



## Telecom Decision CRTC 2010-899

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Ottawa, 2 December 2010

### **MTS Allstream Inc. – Application to direct TBayTel to correct overbilling for competitor digital network services**

File number: 8661-M59-201011452

#### **Introduction**

1. The Commission received an application by MTS Allstream Inc. (MTS Allstream), dated 16 July 2010, in which the company requested that the Commission direct TBayTel to refund to MTS Allstream overbilled charges for competitor digital network (CDN) services. MTS Allstream also requested that TBayTel be directed to refund all overbilling of inter-office channels, alleging that TBayTel had incorrectly identified its wire centres with regard to CDN services.
2. The Commission received comments from TBayTel. The public record of this proceeding, which closed on 26 August 2010, 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.
3. The Commission has identified the following issues to be addressed in this decision:
  - I. Should the Commission direct TBayTel to refund MTS Allstream?
  - II. Are TBayTel's wire centres correctly identified with regard to CDN services?

#### **I. Should the Commission direct TBayTel to refund MTS Allstream?**

4. In Telecom Order 2007-398, the Commission approved on an interim basis the CDN Services section of TBayTel's Carrier Access Tariff (CDN services tariff). On 23 October 2009, at the request of MTS Allstream, TBayTel re-rated some of MTS Allstream's circuits from digital network access (DNA) rates to CDN rates. In Telecom Order 2010-294, the Commission approved TBayTel's CDN services tariff on a final basis.
5. MTS Allstream submitted that it had been overbilled by TBayTel for CDN services. It argued that following the finalization of CDN services in Telecom Decision 2005-6, incumbent local exchange carriers (ILECs) were required to inform their wholesale customers of the introduction of CDN rates and services, and to explain the steps that those customers must follow to receive CDN rates. MTS Allstream indicated that TBayTel did not provide proper notification when it filed its CDN services tariff or when the tariff became effective.

6. MTS Allstream claimed that TBayTel made no mention of the tariff when the two companies were negotiating an extension to their Dedicated Services Interconnection and Settlement Agreement (DSISA), which included CDN-eligible circuits. MTS Allstream argued that for the two-year period before TBayTel began charging it CDN rates, it had been overbilled at DNA rates and that, accordingly, it is entitled to a refund.
7. TBayTel submitted that the DSISA set out the contractual relationship between the parties, including the DNA rates to be charged for the circuits provided to MTS Allstream. TBayTel argued that when it was negotiating the DSISA with MTS Allstream, both parties had access to the same information, and therefore MTS Allstream had no grounds for claiming that TBayTel had concealed the existence of the CDN services tariff.
8. Finally, TBayTel submitted that, based on the arguments put forward in its Part VII application leading to Telecom Decision 2010-897, CDN rates should no longer be available to MTS Allstream.

#### **Commission's analysis and determinations**

9. The Commission notes that in Telecom Decision 2005-6, which established the CDN services framework, it determined that the large ILECs<sup>1</sup> should provide CDN services to competitors. The Commission notes, however, that the small ILECs were not parties to the proceeding that led to that decision and that the determinations set out in that decision do not apply to the small ILECs. The Commission also notes that the implementation of local competition in the territories of the small ILECs did not address the inclusion of CDN services.
10. The Commission further notes that in Telecom Decision 2005-6, the large ILECs subject to that decision, with the exception of Saskatchewan Telecommunications (SaskTel), were compensated through their deferral accounts for the loss of retail revenues due to the introduction of CDN services in their territories. Because SaskTel's deferral account did not contain sufficient funds to compensate the company, the Commission established alternative rules to minimize related revenue impacts. However, the Commission has not examined the issue of compensation to TBayTel for the loss of retail revenue due to the introduction of CDN services in its territory.
11. Finally, the Commission notes that prior to 23 October 2009, MTS Allstream was not aware of the existence of TBayTel's CDN services tariff. As such, the Commission considers that MTS Allstream would have bid on and secured contracts with end-users based on DNA rates, not CDN rates.

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<sup>1</sup> Bell Aliant Regional Communications, Limited Partnership; Bell Canada; MTS Allstream; Saskatchewan Telecommunications; and TCC

12. In light of the unique circumstances of this case, the Commission considers that it would not be appropriate to require TBayTel to apply the CDN services tariff in its territory for the period in question. Accordingly, the Commission **denies** MTS Allstream's request that TBayTel be directed to refund MTS Allstream.

## **II. Are TBayTel's wire centres correctly identified with regard to CDN services?**

13. MTS Allstream claimed that TBayTel rates its CDN circuits as if they are served from 12 wire centres within the Thunder Bay exchange, when actually there are only one or two serving wire centres. MTS Allstream submitted that, according to Telecom Decision 2002-70, TBayTel's wire centres were only recognized as such for the purpose of calculating the total subsidy requirement in high-cost serving areas (HCSAs), and should not be recognized as serving wire centres for CDN services.

14. MTS Allstream also submitted that TBayTel is (a) charging for CDN inter-office channels based on a definition of "serving wire centre" that is inconsistent with the definition contained in the CDN services tariff, and (b) charging for a CDN inter-office channel in addition to a CDN access in cases where charging for the CDN access alone would recover its costs.

15. TBayTel submitted that its wire centres were correctly identified in Telecom Decision 2002-70. It argued that the determination in that decision regarding its wire centres was independent of the determination regarding the definition of a wire centre for the purpose of calculating the total subsidy requirement in HCSAs.

### **Commission's analysis and determinations**

16. The Commission notes that in Telecom Decision 2002-70 it stated the following:

Based on the information provided by Thunder Bay Telephone [TBayTel] in this application, the Commission finds that the Lithium, Mackenzie, Kakabeka, and Slate River areas clearly meet the definition of a wire centre. Given that each of these wire centres has a total number of NAS of less than 8,000, the Commission *also* finds that these wire centres qualify as HCSAs. [emphasis added]

17. The Commission notes that the use of the word "also" signifies that the Lithium, Mackenzie, Kakabeka, and Slate River wire centres are considered to be wire centres independently of the fact that they also qualify as HCSAs. Accordingly, the Commission considers that TBayTel is correctly relying on Telecom Decision 2002-70 to identify its wire centres for the purpose of the CDN services tariff.

18. In light of the above, the Commission **denies** MTS Allstream's request that TBayTel be directed to refund MTS Allstream due to alleged overbilling of inter-office channels.

Secretary General

## Related documents

- *TBayTel – Application for relief regarding provision of competitor digital network services*, Telecom Decision CRTC 2010-897, 2 December 2010
- Telecom Order CRTC 2010-294, 19 May 2010
- Telecom Order CRTC 2007-398, 29 October 2007
- *Competitor Digital Network Services*, Telecom Decision CRTC 2005-6, 3 February 2005, as amended by Telecom Decision CRTC 2005-6-1, 28 April 2006
- *Thunder Bay Telephone – Application to review and vary certain aspects of Regulatory framework for the small incumbent telephone companies*, *Decision CRTC 2001-756*, 14 December 2001, Telecom Decision CRTC 2002-70, 7 November 2002