



Telecom Decision CRTC 2010-944

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Ottawa, 17 December 2010

MTS Allstream Inc. – Application seeking competitor quality of service rebates from TELUS Communications Company for competitor digital network DS-1 services

File number: 8660-M59-201008243

In this decision, the Commission denies MTS Allstream's request for competitor quality of service rebates from TCC for the period prior to the release of Telecom Decision 2009-514. The Commission approves MTS Allstream's request for the three months following the release of that decision and directs TCC to rebate MTS Allstream for missed competitor digital network DS-1 provisioning standards over that three-month period.

Introduction

1. The Commission received an application from MTS Allstream Inc. (MTS Allstream), dated 13 May 2010, seeking rebates from TELUS Communications Company (TCC) in accordance with the Commission's competitor quality of service (Q of S) rate rebate regime for competitor digital network (CDN) DS-1 services.
2. The Commission received comments from TCC. The public record of this proceeding, which closed on 2 September 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Background

3. In Telecom Decision 2005-20, the Commission established the rate rebate plan for competitors, which, among other things, directed large incumbent local exchange carriers (ILECs) to rebate competitors for failing to meet prescribed competitor Q of S targets.
4. In Telecom Decision 2006-34, the Commission finalized the rate rebate plan as it related to CDN services provided by large ILECs. In particular, the Commission set the service standards for the provisioning of CDN services and broadly defined a "no facilities available" (NFA) situation.¹

¹ The introduction of the NFA situation into the rate rebate regime recognized that at times it was not possible for an ILEC to meet provisioning standards because the required facilities were not available. The Commission determined that the necessary steps to acquire such facilities were not completely within the ILECs' control, and that in such cases ILECs and their customers must negotiate in-service dates.

5. In Telecom Decision 2009-514,² the Commission clarified certain circumstances under which an ILEC cannot claim that no facilities are available to provision CDN services, and directed the ILECs to immediately apply the clarified definition.

Should the Commission order TCC to rebate MTS Allstream and, if so, what rebate amount would be appropriate?

6. MTS Allstream submitted that TCC has been making inappropriate use of the NFA exception with regard to the provisioning of CDN DS-1 services, which has led to substandard service and provisioning delays. In particular, MTS Allstream argued that TCC has incorrectly reported meeting competitor Q of S indicator 1.19.³
7. MTS Allstream submitted that TCC's actions in this regard began when the NFA exception was first established as part of the rate rebate plan for CDN services in Telecom Decision 2006-34 and persisted until November 2009 – three months after the Commission clarified the NFA definition in Telecom Decision 2009-514.
8. MTS Allstream indicated that when the NFA definition was clarified, the Commission confirmed that TCC's past NFA claims were often not legitimate. MTS Allstream added that Telecom Decision 2009-514 did not change or refine the NFA rules; it merely confirmed that the existing rules were not being applied appropriately by ILECs in certain situations.
9. For these reasons, MTS Allstream is seeking rate rebates⁴ from TCC over a period of 41 months from June 2006 to November 2009.
10. TCC submitted that, from a procedural perspective, it is improper for MTS Allstream to request rebates dating back to 2006 because, in the application that led to Telecom Decision 2009-514, MTS Allstream stated explicitly that it was not seeking such relief. TCC argued that for this reason, the Commission should deny MTS Allstream's request for rebates for months prior to the release of Telecom Decision 2009-514.
11. TCC further submitted that Telecom Decision 2009-514 clearly defined the circumstances that constitute acceptable NFA situations and that any violations of the NFA exception that occurred prior to the release of that decision should not be penalized. TCC indicated that its actions related to NFA situations were based on its interpretation of the NFA definition that the Commission had introduced in Telecom Decision 2006-34.
12. With regard to MTS Allstream's request for rebates for the period after Telecom Decision 2009-514, TCC submitted that it needed 90 days following the release of that decision to adhere to the clarified NFA rules because implementing the

² MTS Allstream had filed an application alleging that the other ILECs had been incorrectly classifying many CDN orders as NFA orders and excluding these missed orders from provisioning standards. MTS Allstream sought to have the NFA definition clarified.

³ In Telecom Decision 2006-34, the Commission finalized the standard service intervals for the provision of CDN services. Competitor Q of S indicator 1.19 measures confirmed due dates met for CDN services, with a standard of 90 percent.

⁴ MTS Allstream filed the amount it is seeking in confidence.

clarifications was painstaking and complex. TCC argued that rebates should therefore not be required for any missed intervals during the three months following the release of Telecom Decision 2009-514.⁵ TCC submitted that it has met its CDN DS-1 provisioning standards since December 2009.

Commission's analysis and determinations

13. The Commission notes that the record of the proceeding that led to Telecom Decision 2009-514 indicated that there was confusion among parties as to what constituted an acceptable NFA situation. As a result, Telecom Decision 2009-514 clarified the NFA definition for all parties by determining which circumstances would and would not constitute an acceptable NFA scenario, and that parties were to immediately implement the clarified NFA definition for the purposes of their provisioning standards and competitor Q of S reporting.
14. In light of the above, the Commission considers that it would not be appropriate in the circumstances to apply its determinations in Telecom Decision 2009-514 on a retroactive basis. As a result, the Commission **denies** MTS Allstream's request that TCC be required to pay rate rebates to MTS Allstream for months prior to the release of Telecom Decision 2009-514.
15. With regard to the three months following the release of Telecom Decision 2009-514, the Commission notes that it stated in that decision that the ILECs were to immediately implement the NFA clarifications. In the Commission's view, many of the systems and processes associated with NFA situations should already have been in place as a result of its previous determinations and, as such, the changes associated with the clarifications outlined in Telecom Decision 2009-514 should have been relatively minor.
16. Accordingly, the Commission considers it appropriate for TCC to pay rate rebates for missed competitor Q of S provisioning standards as of the date of Telecom Decision 2009-514 and therefore **approves** MTS Allstream's request with respect to that period. Since TCC began meeting the provisioning standards in December 2009, the Commission directs TCC to pay MTS Allstream rebates, plus applicable interest, for any months from September 2009 to November 2009 in which, using the clarified NFA definition, the provisioning standards for indicator 1.19 were not met.⁶

Secretary General

⁵ Telecom Decision 2009-514 was issued on 23 August 2009. Therefore, based on TCC's submission, the first eligible month would be December 2009.

⁶ TCC reported missing its provisioning standards for indicator 1.19 in September and November 2009, and paid the associated rebates to MTS Allstream. However, TCC reported meeting the provisioning standard in October 2009 using its own interpretation of the NFA definition, not the newly clarified definition. The rebate amount that MTS Allstream requested for the month of October 2009 was filed in confidence.

Related documents

- *MTS Allstream Inc. – Application concerning provisioning of competitor digital network services in accordance with competitor quality of service standards*, Telecom Decision CRTC 2009-514, 21 August 2009
- *Follow-up to Finalization of quality of service rate rebate plan for competitors, Telecom Decision CRTC 2005-20 – Service intervals for provisioning CDN services and Type C loops*, Telecom Decision CRTC 2006-34, 26 May 2006
- *Finalization of quality of service rate rebate plan for competitors*, Telecom Decision CRTC 2005-20, 31 March 2005