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

Telecom Decision CRTC 2013-480

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Ottawa, 11 September 2013

Review of rate principles for legacy business wholesale high-speed access services

File number: 8661-C12-201303495

In this decision, the Commission determines that the rates for the legacy business wholesale high-speed access (HSA) services of the Bell companies in Ontario and Quebec should be the same as the rates for their comparable legacy residential wholesale HSA services, and that the revised rates should come into effect 45 days from the date of this decision. The revised legacy business wholesale HSA service rates will stimulate competition in the market and ensure that independent service providers will continue to benefit from a common billing model.

Background

1. In Telecom Regulatory Policy 2011-704, the Commission determined, among other things, the billing structure and rates of business wholesale high-speed access (HSA) services offered by the large telephone companies. Independent service providers use these wholesale HSA services to provide high-speed Internet access or other services to their own retail end-users. The Commission does not approve the rates for retail Internet services because there are multiple service providers bringing competition, pricing discipline, innovation, and consumer choice to the retail Internet services market. The Commission also determined the rate principles for business wholesale HSA services such that rates should be based on the Phase II costs[1] of providing the service plus an appropriate markup.[2] The Commission further decided that the business wholesale HSA rates would be set using a higher markup than the markup used to set residential wholesale HSA rates.

2. Based on these determinations, the Commission approved rates for business wholesale HSA services for those companies that offer separate wholesale HSA

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[1] Phase II costing is an incremental costing approach used by the Commission to assess the incumbent carrier's costs of providing wholesale services to competitors.

[2] Markup is defined as the difference between the cost and rate of a service. For example, if the service cost is $100 and the markup is 15 percent, then the service rate is $115. Markup provides a contribution to incumbent carriers' fixed and common costs. Fixed and common costs are costs that do not vary with the offering of a service. These costs are not incremental to providing wholesale services and hence are not recovered in incremental wholesale cost studies. Markup should not be confused with profit margin, given that a number of costs such as corporate overheads and past network investments may be excluded from the incremental costing analysis but would be included in the profit margin analysis.

services for residential and business end-users, i.e., Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (collectively, the Bell companies) and TELUS Communications Company (TCC). The wholesale HSA service rates approved in Telecom Regulatory Policy 2011-704 included the business non-legacy[3] services offered by these companies as well as the business legacy wholesale HSA services of TCC,[4] but excluded the business legacy wholesale HSA services for Bell Aliant in its territory in Ontario and Quebec and Bell Canada (collectively, the Bell companies in Ontario and Quebec).[5]

3. Subsequently, the Canadian Network Operators Consortium Inc. (CNOC) filed an application requesting that the Commission review and vary the rate principles established in Telecom Regulatory Policy 2011-704.

4. In Telecom Decision 2013-73, the Commission considered the above-noted review and vary application and determined that the rates for business wholesale HSA services were to be made equivalent to the rates approved for comparable residential wholesale HSA services.

5. Consistent with other telephone companies and cable carriers, there is no longer a distinction between business and residential non-legacy wholesale HSA service rates for the Bell companies and TCC. However, there continued to be a distinction between legacy business and residential wholesale HSA service rates for the Bell companies in Ontario and Quebec.

6. On 21 February 2013, the Commission issued Telecom Notice of Consultation 2013-79, inviting parties to file comments on whether the principle of applying the same rates for comparable business and residential wholesale HSA service speeds established in Telecom Decision 2013-73 should also apply to the legacy business wholesale HSA service speeds of the Bell companies in Ontario and Quebec.

7. The Commission also invited parties to file comments on whether any modifications to rates resulting from a Commission decision to approve legacy business wholesale HSA rates that are equivalent to the legacy residential wholesale HSA rates for the Bell companies in Ontario and Quebec should be made effective 45 days from the date of such decision, consistent with the effective date of implementation set out in Telecom Decision 2013-73.

8. The Commission received comments on these issues from the Bell companies, the Canadian Association of Internet Providers (CAIP), CNOC, MTS Inc. and Allstream Inc. (collectively, MTS Allstream), Primus Telecommunications Canada Inc.

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[3] Non-legacy business wholesale HSA services are those services offered using fibre-to-the-node technology, which upgrades the access network by extending fibre closer to the customer premises in order to provide increasingly higher-speed access services.

[4] Legacy business wholesale HSA services are those services that were on the market prior to July 2011.

[5] The legacy business wholesale HSA services of the Bell companies in Ontario and Quebec are offered at speeds of up to 640 kilobits per second (Kbps), 1 megabit per second (Mbps), and 6 Mbps. Bell Aliant in its territory in Atlantic Canada does not make a distinction between legacy residential and business wholesale HSA services.

(Primus), Radiant Communications Corp. (Radiant), TCC, and Vaxination Informatique (Vaxination).

9. The public record of this proceeding, which closed on 16 April 2013, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

I. Should the principle of applying the same rates for comparable business and residential wholesale HSA service speeds apply to the legacy business wholesale HSA service speeds of the Bell companies in Ontario and Quebec?

10. The Bell companies, supported by TCC, submitted that there are important differences between the residential and business HSA services that justify keeping the existing different rates intact, such as the level of support provided to the various types of competitors and the value of the services to end-users.

11. The Bell companies, supported by TCC, also submitted that competitors have secured a 25 percent market share of business Internet revenues under a regime where the markup for business legacy wholesale HSA services has been higher than that used for residential legacy wholesale HSA services, proving that the rate level for business legacy wholesale HSA services has not been a barrier to their entry.

12. The Bell companies further submitted that if demand increases for legacy wholesale HSA services, more resources would have to be devoted to the legacy network and fewer resources would be devoted to fibre-to-the-node (FTTN) infrastructure and other next-generation facilities.

13. Finally, the Bell companies submitted that there should be no assumption that the principle (established in Telecom Decision 2013-72) of requiring large telephone companies and cable carriers to offer a common billing model for both residential and business customers, either applying the capacity-based billing (CBB) or flat rate model to both, applies to legacy wholesale HSA services, as it was decided in the FTTN context.

14. CNOC, supported by CAIP, MTS Allstream, Primus, Radiant, and Vaxination, submitted that the markup included in legacy business wholesale HSA service rates should be no higher than the markup included in legacy residential wholesale HSA service rates as the underlying costs are essentially the same and no unique characteristics of legacy business wholesale HSA service were identified that would support maintaining higher rates.

15. CNOC, supported by CAIP, MTS Allstream, and Primus, also submitted that "value for service" is not a consideration when setting wholesale rates as any additional value associated with retail business Internet services is generally created at the retail level by the provider.

16. CNOC, supported by CAIP and Radiant, further submitted that (i) the current competitor market share for retail business Internet services does not justify maintaining the higher legacy business wholesale HSA service rates that do not reflect market forces, and (ii) the Commission should establish a wholesale regime that interferes as little as possible with market forces, rather than trying to favour the deployment of one type of technology over another.

17. Primus submitted that the application of higher markups for the Bell companies in Ontario and Quebec's legacy business wholesale HSA services harms the competitive market and unduly interferes with the operation of competitive market forces. Primus added that there is nothing unique about the legacy business wholesale HSA services of the Bell companies in Ontario and Quebec that would render the determinations made in Telecom Decision 2013-73 inapplicable.

18. MTS Allstream submitted that customer demand and competition are driving the Bell companies in Ontario and Quebec's investment in FTTN and that these same factors will continue to drive competitors' demand for FTTN, as opposed to the rates of legacy wholesale HSA services.

Commission's analysis and decisions

19. The Commission notes that it did not make a distinction between legacy and non-legacy wholesale HSA services in regard to its determinations made in Telecom Decision 2013-72. The Commission notes that had it not required the Bell companies to include legacy business services in a common billing model, the issues related to implementation of CBB would have remained. For example, the requirement to separate the legacy business traffic from the rest of the traffic using realm splitting[6] would have caused significant disruptions to both end-users and independent service providers. Accordingly, the Commission's determinations in Telecom Decision 2013-72 that a common billing model should be applied to residential wholesale HSA and business wholesale HSA services applies to both legacy and non-legacy services.

20. With respect to the question of whether the principle established in Telecom Decision 2013-73 should apply to legacy wholesale HSA service speeds, the Commission notes that in Telecom Decision 2013-73, it was determined that rates for business wholesale HSA services in question should be equal to the comparable residential wholesale HSA services for the following reasons:

    a. the services are essentially the same, providing the same functionality, using the same network components, and having similar costs;

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[6] Realm splitting is a method for separating residential and business traffic into two data flows. A realm is an identifier associated with each end-user of an independent service provider to designate the end-user as a residential or business customer so that the networks of the Bell companies in Ontario and Quebec can direct the traffic to the appropriate business or residential interface. The independent service provider is responsible for ensuring that each of its end-users has the appropriate identifier programmed into the end-user's router.

b. any additional value associated with retail business Internet services is generally created at the retail level by the provider;

c. markups approved for residential wholesale HSA services appropriately compensate incumbents for their costs of providing these services, and the higher markup for business wholesale HSA services was not intended to compensate for the lower markup for residential wholesale HSA services; and

d. the current market share of competitors in the retail business Internet services market does not justify maintaining higher business wholesale HSA markups because competition should determine retail prices and higher business wholesale HSA service rates resulting from greater markups artificially favour the incumbents relative to the independent service providers that rely on the wholesale services in that market.

21. The Commission notes that no evidence was provided to support the claim made by the Bell companies and TCC that legacy business wholesale HSA services have higher support costs than legacy residential wholesale HSA services.

22. The Commission considers that wholesale rates, whether legacy or non-legacy, based on costs plus an appropriate markup provide a basis for robust competition and that any additional value attributed to legacy business wholesale HSA services is created at the retail level by the provider.

23. The Commission also considers that there is nothing unique about the legacy business wholesale HSA services of the Bell companies in Ontario and Quebec that would warrant a higher markup than the markup applied to their legacy residential wholesale HSA services.

24. The Commission finds that, contrary to the position of the Bell companies, the current market share of competitors in the retail business Internet service market does not justify maintaining higher legacy business wholesale HSA markups, as competition should determine retail prices.

25. The Commission notes that the Bell companies did not provide evidence that lower legacy wholesale HSA service rates would reduce deployment of FTTN services. The Commission considers that competition for end-users will drive the Bell companies in Ontario and Quebec to invest in FTTN.

26. In light of the above, the Commission concludes that the principle set out in Telecom Decision 2013-73 of applying the same rates for comparable business and residential wholesale HSA service speeds should also apply to the legacy business wholesale HSA service speeds of the Bell companies in Ontario and Quebec. The revised rates are identified in the appendix to this decision.

II. Should the revised legacy business wholesale HSA service rates of the Bell companies in Ontario and Quebec be made effective after 45 days?

27. The Bell companies submitted that rates should not be made effective until 90 days from the later of the date of the decision regarding this proceeding and the decision regarding its application dated 25 March 2013 to review and vary Telecom Decisions 2013-72 and 2013-73. The Bell companies submitted that a period of 45 days is inadequate due to: (i) the operational complexities involved in implementing competitor capacity orders, and (ii) the period of time required by competitors to identify their capacity requirements.

28. CNOC, supported by Primus and Vaxination, submitted that Telecom Decision 2013-72 determined that the CBB model should apply to the Bell companies in Ontario and Quebec's business wholesale HSA services as of 8 April 2013. Accordingly, CNOC proposed that the Commission set the rates for the legacy business wholesale HSA service speeds of the Bell companies in Ontario and Quebec equivalent to the rates for the legacy residential wholesale HSA service speed rates on an interim basis, effective 8 April 2013.

29. Radiant submitted that the legacy rates of the Bell companies in Ontario and Quebec must be adjusted retroactively to 21 February 2013 to mirror the conclusions made in Telecom Decision 2013-73 issued on that date.

30. CNOC, supported by Primus, also submitted that the transition to CBB will be completed before there is a ruling in this proceeding; therefore, a 45-day implementation delay is neither necessary nor appropriate and there is ample time for the Bell companies in Ontario and Quebec and competitors to manage the transition from the current flat rate model for legacy business wholesale HSA services.

Commission's analysis and decisions

31. The Commission notes that although competitors subscribing to the wholesale HSA services of the Bell companies in Ontario and Quebec should have moved to CBB by 8 April 2013 in accordance with Telecom Decision 2013-72, there remain a number of competitors that have yet to move to CBB.

32. While the Commission notes that the rates for legacy business wholesale HSA services were made interim effective 3 May 2013,[7] the Commission considers that rate retroactivity to this date would be overly complex because of the timing issues associated with the transfer of each competitor from flat rate billing to CBB.

33. The Commission notes that in Telecom Decision 2013-72, it determined that a 45-day implementation period was appropriate to allow parties to execute a smooth transition. The Commission considers that the Bell companies failed to demonstrate

[7] See Commission letter dated 3 May 2013 regarding Telecom Notice of Consultation 2013-79.

why a 45-day implementation period would not be sufficient to implement the rate changes for legacy wholesale HSA services.

34. In light of the above, the Commission concludes that the effective date of the rates for the legacy business wholesale HSA services of the Bell companies in Ontario and Quebec should be 45 days from the date of this decision and directs the Bell companies to issue, by 28 October 2013, tariff pages that reflect this decision including the rates listed in the appendix to this decision.

Policy Direction

35. The Policy Direction states that the Commission, in exercising its powers and performing its duties under the *Telecommunications Act* (the Act), shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(*a*), (*b*), and (*c*) of the Policy Direction.

36. The Commission considers that its findings in this decision advance the policy objectives set out in section 7 of the Act, including paragraphs 7(*a*), (*b*), (*c*), (*f*) and (*h*). [8] The Commission considers that the rates approved in this decision were established with a view to ensuring that competitors pay rates constituting Phase II costs plus a reasonable markup, while the incumbent providers legitimately recover the costs that are incurred. As noted above, the Commission considers that these rates provide a basis for robust competition.

37. The Commission considers that in accordance with subparagraphs 1(*a*)(ii) and 1(*b*)(ii) of the Policy Direction, the rates for these services (a) are efficient and proportionate to their purpose and interfere with competitive market forces to the minimum extent necessary to meet the policy objectives noted above, and (b) neither deter economically efficient competitive entry into the market nor promote economically inefficient entry.

Secretary General

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[8] The cited policy objectives of the Act are:
7(*a*) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;
7(*b*) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;
7(*c*) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;
7(*f*) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and
7(*h*) to respond to the economic and social requirements of users of telecommunications services.

Related documents

- *Review of rate principles for legacy business wholesale high-speed access* services, Telecom Notice of Consultation CRTC 2013-79, 21 February 2013

- *Canadian Network Operators Consortium Inc. – Application to review and vary Telecom Regulatory Policies 2011-703 and 2011-704*, Telecom Decision CRTC 2013-73, 21 February 2013

- *Canadian Network Operators Consortium Inc. – Application requesting relief to address implementation of the capacity model approved in Telecom Regulatory Policy 2011-703*, Telecom Decision CRTC 2013-72, 21 February 2013

- *Billing practices for wholesale business high-speed access services*, Telecom Regulatory Policy CRTC 2011-704, 15 November 2011

Appendix

Approved legacy business wholesale HSA rates of the Bell companies in Ontario and Quebec

Access – Business, each	Monthly access rate
Lite (up to 640 Kbps downstream and up to 512 Kbps upstream)	$14.11
Lite Plus (up to 1 Mbps downstream and up to 640 Kbps upstream)	$14.11
Basic (up to 6 Mbps downstream and up to 800 Kbps upstream)	$14.11