



Telecom Decision CRTC 2011-87

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Ottawa, 11 February 2011

MTS Allstream Inc. – Application regarding overbilling by TELUS Communications Company for dry loops and signal transfer point links

File number: 8661-M59-201014605

In this decision, the Commission denies MTS Allstream's request that the Commission direct TCC to cease applying the per-order service charge to dry loops and to refund service charges previously applied. The Commission approves MTS Allstream's request that TCC refund charges it applied to signal transfer point (STP) links in Edmonton and Calgary. The Commission directs TCC to refund those STP link charges on the basis that an MTS Allstream email dated 13 February 2007 is equivalent to a Notice of Billing Dispute under the terms of the agreement between the parties.

Introduction

1. The Commission received an application by MTS Allstream Inc. (MTS Allstream), dated 13 September 2010, requesting that the Commission direct TELUS Communications Company (TCC) to (a) cease applying per-order service charges for dry loops;¹ and (b) refund such charges previously applied for dry loops, as well as charges previously applied to signal transfer point (STP) links² in Edmonton and Calgary.
2. The Commission received comments from TCC. The public record of this proceeding, which closed on 22 October 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.
3. The Commission has identified the following two issues to be addressed in its determinations in this decision:
 - I. Should the Commission direct TCC to cease applying a per-order service charge to dry loops and to refund charges previously applied?

¹ A dry loop is an access facility that Internet service providers (ISPs) use in conjunction with the wholesale aggregated asynchronous digital subscriber line (ADSL) service to provide retail Internet services to end-customers who do not subscribe to the incumbent local exchange carrier's wireline telephone service.

² STP links connect the STP networks of different carriers. These networks enable a carrier's customers to complete calls to other carriers' customers.

II. Is a refund of monthly charges for STP links in Edmonton and Calgary appropriate and, if so, how should it be determined?

I. Should the Commission direct TCC to cease applying a per-order service charge to dry loops and to refund charges previously applied?

4. MTS Allstream submitted that when it orders a dry loop in TCC's serving territory, TCC applies a per-loop service charge and a per-order service charge. It further submitted that TCC's dry loop tariff specifies that the service charge for a dry loop is 100 percent of the per-loop service charge that applies to an unbundled loop. MTS Allstream submitted that, therefore, the per-order component of the service charge applied by TCC is not authorized by the dry loop tariff.
5. MTS Allstream requested that the Commission direct TCC to cease applying the per-order service charge when MTS Allstream orders a dry loop, and to provide refunds, under TCC's Terms of Service, of per-order service charges previously charged.
6. TCC submitted that the per-loop service charge for an unbundled loop is comprised of two parts: a fixed per-order component and a variable per-loop component and, therefore, the total service charge that applies to an unbundled loop includes both the per-order component and the per-loop component. It also submitted that the dry loop tariff references the total service charge. TCC argued, therefore, that the per-order service charge is an authorized part of the dry loop tariff and MTS Allstream's application should be denied.

Commission's analysis and determinations

7. The Commission notes that TCC's currently approved dry loop service charges rely on cross-references to the service charges in the unbundled loop tariff, which consist of a per-order service charge³ and a per-loop service charge.⁴ The Commission considers that the service charges that apply to the dry loop through this tariff reference include both the per-order and the per-loop service charges. On this basis, the Commission considers that TCC's application of the per-order and per-loop service charges as specified in its dry loop tariff is consistent with the authorized tariff for this service and, therefore, that both of these charges are appropriate.
8. In light of the above, the Commission **denies** MTS Allstream's request that the Commission direct TCC to cease applying the per-order service charge to dry loops and to refund service charges previously applied.

³ The per-order service charge recovers the major activity costs that are driven by the order itself.

⁴ The per-loop service charge recovers the major activity costs that are driven by the number of loops in the order.

II. Is a refund of monthly charges for STP links in Edmonton and Calgary appropriate and, if so, how should it be determined?

9. MTS Allstream and TCC agreed that MTS Allstream should not have been charged for STP links in Edmonton and Calgary. They also agreed that the STP links in question are provided under the terms of a Master Agreement for Local Interconnection (MALI).
10. However, the parties disagreed about what amount of refund would be appropriate given the terms of the MALI. TCC submitted that in June 2009 it had ceased to apply any charges for the STP links in question on a going-forward basis and that it had refunded charges for the July 2007 to June 2009 period. TCC also submitted that in order to qualify for a refund, MTS Allstream was obliged under the terms of the MALI to file a formal Notice of Billing Dispute. In TCC's view, therefore, MTS Allstream had no right to the refund that TCC had provided since it had never provided such a notice. TCC requested that the Commission direct MTS Allstream to return the entire refund TCC had provided.
11. TCC further submitted that even if the Commission deemed that MTS Allstream had satisfied the requirement to provide a Notice of Billing Dispute as of June 2009, under the terms of the MALI, a disputing party is limited to a maximum refund of one year of billing where a discrepancy occurs. TCC argued that, in this event, MTS Allstream should be required to return one-half of the refund that TCC had provided.
12. MTS Allstream submitted that it had first disputed the charges much earlier than June 2009 and submitted evidence of emails it had sent to TCC challenging the applicability of the STP charges as early as 13 February 2007. MTS Allstream submitted that on the basis of this evidence, the Commission should direct TCC to provide a refund of any billing for STP links that occurred after 13 February 2006, consistent with the terms of the MALI.
13. Regarding TCC's argument that MTS Allstream should have provided a Notice of Billing Dispute, MTS Allstream submitted that TCC had never indicated that such a notice was required in order to qualify for a refund of charges. MTS Allstream submitted evidence of emails in which it had specifically requested that TCC identify the tariff under which the charges were authorized. MTS Allstream noted, however, that it had received no explanation or reference to the MALI in response to these emails. As such, it argued that the appropriate time for TCC to insist on formal notice pursuant to the MALI was when the discrepancy was brought forward, not years later.

Commission's analysis and determinations

14. In *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997 (Telecom Decision 97-8), the Commission mandated that local exchange carriers (LECs) equally share the costs of interconnecting trunks and STP links. Consistent with the determinations set out in Telecom Decision 97-8, the MALI under which these links are provided specifies that costs shall be shared equally between the parties. No rates apply to these interconnection components.

15. The Commission agrees with the parties that the appropriate framework for resolving the dispute over the charges applied to the STP links in Edmonton and Calgary is provided by the MALI. The Commission notes that Schedule E of the MALI indicates in part

25. Each LEC agrees to notify the other LEC upon the discovery of a billing discrepancy. In the event of such discrepancy, the LECs shall endeavour to resolve the discrepancy prior to the next bill date using normal business procedures. If the discrepancy is disputed, a “Notice of Billing Dispute” shall be sent by the disputing LEC pursuant to the Billing section of the C-LOG [Canadian Local Ordering Guidelines]. In the event that a Notice of Billing Dispute is sent, it is the intent of the Parties to have resolution occur at the first level of management before the next bill date, resulting in a settlement of the dispute within that specific billing period.

26. Failure to provide such notice by the next bill date shall not preclude a LEC from subsequently challenging billed charges within a one-year period.

16. The Commission notes that in its 13 February 2007 email MTS Allstream did not refer to the MALI, instead asking TCC to identify the tariff that applied to the service. In its response, TCC did not indicate that the MALI applied. TCC ultimately provided a refund, which it now states is inconsistent with the MALI.

17. In light of the above, the Commission considers that, based on the specific circumstances of this case, MTS Allstream’s 13 February 2007 email provided sufficient notice to TCC that MTS Allstream was disputing the charges applied to the STP links in question. The Commission also considers that refunds of the STP link charges should be provided on that basis.

18. In light of the above, the Commission **approves** MTS Allstream’s request and directs the parties to regard MTS Allstream’s 13 February 2007 email as equivalent to a Notice of Billing Dispute. The Commission also directs TCC to use that date as the basis for refunding the STP link charges applied in Edmonton and Calgary to MTS Allstream under the terms specified in the MALI.

Secretary General