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

Telecom Decision CRTC 2010-639

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Follow-up to Telecom Decision 2008-1 – Proposal by TELUS Communications Company to dispose of the funds remaining in its deferral accounts

File numbers: 8638-C12-200817505; 8638-C12-200817512; and 8638-C12-200817520

In this decision, the Commission approves the use of deferral account funds by TCC to expand broadband services to 159 communities in Alberta, British Columbia, and Quebec. The Commission also directs the company to rebate funds remaining in its deferral accounts 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, proposals for TELUS Communications Company (TCC) to expand broadband services to certain rural and remote communities in Alberta, British Columbia, and Quebec (the approved communities) using funds from its deferral accounts. In Telecom Decision 2008-1, the Commission also approved the use of certain other funds in TCC's deferral accounts 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 TCC's deferral accounts after funds were allocated to TCC's broadband plans and accessibility initiatives should be rebated to residential subscribers of record in non-HSCAs 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 to the consumer rebates.[1] Following the dismissal of the appeals to the Supreme Court of Canada, TCC submitted revised plans to provide broadband service to the final 159 communities approved in the deferral account decisions and in related decisions.[2] TCC also submitted a plan to rebate the funds remaining in its deferral accounts to residential subscribers in non-HCSAs.

4. The Commission received comments from Axia SuperNet Ltd. (Axia), Barrett Xplore Inc. and Barrett Broadband Networks Inc. (collectively, Barrett), the Coalition of Internet Service Providers Inc., MTS Allstream Inc. (MTS Allstream), Open Source Solutions (OSS), the Public Interest Advocacy Centre and Canada Without Poverty (collectively, PIAC et al.), and Rogers Communications Inc. (RCI). 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 MTS Allstream 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 are the remaining balances in TCC's deferral accounts?

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

    III. Is TCC's proposed rebate plan reasonable?

    IV. Is TCC's competitor services proposal appropriate?

I. What are the remaining balances in TCC's deferral accounts?

7. As part of its revised plans, TCC estimated its deferral account balances, as of 26 February 2010, at $145.1 million for its Alberta and British Columbia territories, and $8.8 million for its Quebec territory. These estimated balances include $8.1 million to fund initiatives to improve accessibility for persons with disabilities in Alberta and British Columbia, and $0.3 million to fund such initiatives in Quebec.

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[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.

[2] Other decisions relating to the approval of the 159 communities included Telecom Decisions 2008-5, 2008-29, 2008-87, and 2008-110.

8. The Commission notes that TCC's estimates do not include interest accumulated beyond 31 May 2007. The Commission also notes that TCC did not object to including recurring amounts in its deferral account balances and included them in its estimates up to 26 February 2010.

9. 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 also 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 accounts 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.

10. The Bell companies and MTS Allstream opposed the continued accumulation of interest in the deferral accounts beyond 31 May 2006 and 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 that date.

11. More specifically, the Bell companies 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.

Commission's analysis and determinations

12. 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.

13. The Commission notes that, as TCC submitted, 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.

14. 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.

15. In light of the foregoing, the Commission considers that the ILECs' deferral accounts should continue to accrue interest and recurring amounts beyond the date proposed by TCC. 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.

16. Accordingly, the Commission finds that TCC's deferral account balances should be adjusted to include interest beyond 31 May 2007 and that the recurring amounts should be calculated beyond 26 February 2010 and added to the company's accumulated balances.

17. 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.

18. In light of all the above, the Commission is adjusting TCC's estimates of the accumulated balances in both of its deferral accounts to include the recurring amounts accruing in the accounts beyond 26 February 2010 and the annual interest amounts beyond 31 May 2007. Consequently, the Commission determines the accumulated balances in TCC's deferral accounts, as of 31 May 2010, to be $156.5 million for the Alberta and British Columbia territories, which includes $8.1 million to fund initiatives to improve accessibility for persons with disabilities, and $9.2 million for the Quebec territory, which includes $0.3 million for accessibility initiatives.

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

19. In the deferral account decisions, the Commission directed TCC 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 TCC to offer various speed levels. Finally, the Commission directed TCC to make use of Alberta SuperNet (SuperNet) facilities in those communities where it would be less expensive to do so than to construct new facilities.

Proposed broadband service

20. TCC 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. TCC noted that it will use digital subscriber line (DSL) technology to provide these services.

21. In the Commission’s view, TCC’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.

Use of the SuperNet

22. TCC identified some communities where it would be less expensive to make use of SuperNet than to build its own facilities. Despite the Commission’s direction to use SuperNet in these communities, however, TCC proposed that it be permitted to build its own facilities while drawing down from the deferral accounts only the amount that would be required if it had used SuperNet. TCC proposed to supplement the amount drawn down with its own funds to cover the full cost of building its own facilities.

23. TCC argued that using SuperNet would be complex and would unnecessarily increase the cost to support broadband services that would have to be provisioned to span the two networks. TCC submitted that its proposal would improve the robustness and reliability of its network, and would provide it with end-to-end control over its broadband network, resulting in greater control over quality of service, trouble detection, and problem resolution.

24. Axia submitted that TCC had inflated the costs of using SuperNet facilities and understated the costs of building its own facilities. Axia also submitted that, in the proceeding associated with Axia’s application to review and vary Telecom Decision 2008-1, TCC stated that in most communities it would be less costly to interconnect with the SuperNet backbone network than to construct or upgrade its own backbone facilities. Axia submitted that TCC has reversed this previous position without justification and that it should be required to use the SuperNet network to avoid building duplicate facilities.

25. The Commission has reviewed the costs provided by TCC and Axia, and concludes that there are some communities where it would be less costly for TCC to use SuperNet facilities than to build its own. However, the Commission considers that, for these communities, if TCC withdraws from its deferral accounts only the amount of the cost to use the SuperNet network, the company would withdraw the same amount as if it had chosen the least-cost option.

26. The Commission notes that the service provided to subscribers will be the same regardless of which facilities TCC uses, and will be equivalent to TCC’s broadband services provided in urban areas, thereby satisfying the Commission’s determination in the deferral account decisions. Further, while the Commission considers that it would be beneficial to avoid the duplication of facilities in certain approved communities, it concludes that the benefits associated with TCC having greater control over its end-to-end broadband network are significant.

27. In light of the foregoing, the Commission finds that TCC’s proposal to build its own facilities in certain approved communities, while drawing down from the deferral accounts only the amount of funds that would be required if it had used the SuperNet network, is acceptable. The Commission also finds that the amounts that TCC withdraws from its deferral accounts for these communities must reflect the current rates that Axia would charge TCC for use of its facilities.

Proposed broadband costs

28. TCC estimated its costs for providing broadband service to the approved communities to be $119 million for Alberta and British Columbia, and $3.9 million for Quebec. TCC requested that a contingency fund equal to 10 percent of the funds approved for broadband expansion be established to allow for any unexpected cost overruns. In the event that the actual costs incurred after completion of the broadband expansion program are less than the amount in this contingency fund, TCC proposed to rebate the remaining funds to subscribers at that time.

29. Barrett argued that TCC’s proposed broadband costs appear to be excessive and do not appear to constitute the least-cost technology option.

30. Axia submitted that the Commission should not approve the establishment of a contingency fund, since such a mechanism could lead to companies understating costs to demonstrate that the least-cost technology is being proposed, then claiming contingency fund costs later.

31. The Commission has reviewed TCC’s current proposed costs and notes that they have generally increased significantly, particularly in British Columbia and Quebec, from those proposed in the 2006 cost studies submitted by TCC in the proceeding that led to Telecom Decision 2008-1. The Commission also notes that these cost increases exceed those that might be expected due to inflation and other developments since 2006.

32. The Commission considers that TCC has overstated its proposed costs in some areas and has not provided sufficient justification to substantiate its cost increases. Specifically, the Commission finds that TCC’s proposed outside plant, central office, and access cost estimates for certain communities in its British Columbia and Quebec territories are considerably higher than the estimates in its 2006 cost study and in its proposed 2010 cost estimates for other communities. Since many of the communities in question are in remote locations, the Commission recognizes that the costs of providing broadband service would be high. However, the Commission considers that TCC’s cost estimates for these communities are still overstated and has adjusted the company’s proposed outside plant, central office, and access costs downward, at the community level.

33. Based on its review of TCC’s current cost estimates, the Commission finds that it would be reasonable to approve $99.4 million for broadband expansion in Alberta and British Columbia, and $3.4 million for broadband expansion in Quebec. 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.

34. 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.

35. With this decision, the Commission determines on a final basis the apportionment of the remaining balances in TCC's deferral accounts. As indicated above, in determining the amounts to be apportioned, the Commission has calculated the interest that accumulated in the funds until 31 May 2010. The Commission notes that the interest that accumulates between 1 June 2010 and the disposition of the funds will be available to TCC. In light of this, the Commission considers that there is no requirement for a contingency fund to cover unforeseen broadband expansion expenses, as proposed by TCC. The Commission also considers that no further adjustments to the remaining balances need to be made after 31 May 2010.

36. Accordingly, the Commission **approves** drawdowns of $99.4 million for Alberta and British Columbia, and $3.4 million for Quebec, from TCC's deferral accounts for the expansion of broadband services, and directs TCC 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.

III. Is TCC's proposed rebate plan reasonable?

37. The Commission considers that, once the above-noted adjustments have been made to TCC's deferral account balances and broadband expansion costs, the amount available for rebate to subscribers in non-HCSAs is $49.0 million for Alberta and British Columbia, and $5.5 million for Quebec. Accordingly, the Commission considers that the following issues must be addressed:

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

Who should receive the rebate?

38. As stated above, the Commission determined in Telecom Decision 2008-1 that any funds available for rebate in TCC's deferral accounts should be rebated to residential subscribers in non-HCSAs as of the date of that decision, 17 January 2008.

39. TCC submitted that, due to an internal misunderstanding of the requirement to capture a record of its subscribers as of 17 January 2008, it does not have this data. TCC therefore proposed that it provide rebates only to current residential subscribers in non-HCSAs, stating that the cost to do so would be modest in comparison with the cost to locate its subscribers as of 17 January 2008.

40. TCC noted the Commission’s determination in Telecom Decision 2005-17, with respect to a similar issue, that the cost to locate former customers would likely outweigh any benefits derived, and that distributing funds to customers of record on a selected date would be the simplest and most efficient plan to administer.

41. PIAC et al. argued that customers of record as of 28 March 2008 should be credited or sent the full rebate, since this would be the best proxy of those customers who paid the rates for services that were not reduced by the price cap formula as a result of Telecom Decision 2002-34.

42. 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 TCC to rebate its residential subscribers of record in non-HCSAs as of the date of this decision.

How should the funds be rebated?

43. TCC proposed that subscribers in Alberta and British Columbia be given a one-time billing credit and that subscribers in Quebec be rebated either through a billing credit or by allowing them to apply the rebate credit towards new TCC services as part of a promotion that would have a greater value than the rebate.

44. RCI submitted that only a one-time rebate is appropriate because the proposal to offer promotions would be anti-competitive if the rebate were tied to a subscription to additional TCC services. PIAC et al. argued that consumers should be credited or sent the full rebate with no promotions employed.

45. The Commission considers that TCC should have some flexibility in the options it provides to its customers regarding the rebate. However, the Commission notes RCI’s concerns about the potential for existing subscribers to be tied to TCC in order to receive the rebate or promotion.

46. Accordingly, the Commission directs TCC 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, TCC is to note that the rebate has been ordered by the Commission.

47. Regarding subscribers who disconnect their services before the six-month period elapses and the full rebate is given, the Commission directs TCC to apply any remaining rebate credit to their final bill with respect to the disconnected services.

Should TCC be permitted to recover the cost of providing rebates from its deferral accounts?

48. TCC proposed to recover certain costs associated with implementing its proposed rebate program from its deferral accounts.

49. 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 accounts 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 accounts.

50. Accordingly, the Commission **approves** drawdowns from TCC's deferral accounts of the cost to process a one-time billing adjustment on each subscriber's monthly bill. The Commission has determined these amounts to be $0.77 million for Alberta and British Columbia, and $0.04 million for Quebec, including costs for billing system adjustments, billing notices, and increased call centre activity.

IV. Is TCC's competitor services proposal appropriate?

51. 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.

52. TCC proposed to make three competitor backbone services (CBSs) available to ABSPs to enable them to connect to Internet backbone facilities in the approved communities: ISP Connection Service, Carrier Internet E10 Service, and Carrier WAN E10 Service. TCC added that its existing tariffed wholesale asymmetric digital subscriber line (ADSL) services will also be available.

53. The Commission has identified the following issues with respect to TCC's CBSs to be addressed in this decision:

- Should the proposed services be tariffed?
- What service classification should apply?
- Is the proposed service configuration appropriate?
- Are the proposed rates reasonable?
- Are the current rates for the tariffed wholesale ADSL services appropriate in the approved communities?
- After providing facilities to an approved community, should TCC wait a year before providing broadband service?

Should the proposed services be tariffed?

54. TCC submitted that the CBSs would only be made available to ABSPs in the approved communities and that they are similar to forborne Ethernet transport services, which do not require tariffs. TCC therefore proposed to offer these services to ABSPs only on a contractual basis. TCC submitted that it would be unnecessary and confusing to make the CBSs available on a tariffed basis, as directed by the Commission, when they will only be available in a limited number of communities, spread over a multi-year implementation schedule.

55. Axia and MTS Allstream submitted that TCC's CBSs are mandated services that must be tariffed.

56. The Commission notes that in Telecom Decision 2008-1, it mandated TCC to provide access to backbone facilities funded by the deferral accounts to any ABSP requesting access. The Commission also notes that, in the absence of tariffs for CBSs, an ABSP would be unable to rely on Commission-approved rates, terms, and conditions when it is not satisfied with an ILEC's contract proposal. Therefore, the Commission determines that the CBSs must be tariffed.

57. In light of the foregoing, the Commission directs TCC to file, within **60 days** of the date of this decision, proposed tariffs to provide its CBSs, consistent with the determinations in this decision.

What service classification should apply?

58. TCC proposed to classify its CBSs as non-essential subject to phase-out, with the phase-out period to be determined by the Commission. TCC submitted that the nature of the proposed services most closely matches the nature of services, such as Ethernet access services, that were given this classification by the Commission in Telecom Decision 2008-17.

59. MTS Allstream submitted that TCC's proposed classification is inconsistent with the fact that the services are uneconomic and that the Commission mandated and approved them in Telecom Decision 2008-1.

60. The Commission considers that, because TCC's proposed CBSs are mandated, it is not appropriate to classify them as non-essential subject to phase-out. Given the non-essential nature of these mandated services, the Commission determines that they are to be classified as conditional mandated non-essential.

61. The Commission notes that in Telecom Regulatory Policy 2009-19, it permitted forborne negotiated agreements for services classified under this category. Therefore, the Commission determines that TCC is permitted to provide its proposed CBSs under negotiated agreements on a forborne basis.

Is the proposed service configuration appropriate?

62. In Telecom Decision 2008-1, the Commission found that the competitor services proposed by TCC at that time were acceptable and directed the company to file tariffs for them. The Commission also concluded that each ILEC should set the amount of bandwidth it makes available to any ABSP, in line with the provisioning guidelines it applies to itself for similar services and end-user demand levels. Based on these directives, TCC proposed to offer limits of either 2 megabits per second (Mbps) or 10 Mbps of bandwidth capacity.

63. MTS Allstream submitted that TCC's proposed CBSs appear to be identical to the services that the Commission found acceptable in Telecom Decision 2008-1. However, MTS Allstream submitted that TCC's proposed limits of bandwidth capacity may not reflect TCC's current provisioning practices.

64. In response, TCC affirmed that its current provisioning practices have not changed from those proposed in the proceeding that led to Telecom Decision 2008-1. However, TCC noted that since its initial proposal in 2006, it has changed its proposed CBSs from a half-duplex to a full-duplex communication system.

65. The Commission considers that TCC's proposal with respect to bandwidth capacity limits is consistent with its previous proposal and is acceptable.

66. In light of its review of TCC's ISP Connection Service, Carrier Internet E10 Service, and Carrier WAN E10 Service, the Commission determines that TCC's proposed service configuration is appropriate.

Are the proposed rates reasonable?

67. In the proceeding that led to Telecom Decision 2008-1, TCC proposed to set its CBS rates in British Columbia and Quebec at levels established through the Connecting Communities Agreement (CCA) between itself and the Government of British Columbia. For Alberta, TCC proposed rates that reflected the then-existing SuperNet rates. In Telecom Decision 2008-1, the Commission found that TCC's proposed rates were acceptable and directed the company to file tariffs for the services in question.

68. In its submission for the current proceeding, TCC proposed to use the current rates established through the CCA between itself and British Columbia for all three provinces. TCC also proposed to recover the uneconomic costs of its proposed services from the deferral accounts, including the construction costs for Ethernet access.

69. MTS Allstream submitted that, while there is good reason to believe that provisioning costs have decreased since 2006, TCC has increased its proposed monthly recurring charges as reflected in its current CCA rates. MTS Allstream also submitted that TCC has proposed to introduce a provisioning/construction charge in the guise of an installation charge, contrary to the Commission's determinations in Telecom Decision 2008-1.

70. In response, TCC submitted that it has modified its proposed pricing for the CBSs to align with its current pricing for services provided through the CCA in British Columbia, which includes the addition of a $1,000 installation charge for the CBSs.

71. OSS submitted that the rates proposed by TCC are reasonable.

72. With respect to the monthly recurring charges, the Commission notes its above determination that it is acceptable for TCC to build its own facilities in Alberta instead of using SuperNet's network, just as it will construct its own facilities in British Columbia and in Quebec. The Commission also notes that it has already determined, in Telecom Decision 2008-1, that it is acceptable for TCC to use the CCA rates in British Columbia and Quebec. In light of this, the Commission concludes that TCC's proposal to extend the same rate schedule to Alberta is acceptable.

73. With respect to the installation charge, the Commission notes that in Telecom Decision 2008-1, it determined that TCC should waive the charges for the construction of Ethernet access facilities for an ABSP and recover the amount of the construction costs from the deferral accounts. The Commission considers that TCC's proposed installation charge forms part of the construction costs that will be recovered and should therefore not be included in TCC's proposed rates.

74. In light of the above, the Commission determines that TCC's proposed monthly rates are reasonable, with the exception that the installation charges should be removed from the rate tables.

Are the current rates for the tariffed wholesale ADSL services appropriate in the approved communities?

75. In the proceeding that led to Telecom Decision 2008-1, TCC stated that its current tariffs for wholesale ADSL services would apply, at prevailing tariffed rates, in the approved communities where it was providing ADSL service. In the current proceeding, TCC indicated that it was not proposing any changes to its rates for these wholesale services.

76. MTS Allstream submitted that the rates for wholesale ADSL services in approved communities should reflect only the cost of providing the services, since the cost of the initial investment in these communities will be funded through the deferral accounts. In response, TCC noted that the tariff for wholesale ADSL services applies to its entire serving territory and that no provision is made for differences in cost between different exchanges, bands, etc.

77. The Commission notes that in Telecom Decision 2006-9, it determined that any wholesale broadband service offered by the ILECs would be made available in all approved communities. The Commission also notes that in Telecom Decision 2008-1, it was satisfied that the ILECs' proposals to make their wholesale broadband services available to ABSPs at prevailing rates were consistent with Telecom Decision 2006-9. Therefore, the Commission determines that it is appropriate for TCC to provide its wholesale ADSL services in the approved communities at prevailing tariff rates.

After providing facilities to an approved community, should TCC wait a year before providing broadband service?

78. In the proceeding that led to Telecom Decision 2008-1, TCC proposed to provide broadband transport facilities to an approved community and then wait a year before providing broadband service to that community to determine if an ABSP planned to serve the community. In the current proceeding, TCC revised this proposal and indicated that it will work with potential ABSPs during the year preceding the construction of planned transport facilities in unserved communities to allow the development of transport facilities and access facilities to be completed in the same construction season, with service being offered as soon as construction is complete. TCC submitted that broadband service will be provided to customers more quickly under this proposal than under its previous proposal.

79. TCC indicated that the CBSs will continue to be made available in approved communities, even if no ABSP expresses interest in becoming the retail broadband service provider in a given community instead of TCC. TCC submitted that, in communities where it is providing new broadband service, the existing tariffed wholesale ADSL service will also be available.

80. The Commission considers that TCC's revised proposal complies with the determination in Telecom Decision 2008-1 that an ILEC should not begin to market its own services to end-users until a competitor services tariff is in place and ABSPs have access to the ILEC's facilities and services. The Commission notes that this determination allows service to be provided in a more timely fashion in cases where no ABSP expresses an interest in serving the community. Accordingly, the Commission determines that TCC's revised proposal is acceptable.

Conclusion

81. In light of all the foregoing, the Commission directs TCC to file, within **60 days** of the date of this decision, proposed tariffs to provide its CBSs, consistent with the determinations in this decision.

Ongoing reporting requirements

82. 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.

83. Accordingly, the Commission directs TCC 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.

84. TCC 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

- *Bell Canada et al.'s application to review and vary Telecom Decision 2008-17 with respect to negotiated agreements*, Telecom Regulatory Policy CRTC 2009-19, 19 January 2009

- *Axia SuperNet Ltd. – Request to exclude certain Alberta communities from the approved list of communities for broadband service expansion by TELUS Communications Company in Telecom Decision 2008-1*, Telecom Decision CRTC 2008-110, 25 November 2008

- *Axia SuperNet Ltd. – Application to review and vary part of Telecom Decision 2008-1 related to the use of deferral account funds for broadband expansion*, Telecom Decision CRTC 2008-87, 9 September 2008

- *Follow-up to* Andy Shadrack, Director, Area D, Regional District of Central Kootenay **–** Application to review and vary certain determinations in Telecom Decision 2007-50, *Telecom Decision 2008-5*, Telecom Decision CRTC 2008-29, 2 April 2008

- *Revised regulatory framework for wholesale services and definition of essential service,* Telecom Decision CRTC 2008-17, 3 March 2008

- *Andy Shadrack, Director, Area D, Regional District of Central Kootenay – Application to review and vary certain determinations in Telecom Decision 2007-50*, Telecom Decision CRTC 2008-5, 25 January 2008

- *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

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