



Telecom Decision CRTC 2010-638

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Route reference: Telecom Decision 2008-1

Ottawa, 31 August 2010

Follow-up to Telecom Decision 2008-1 – Proposal by MTS Allstream Inc. to dispose of the funds remaining in its deferral account

File numbers: 8638-C12-200817505; 8638-C12-200817512; 8638-C12-200817520;
and Tariff Notice 687

In this decision, the Commission approves the use of deferral account funds by MTS Allstream to expand broadband services to 16 communities in Manitoba. The Commission also directs the company to rebate funds remaining in its deferral account to residential subscribers in non-high-cost serving areas.

Introduction

1. In Telecom Decision 2006-9, the Commission determined that incumbent local exchange carriers (ILECs) should, to the greatest extent possible, use the funds in their deferral accounts to improve access to telecommunications services for persons with disabilities and to expand broadband services to rural and remote communities. The Commission also concluded that any accumulated balance remaining in an ILEC's deferral account after these initiatives had been approved would be rebated to the ILEC's residential local subscribers in non-high-cost serving areas (non-HCSAs).
2. In Telecom Decisions 2007-50 and 2008-1 (these two decisions and Telecom Decision 2006-9 are hereafter referred to collectively as the deferral account decisions), the Commission approved, among other things, a proposal by MTS Allstream Inc. (MTS Allstream) to expand broadband services to 16 rural and remote communities in Manitoba (the approved communities) using funds from its deferral account. In Telecom Decision 2008-1, the Commission also approved the use of certain other funds in MTS Allstream's deferral account to complete initiatives to improve access to telecommunications services for persons with disabilities. Finally, in Telecom Decision 2008-1, the Commission determined that any funds remaining in MTS Allstream's deferral account after funds were allocated to the broadband plans and accessibility initiatives should be rebated to residential subscribers of record in non-HCSAs as of the date of that decision, 17 January 2008.

3. The implementation of the deferral account decisions was put on hold pending disposition of appeals before the Federal Court of Appeal and the Supreme Court of Canada related to the broadband expansion proposals and the consumer rebates.¹ Following the dismissal of the appeals to the Supreme Court of Canada, MTS Allstream submitted revised plans to provide broadband service to the 16 communities approved in the deferral account decisions. MTS Allstream also submitted a plan to rebate the funds remaining in its deferral account to residential subscribers in non-HCSAs.
 4. The Commission received comments from the Public Interest Advocacy Centre and Canada Without Poverty; Rogers Communications Inc. (RCI); Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); and one individual. The public record of this proceeding, which closed on 8 June 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file numbers provided above.
 5. The Commission notes that other decisions are also being released today approving the use of deferral account funds for Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies) and TELUS Communications Company (TCC) to expand broadband services to approved communities in their operating territories and to provide rebates to their residential subscribers in non-HCSAs.
 6. The Commission has identified the following four issues to be addressed in this decision:
 - I. What is the remaining balance in MTS Allstream's deferral account?
 - II. Is MTS Allstream's proposed broadband rollout plan consistent with the Commission's determinations in the deferral account decisions?
 - III. Is MTS Allstream's proposed rebate plan reasonable?
 - IV. Is MTS Allstream's proposed competitor services tariff appropriate?
- I. What is the remaining balance in MTS Allstream's deferral account?**
7. As part of its revised plans, MTS Allstream estimated its deferral account balance at \$20.3 million as of 31 May 2007, which includes \$1.2 million to fund initiatives to improve accessibility for persons with disabilities.
 8. The Commission notes that MTS Allstream's estimate does not include interest accumulated beyond 31 May 2006 or recurring amounts which might have accrued in its deferral account beyond 31 May 2007. The Commission further notes that MTS Allstream opposed the inclusion of interest beyond 31 May 2006 and of recurring amounts beyond 31 May 2007.

¹ Funding for initiatives to improve accessibility for persons with disabilities was not part of the appeals and was approved in Telecom Decision 2008-1.

9. The Commission notes that the Bell companies supported MTS Allstream's position with respect to interest, but suggested that recurring amounts should not accumulate beyond 31 May 2006, while TCC opposed the continued accumulation of interest beyond 31 May 2007.

Interest

10. MTS Allstream and the Bell companies submitted that the Commission did not direct or give notice in Telecom Decision 2005-69 (which extended certain aspects of the price cap regime), in the deferral account decisions, or elsewhere that interest should be added to the accumulated balances beyond 31 May 2006.
11. The Bell companies also submitted that, while the ILECs were directed in Telecom Decision 2006-9 to file proposals to dispose of the funds that would have accumulated by the end of the fourth year of the price cap period, they were not directed to take into account interest that would accrue on those balances beyond 31 May 2006 in formulating those proposals. Furthermore, the Bell companies noted that the Commission has never taken issue with the fact that, in subsequent filings, they did not include interest in their deferral account balance beyond 31 May 2006. The Bell companies argued that the requirement to include interest would create uncertainty about the amount that should be allocated to accessibility initiatives.
12. TCC submitted that an extension of the interest accrual period from 31 May 2006 to 31 May 2007 would be consistent with Telecom Decision 2005-69 because that decision extended the deferral account mechanism in its entirety for one year. However, TCC submitted that an extension beyond that date would be inconsistent with Telecom Decision 2007-27, wherein the Commission determined that the deferral account mechanism would not form part of the next price cap regime, as the effect of such an extension would be to expand rather than phase out the accounts and the ILECs' obligations. TCC further submitted that the delay in implementing programs approved for drawdown from its deferral account was caused by the court appeals, and argued that the ILECs should not be penalized through the application of additional interest due to this delay.

Recurring amounts

13. The Bell companies submitted that the Commission had already made its final determination in Telecom Decision 2006-9 regarding the elimination of the recurring amounts. In particular, amounts recurring after 31 May 2006 were to be eliminated via prospective rate reductions.
14. On the other hand, TCC did not dispute the inclusion of recurring amounts after 31 May 2006 in its estimated deferral account balances.

Commission's analysis and determinations

15. With respect to interest, the Commission notes that Telecom Decision 2002-34 specifically provides that amounts in the deferral accounts will bear interest at the ILECs' short-term cost of debt, which is to be determined annually, and that no subsequent Commission decision has indicated that this practice should cease. Furthermore, the Commission notes that in Telecom Decision 2006-9, in directing the ILECs to file updates to their deferral account schedules, it specifically indicated that these updates were to reflect all decisions that impact the balance (this would include Telecom Decision 2002-34) and that the ILECs were to provide any assumptions or rationale, including the rate of interest, used to derive their figures.
16. The Commission notes that Telecom Decision 2005-69 extended the deferral account regime as a whole until 31 May 2007. However, the Commission notes that the extension did not single out particular elements of the regime for different treatment, as suggested by the Bell companies. In addition, Telecom Decision 2007-27, which ended the application of the deferral account mechanism going forward, did not eliminate obligations under the existing deferral accounts, including the accumulation of interest and of any remaining recurring amounts.
17. The Commission also notes that it did not approve any specific deferral account balances in Telecom Decision 2008-1, nor did it confirm the estimates provided by the ILECs in the proceeding that led to that decision. Once the follow-up processes resumed, the Commission required the ILECs to update their deferral account balances, a step that would have been unnecessary if the amounts were frozen as of 31 May 2006 or 31 May 2007.
18. In light of the foregoing, the Commission considers that the ILECs' deferral accounts should continue to accrue interest and recurring amounts beyond the dates proposed by MTS Allstream. The Commission considers that this methodology recognizes the full value of the funds in the accounts, and that to permit otherwise would allow the ILECs to benefit from, in effect, interest-free loans.
19. Accordingly, the Commission finds that MTS Allstream's deferral account balance should be adjusted to include interest beyond 31 May 2006 and recurring amounts beyond 31 May 2007.
20. The Commission notes that amounts related to accessibility initiatives were apportioned in Telecom Decision 2008-1 and that their disposition was not delayed due to the legal actions. Accordingly, in its analysis the Commission did not include interest calculations related to those amounts after 17 January 2008, the date of Telecom Decision 2008-1.
21. In light of all the above, the Commission determines the accumulated balance in MTS Allstream's deferral account to be \$21.0 million as of 31 May 2010. This amount includes the \$1.2 million already approved to fund initiatives to improve accessibility for persons with disabilities.

II. Is MTS Allstream's proposed broadband rollout plan consistent with the Commission's determinations in the deferral account decisions?

22. In the deferral account decisions, the Commission directed MTS Allstream to deploy broadband services in the approved communities using least-cost technology and to make services available that would be comparable to the services it provides in urban areas in terms of rates, terms and conditions, upload and download speeds, and reliability. The Commission also considered that it would be in the public interest for MTS Allstream to offer various speed levels.

Proposed broadband service

23. MTS Allstream proposed to offer broadband services in the approved communities that are equivalent to those it provides in urban areas. Consequently, a variety of service speeds and usage levels will be available to residential subscribers in the approved communities. MTS Allstream noted that it will use digital subscriber line technology to provide these services.
24. In the Commission's view, MTS Allstream's proposed broadband services are comparable to those it offers in urban areas and, therefore, comply with the Commission's determinations in the deferral account decisions.

Proposed broadband costs

25. MTS Allstream submitted cost estimates of \$12.8 million for providing broadband services to the approved communities.
26. The Commission has reviewed these estimates and notes that the cost increases for a few communities have exceeded those that might be expected due to inflation and other developments since 2006. However, the Commission considers that MTS Allstream has generally provided satisfactory explanations for these increases.
27. Based on its review of MTS Allstream's current cost estimates, the Commission finds that it would be reasonable to approve \$12.8 million for broadband expansion. The Commission considers that this amount of funding should be more than adequate to satisfy the requirement to provision broadband services to all of the approved communities.
28. The Commission considers it appropriate to fix the amount available for broadband expansion; therefore, no further adjustments to the total approved broadband expansion costs shall be permitted. This will provide a level of certainty with respect to the funds available and will simplify the follow-up process by avoiding any requirement to review the costs as the broadband services are rolled out.
29. With this decision, the Commission determines on a final basis the apportionment of the remaining balance in MTS Allstream's deferral account. Accordingly, the Commission **approves** the drawdown of \$12.8 million from MTS Allstream's deferral account for the expansion of broadband services and directs MTS Allstream

to use these funds to serve the approved communities. The Commission notes that, as directed in the deferral account decisions, this service expansion should take place over no more than four years and should be completed by the end of August 2014.

30. Finally, the Commission notes MTS Allstream's submission that it rolled out its broadband service to the approved community of Cranberry Portage in 2009, prior to final approval of its broadband expansion plan. In light of the delay caused by the court appeals, the Commission considers the early implementation of service in Cranberry Portage to be reasonable and **approves** the use of deferral account funds to provide broadband services to this community as part of the approved \$12.8 million drawdown.

III. Is MTS Allstream's proposed rebate plan reasonable?

31. The Commission considers that, once the above-noted adjustments have been made to MTS Allstream's deferral account balance and to its broadband expansion costs, the amount available for rebate to subscribers in non-HCSAs is \$7.0 million. Accordingly, the Commission considers that the following issues must be addressed:

- Who should receive the rebate?
- How should the funds be rebated?
- Should MTS Allstream be permitted to recover the cost of providing rebates from its deferral account?

Who should receive the rebate?

32. As stated above, the Commission determined in Telecom Decision 2008-1 that any funds available for rebate in MTS Allstream's deferral account should be rebated to residential subscribers in non-HCSAs as of the date of that decision, 17 January 2008.
33. MTS Allstream proposed to provide rebates only to current subscribers, arguing that the costs associated with locating and rebating former subscribers would substantially reduce the amount available for rebate.
34. The Commission notes that there were no objections to MTS Allstream's proposal.
35. In the Commission's view, the effort associated with tracking down subscribers of record as of 17 January 2008 would introduce undue complexity, delays, and costs that could be avoided by applying the rebate to current subscribers. Accordingly, in the interest of benefiting subscribers to the greatest extent possible, the Commission directs MTS Allstream to rebate its residential subscribers of record in non-HCSAs as of the date of this decision.

How should the funds be rebated?

36. MTS Allstream submitted that it would require 120 days between Commission approval and implementation of the rebate proposal to put in place the necessary internal procedures to process the rebates. MTS Allstream proposed that, after the 120 days, it provide rebates to residential subscribers in non-HCSAs in six equal monthly payments, arguing that this approach would be the most practical from a subscriber perspective, as well as in terms of its systems and operations.
37. MTS Allstream also proposed that subscribers be provided the choice of receiving one of two promotional offers instead of the proposed rebate. According to MTS Allstream's proposal, subscribers would receive the rebate unless they explicitly opted for an alternative offer, and the value of the promotional offers would be approximately twice the value of the rebate.
38. RCI and Videotron objected to MTS Allstream's proposal, arguing that spreading the rebate over a six-month period would be an unreasonable customer retention scheme, since it would require that subscribers remain with MTS Allstream for the duration of that period to receive the full value of the rebate. In addition, Videotron submitted that the rebate should be issued in the form of a cheque instead of a billing credit so that the subscriber would not be tied to MTS Allstream in any manner.
39. The Commission considers that MTS Allstream should have some flexibility in the options it provides to its customers regarding the rebate. However, the Commission notes RCI's and Videotron's concerns about the potential for existing subscribers to be tied to MTS Allstream in order to receive the rebate or promotion.
40. Accordingly, the Commission directs MTS Allstream to fully rebate or credit the funds within **six months** of the date of this decision. The rebate plan may include options for customers, such as an option to accept a promotion of greater value than the value of the rebate obligation, as long as the full value of the promotion is provided within six months of the date of this decision. Further, in communicating with its subscribers, MTS Allstream is to note that the rebate has been ordered by the Commission.
41. Regarding subscribers who disconnect their services before the six-month period elapses and the full rebate is given, the Commission directs MTS Allstream to apply any remaining rebate credit to their final bill with respect to the disconnected services.

Should MTS Allstream be permitted to recover the cost of providing rebates from its deferral account?

42. MTS Allstream proposed to recover all costs to implement its proposed rebate program, including the two promotions, from its deferral account.

43. The Commission considers that the simplest and most cost-effective method to provide the rebate would be via a one-time billing credit on a subscriber's monthly bill with an explanation on the bill as to why the rebate is being given. The offer of other rebate options, such as promotions, a rebate cheque, or rebates over a period longer than one month, would increase the cost of the rebate plan. The Commission considers it appropriate that the deferral account be used to cover the cost of rebating customers. However, in order to maximize the benefit to subscribers, only the costs associated with the least-cost alternative, a one-time bill credit, should be recovered from the deferral account.
44. Accordingly, the Commission **approves** the drawdown from MTS Allstream's deferral account of the cost to process a one-time billing adjustment on each subscriber's monthly bill. The Commission has determined this amount to be \$0.47 million, which includes costs for billing system adjustments, billing notices, and increased call centre activity.

IV. Is MTS Allstream's proposed competitor services tariff appropriate?

45. In Telecom Decision 2006-9, the ILECs were required to make the backbone facilities funded through the deferral accounts available to alternative broadband service providers (ABSPs) at a minimal rate.
46. In Tariff Notice 687, MTS Allstream filed proposed tariffs and supporting cost studies for its competitor backbone services (CBSs). MTS Allstream submitted that its proposal would enable ABSPs accessing any of the approved communities to deliver traffic to Winnipeg, Manitoba for termination at an ABSP's co-located facility.
47. Specifically, MTS Allstream proposed to introduce the following new services:
- i) Access Services Tariff (AST) item 118.4.A.2, Competitor Backbone Service for Use in 16 Approved Broadband Access Communities in Manitoba – Ethernet Extension Feature (EEF), which would transport the ABSP's Internet traffic from the approved community to the first community that has an existing Ethernet switch on the MTS Allstream Ethernet backbone network; and
 - ii) AST item 123.4.E, Ethernet Transport Service – Deferral Account Backhaul Path (DABP), which would provide for the transport of the ABSP's Internet traffic from the first community with an Ethernet switch, through the MTS Allstream provincial network, and back to Winnipeg, Manitoba.
48. MTS Allstream submitted that it had determined that the most effective service design for providing end-to-end connectivity for an ABSP in the approved communities is to provide a CBS that uses a combination of service components from its existing tariffed services in conjunction with two new service components. Accordingly, MTS Allstream proposed to offer the following four existing tariffed services in conjunction with the two new services:

- i) AST item 122, Ethernet Central Office Connecting Link Service;
- ii) AST item 123.4.A, Ethernet Transport Service – Ethernet Port;
- iii) AST item 123.4.C, Ethernet Transport Service – Carrier-to-Carrier Interconnection; and
- iv) Special Services and Facilities Tariff item 6900, Ethernet Access Service.

49. The Commission received no comments on Tariff Notice 687.

50. The Commission considers that MTS Allstream's proposed service configuration is consistent with the determination in Telecom Decision 2008-1 that MTS Allstream must make backbone facilities funded through its deferral account available to ABSPs. However, the Commission considers that the following issues with respect to Tariff Notice 687 remain to be addressed in this decision:

- What service classifications should apply to the proposed EEF and DABP services?
- Are the proposed rates for the EEF and DABP services reasonable?

What service classifications should apply to the proposed EEF and DABP services?

51. MTS Allstream submitted that its proposed EEF service should be classified as a conditional essential service and that its proposed DABP service should be classified as a conditional mandated non-essential service.

52. In light of the fact that EEF service has been mandated and is required, along with DABP service, for ABSPs to provide their services in the approved communities, the Commission considers it appropriate to use the same classification for both services. The Commission also notes that the conditional mandated non-essential classification is being applied to equivalent services offered by other ILECs in communities that are eligible for deferral account funding. Accordingly, the Commission determines that MTS Allstream's services should be classified as conditional mandated non-essential services.

Are the proposed rates for the EEF and DABP services reasonable?

53. MTS Allstream filed proposed rates for its EEF and DABP services in each of the approved communities, along with supporting Phase II cost studies and price floor tests.

54. The Commission has reviewed the cost studies and price floor tests, and considers that the costs submitted are reasonable. The Commission also considers the proposed rates for the EEF service to be appropriate.

55. The Commission notes, however, that MTS Allstream's proposed rates for the DABP service include high markups. Because MTS Allstream will be compensated from its deferral account for the uneconomic portion of its costs to build the backbone facilities in question, the Commission mandated in the deferral account decisions that ABSPs shall have access to these facilities at a minimal rate. Accordingly, the Commission considers that the proposed markups should be lowered to ensure that the rates are minimal.
56. In light of the foregoing, the Commission **approves** the proposed rates for the EEF service, but modifies the proposed rates for the DABP service as follows:

Approved community	Monthly rate (\$)
Cooks Creek	91.55
Cranberry Portage	130.09
Dallas	98.53
Falcon River	87.39
Lee River	132.92
Lynn Lake	130.09
Nelson House	130.09
Oswald	91.55
Poplar Point	87.39
Rockwood	88.77
Roseau River	91.64
Sandy Bay	90.22
Spruce Woods	88.77
St. Eustache	87.39
Sunset Bay	132.92
Woodridge	90.22

Conclusion

57. In light of all the above, the Commission **approves** Tariff Notice 687, subject to the preceding modifications.

Ongoing reporting requirements

58. In Telecom Decision 2008-1, the Commission directed the ILECs to file annual reports, by 31 March of each year, beginning in 2009 and ending in 2012. These reports were to include, among other things, annual updates to cost studies and revenue assumptions for the broadband expansion program, and annual adjustments to the deferral account balances for activities carried out in the previous year. In light of the Commission's determinations herein that the amount of funding available for broadband expansion shall be fixed at the amount approved in this decision and that no further adjustments will be permitted, the Commission no longer requires the level of detail in these reports set out in Telecom Decision 2008-1.

59. Accordingly, the Commission directs MTS Allstream to file an annual report containing a description of its previous year's broadband rollout, the service introduction date for the communities in which broadband service was made available, and its proposed rollout plan for the remaining years of its broadband expansion program. This report must be filed on 31 March of each year, beginning in 2011 and ending in 2015.
60. MTS Allstream is also directed to provide, in its 31 March 2011 annual report, a confirmation that it has completed its rebate plan and a calculation of the total amount of funds that were rebated.

Secretary General

Related documents

- *Use of deferral account funds to improve access to telecommunications services for persons with disabilities and to expand broadband services to rural and remote communities*, Telecom Decision CRTC 2008-1, 17 January 2008
- *Telecom Public Notice CRTC 2006-15 – Use of deferral account funds to expand broadband services to certain rural and remote communities*, Telecom Decision CRTC 2007-50, 6 July 2007, as amended by Telecom Decision CRTC 2007-50-1, 27 July 2007
- *Price cap framework for large incumbent local exchange carriers*, Telecom Decision CRTC 2007-27, 30 April 2007
- *Disposition of funds in the deferral accounts*, Telecom Decision CRTC 2006-9, 16 February 2006
- *Extension of the price regulation regime for Aliant Telecom Inc., Bell Canada, MTS Allstream Inc., Saskatchewan Telecommunications and TELUS Communications Inc.*, Telecom Decision CRTC 2005-69, 16 December 2005
- *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