasons set out in this decision.

### **III. Does the Commission have jurisdiction to grant the relief sought and, if so, should it do so?**

15. TCC submitted that the Commission has no authority to grant the relief requested by RCI because it involves the retroactive variation of rates that have been made final. TCC submitted that, except when rates are made interim, the Act only allows for rates to be varied prospectively.
16. The Commission notes that it has a legal duty to ensure that rates are just and reasonable at all times. If the Commission approves rates that are not just and reasonable, such rates must necessarily be void given that the Commission has no authority to approve rates that are not just and reasonable. Further, the Commission notes that where final rates are void, the applicable rates are those that were in effect immediately prior to the rates being finalized.<sup>2</sup>
17. In this case, the previously applicable rates were made interim in Telecom Decision 2006-57. Because the Act expressly allows final rates to be effective from the date rates were made interim, the Commission considers that if the higher final rates approved for the period prior to 14 August 2009 are not just and reasonable, and hence void, it has the necessary statutory authority to apply for that period the lower final rates approved in Telecom Order 2009-497.

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<sup>2</sup> *TELUS v. CRTC et al.* [2005] 2 F.C.R. 388.

18. In Telecom Order 2009-497, the Commission determined, based on the detailed costing information on the record of the proceeding leading to that order, that the existing interim rates were too high. The Commission approved the lower final rates as just and reasonable on a going-forward basis. Despite these findings, the Commission decided not to adjust the interim rates for the period from 12 September 2006 to 13 August 2009.
19. The Commission considers that the ILECs' cost studies and proposed rates filed on 27 October 2006 and 27 October 2008, except those of TCC, demonstrate that as of 2006 the costs for Carrier ID service had significantly decreased and the existing interim rates were too high.
20. Regarding TCC, the Commission considers that the company's October 2006 cost study and revised cost study for October 2008 did not reflect the appropriate economic service costs for the purpose of determining just and reasonable rates for the service. The Commission notes that it posed interrogatories with respect to both sets of cost studies filed by TCC. The Commission also notes that TCC's estimated costs were significantly higher than the estimates submitted by other ILECs. In particular, the Commission considers that in 2006 and 2008, TCC applied an inappropriate methodology that significantly overestimated its associated software capital costs. The Commission further notes that in its 3 April 2009 revised cost study, TCC significantly reduced its estimates for associated software capital costs. In Telecom Order 2009-497, the Commission found these lower estimated costs to be appropriate for establishing just and reasonable rates for TCC, effective 14 August 2009.
21. In light of the above, the Commission finds that the rates approved in Telecom Order 2009-497 for the period from 12 September 2006 to 13 August 2009 are not just and reasonable.
22. Having found that the higher final rates are not just and reasonable, it is necessary to examine what rates are just and reasonable for this period. The Commission notes that it approved updated costing methodologies on 21 February 2008, in Telecom Decision 2008-14. The Commission further notes that the revised cost studies and proposed rates filed by the ILECs on 27 October 2008 were based on the updated costing methodologies set out in that decision. The 2008 revised cost studies and proposed rates revealed little change from the cost studies and proposed rates filed by the ILECs on 27 October 2006. Except for TCC, the lower final rates approved in Telecom Order 2009-497 were based on those updated cost studies.
23. In the case of TCC, the lower final rates were based on TCC's cost study filed on 3 April 2009, which, as noted above, revealed significantly reduced estimated software capital costs. Further, as noted above, the Commission considers that until it filed its 3 April 2009 cost study, TCC's cost studies had failed to reflect the appropriate economic service costs to allow the Commission to determine just and reasonable rates as far back as 2006.

24. In the circumstances, the Commission considers that the costs found to be appropriate for the purpose of setting just and reasonable rates on a going-forward basis in Telecom Order 2009-497 are also appropriate for the period from 12 September 2006 to 13 August 2009. Accordingly, the Commission finds that the lower final rates approved in Telecom Order 2009-497 on a going-forward basis are also just and reasonable for the period from 12 September 2006 to 13 August 2009 and, as a result, that they should be applied for that period.

## Conclusion

25. The Commission concludes that because the higher final rates for the period of 12 September 2006 to 13 August 2009 are void, there is substantial doubt as to the correctness of its determination in Telecom Order 2009-497 to apply the higher final rates for that period. The Commission also concludes that Telecom Order 2009-497 should be varied by finding that the lower final rates approved in that order are also the just and reasonable rates for the period of 12 September 2006 to 13 August 2009.
26. The Commission considers that its determinations in this decision advance the telecommunications policy objectives set out in paragraphs 7(b), (f), and (h) of the Act.<sup>3</sup> The Commission further considers that its determinations are consistent with the Policy Direction<sup>4</sup> requirements that (a) the measures in question be efficient and proportionate to their purposes, and that they minimally interfere with competitive market forces to meet the above policy objectives; and (b) the measures neither deter economically efficient competitive entry into the market nor promote economically inefficient entry.
27. The Commission directs the ILECs to credit or reimburse their relevant customers of Carrier ID service, within 45 days of the date of this decision, the difference between the rates that applied for the period from 12 September 2006 to 13 August 2009 and the rates found to be just and reasonable in this decision for that period. Further, the Commission directs the ILECs to issue revised tariff pages, within 15 days of the date of this decision, reflecting the revised rates for the period from 12 September 2006 to 13 August 2009.

Secretary General

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<sup>3</sup> The cited policy objectives of the Act are  
(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;  
(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  
(h) to respond to the economic and social requirements of users of telecommunications services.

<sup>4</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

## Related documents

- *Review of rates for the 800/888 Carrier Identification service*, Telecom Order CRTC 2009-497, 14 August 2009
- *Review of certain Phase II costing issues*, Telecom Decision CRTC 2008-14, 21 February 2008, as amended by Telecom Decision 2008-14-1, 11 April 2008
- *Review of certain Phase II costing issues*, Telecom Public Notice CRTC 2007-4, 30 March 2007
- *MTS Allstream Inc. – Request to review rates for 800/888 Carrier Identification service*, Telecom Decision CRTC 2006-57, 12 September 2006
- *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>.*