



Telecom Decision CRTC 2013-75

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Ottawa, 21 February 2013

Quebecor Media Inc. and Videotron G.P. – Application to review and vary the approach used to establish capacity rates in Telecom Regulatory Policy 2011-703

File number: 8662-V48-201201722

*In this decision, the Commission **denies** a request from Quebecor Media Inc, on behalf of itself and Videotron G.P. (Videotron) to review and vary the approach used by the Commission in Telecom Regulatory Policy 2011-703 to establish the monthly capacity rate for Videotron's wholesale high-speed access services.*

The Commission notes that Telecom Regulatory Policy 2013-70, which frames a series of decisions in regard to wholesale HSA services, is a companion document to this decision.

The application

1. The Commission received an application from Quebecor Media Inc. (Quebecor Media), on behalf of itself and its affiliate Videotron, dated 13 February 2012, in which Quebecor Media requested that the Commission review and vary Telecom Regulatory Policy 2011-703 to adopt a new approach to establish the monthly capacity rate of the approved CBB model¹.
2. Quebecor Media submitted that there is substantial doubt as to the correctness of the Commission's decision in Telecom Regulatory Policy 2011-703 to approve monthly capacity rates, arguing that the Commission failed to consider the basic principle that the cost of providing high-speed capacity is not constant over time.
3. Specifically, Quebecor Media requested that the Commission replace the monthly capacity rate with a monthly capacity rate that declines each year (the declining capacity rate approach) for all incumbent carriers that use the CBB model. This revised rate would be based on the traffic demand forecast over the 10-year study period² such that the weighted-average of the declining capacity rates over the

¹ The CBB model was formerly defined as the “approved capacity model” (in Telecom Regulatory Policy 2011-703 and Telecom Decision 2012-60). The CBB model requires each independent service provider to pay a monthly capacity rate for network capacity, in increments of 100 megabits per second (Mbps), to recover network transport costs, and a separate monthly access rate on a per end-user basis to recover access costs.

² Quebecor Media's proposed declining monthly capacity rates for Videotron are calculated by dividing the monthly average network transport cost over the 10-year study period by each year's estimated average monthly usage (expressed in Mbps).

study period equals the monthly capacity rate approved in Telecom Regulatory Policy 2011-703. Quebecor Media proposed an annual declining monthly capacity rate schedule for Videotron in its application, using this proposed approach.

4. The Commission received comments regarding Quebecor Media's application from the Canadian Network Operators Consortium Inc. (CNOOC), Cogeco, MTS Inc. and Allstream Inc. (MTS Allstream),³ RCP, Shaw Communications Inc. (Shaw), and Vaxination Informatique (Vaxination). The public record of this proceeding, which closed on 18 April 2012, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.
5. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it would use to assess review and vary applications that are filed pursuant to section 62 of the *Telecommunications Act* (the Act). Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, due to, for example, one or more of the following: i) an error in law or in fact, ii) a fundamental change in circumstances or facts since the decision, iii) a failure to consider a basic principle which had been raised in the original proceeding, or iv) a new principle which has arisen as a result of the decision.

Is there substantial doubt as to the correctness of the Commission's decision to require a monthly capacity rate under the CBB model for wholesale high-speed access (HSA) services?

6. Quebecor Media emphasized that the issue is not the amount of costs to be recovered or the length of the study period, but whether these costs should be recovered through a monthly capacity rate. Quebecor Media submitted further that the proposed declining monthly capacity rate schedule tracks cost trends more accurately in an environment of declining real unit costs.
7. Quebecor Media submitted that, unlike the monthly rates from its proposed declining capacity rate approach that follow a true declining cost trajectory, the monthly capacity rate paid by independent service providers under the Commission's monthly capacity rate approach is skewed. Under the monthly capacity rate approach, the rate independent service providers pay during the early years of the study period is lower relative to the rate payable under the declining capacity rate approach, while the opposite occurs in the later years of the study period. Quebecor Media noted that under its proposed declining capacity rate approach, the rate paid by independent service providers declines over time. Quebecor Media submitted that its proposed declining monthly capacity rate schedule could be set for the duration of the 10-year study period and hence it would not be a source of uncertainty or administrative inconvenience for the carriers and independent service providers.

³ MTS Allstream Inc. was the entity that participated in the proceeding that led to Telecom Regulatory Policies 2011-703 and 2011-704. However, as of early January 2012, MTS Allstream Inc. became known as two separate entities, namely, MTS Inc. and Allstream Inc.

8. Quebecor Media submitted that the monthly capacity rate approach is inequitable as it results in the provision by the carrier of a subsidy to independent service providers in the early years of the study period and allows independent service providers to charge artificially low retail rates during that time. In Quebecor Media's view, this could disrupt the retail markets for high-speed Internet access services. They also submitted that it is likely that the Commission would review wholesale HSA service rates before the end of the current study period, which would deprive Videotron of the opportunity to earn a fair overall return.
9. In Quebecor Media's view, the monthly capacity rate approach is therefore contrary to subsection 27(1) of the Act because the resulting monthly capacity rates are not just and reasonable, and contrary to paragraph 1(b) of the Policy Direction⁴ because these rates promote economically inefficient entry into retail high-speed Internet access markets.
10. Quebecor Media submitted that the Commission could address the potential application of the declining capacity rate approach to other wholesale service rates, on a case-by-case basis, premised on whether the network cost declines were sufficiently material to justify the use of a declining capacity rate approach in other contexts.
11. Quebecor Media's request and rationale was supported by Cogeco, RCP, and Shaw, and opposed by CNOC, MTS Allstream, and Vaxination.
12. CNOC and MTS Allstream submitted that the Commission did consider that the cost of providing network capacity is not constant over time. They submitted that the Commission appropriately applied the established costing principles, known as Phase II costing,⁵ and provided specific examples of the principles that reflect costs that change over time.⁶
13. CNOC and MTS Allstream further submitted that the use of a declining capacity rate approach would harm retail high-speed Internet service competition by disproportionately shifting risk and the financial burden of network investments to independent service providers. In their view, independent service providers may simply delay entry in the face of higher monthly capacity rates, thus the declining capacity rate approach would operate as a barrier to entry that would reduce retail competition, contrary to the Act's objectives. MTS Allstream further submitted that Videotron would benefit from less competition for its retail high-speed Internet access services.

⁴ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

⁵ Phase II costing is an incremental costing approach used by the Commission to assess the incumbent carrier's costs of providing wholesale service to competitors.

⁶ CNOC noted the technique of annualizing the present worth of causal costs and demand over the defined 10-year study period in order to provide for a uniform recovery of these costs over the entire period. MTS Allstream submitted that the cost increase factors and productivity improvement factors used in the Phase II costing approach recognize that service provisioning costs generally decline over time as technology costs typically decline and efficiency improves.

14. MTS Allstream also submitted that Quebecor Media's declining capacity rate approach would be complex to adopt and implement, as it would, among other things, fundamentally alter the long-term demand projections Videotron used in its cost study, and would create a precedent that may be expected to result in numerous applications to revise rates for other wholesale services. In its view, this would be contrary to the Policy Direction, which provides that the Commission should only use tariff approval mechanisms that are as minimally intrusive and as minimally onerous as possible.
15. Vaxination submitted that Quebecor Media's request for relief should be denied because of a lack of evidence that Videotron is actually losing money during the first part of the 10-year study period.

Commission's analysis and decisions

16. The Commission notes that Quebecor Media is not disputing the correctness of the total network transport costs nor the use of the 10-year study period that is reflected in Videotron's approved monthly capacity rate. Rather, Quebecor Media is arguing that the monthly capacity rate promotes economically inefficient entry as it does not appropriately consider the basic principle that the cost of providing high-speed capacity is not constant over time, and is therefore not a just and reasonable rate. Further, Quebecor Media submitted that its declining monthly capacity rate approach more accurately reflects costs during each year of the study period.
17. The Commission notes that, while the declining capacity rate approach establishes a different rate for each year, both it and the monthly capacity rate approach are based on the economic average⁷ of all costs incurred during the entire study period. This economic average cost is developed according to the Commission's approved Phase II costing approach and reflects the service's average long-run incremental costs over the study period.
18. The Commission notes that there is a high degree of variability in many costs over the study period. For example, service start-up costs such as hardware and software costs that enable a carrier to establish a platform on which to offer service will typically occur in the early years of the cost study. Under the Phase II costing approach, such one-time costs will be averaged over that service's anticipated life reflecting the expected duration of the associated benefit. Similarly, other costs such as equipment costs are averaged over the anticipated life of the equipment. This cost study approach will ensure that all of the service's major costs, including those that change over time, are captured over the study period. Further, the average economic costs that are determined over this study period will provide, in the Commission's view, the appropriate average service cost from which to derive the associated rate.

⁷ Under the established Phase II principles, an economic average of the annual service costs over the multi-year study period is produced by the technique of annualizing the present worth of these costs; the rate based on the average economic costs provides for a uniform recovery of these costs over the entire period.

19. The Commission therefore concludes that the use of the average economic wholesale HSA service costs using this Phase II costing approach and based on a 10-year study period will provide an appropriate representation of the service's costs.
20. The Commission notes Quebecor Media's submission that the monthly capacity rate approach results in the provision of a subsidy in the early years of the study period and is inequitable. The Commission notes there is no evidence on the record of this proceeding to demonstrate that Videotron is applying a declining rate approach for its retail Internet services similar to that proposed for its wholesale services. Further, the Commission considers that the specific methodology, based on traffic growth, proposed by Quebecor Media does not provide an appropriate representation of the changes in Quebecor Media's service costs over time.
21. In light of the above, the Commission finds that the monthly capacity rate approach is not inequitable. The Commission further considers that this fixed rate approach appropriately reflects the wholesale HSA service's costs over the 10-year study period in a manner that does not promote economically inefficient entry.
22. Further, the Commission considers that implementing the declining capacity rate approach would likely necessitate a review of some of the assumptions underlying the calculation of the rates. Specifically, the Commission considers that the fact that the rate would change each year would impact Videotron's demand forecast and network transport costs. These changes would likely require a re-evaluation of Videotron's rates and possibly the rates of other carriers. In light of the above, the Commission does not consider that Quebecor Media's proposed declining monthly capacity rate approach would be consistent with the Policy Direction's objective to employ tariff approval mechanisms that are as minimally intrusive and as minimally onerous as possible.
23. With respect to Quebecor Media's submission that a review prior to the end of the 10-year study period would deprive Videotron of the opportunity to recover its costs and earn a fair overall return, the Commission notes that it addressed the issue of unrecovered introduction costs in Telecom Regulatory Policy 2009-274. In that decision, the Commission found that incumbents are permitted to recover any unrecovered introduction costs when an update of a study associated with a mandated wholesale service is required before the end of the study period. The Commission considers that the issue of any other unrecovered costs could similarly be addressed in the context of a future cost study.
24. Accordingly, the Commission considers that the monthly capacity rate approach appropriately compensates carriers for their costs of providing the wholesale HSA services. Further, this approach is the most appropriate in order to allow for competition in the market, and thus to implement the policy objectives in the Act, in particular to enhance the competitiveness of Canadian telecommunications.

25. In light of all of the above, the Commission finds that Quebecor Media has failed to demonstrate substantial doubt as to the correctness of the Commission's decision to require a monthly capacity rate for the CBB model for wholesale HSA services in Telecom Regulatory Policy 2011-703.

Policy Direction

26. The Policy Direction states that the Commission, in exercising its powers and performing its duties under 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.
27. 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), 7(b), 7(c), 7(f) and 7(h).⁸ The Commission considers that the monthly capacity rates approved for wholesale HSA services 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 costs that are incurred over a reasonable time frame. The Commission further considers that a monthly capacity rate, rather than a declining monthly capacity rate, encourages economically efficient competition from independent service providers to be introduced in a timely manner. The Commission therefore considers that, in accordance with subparagraphs 1(a)(ii) and 1(b)(ii) of the Policy Direction, the monthly capacity rate for this service (a) is efficient and proportionate to its purpose and interferes with competitive market forces to the minimum extent necessary to meet the policy objectives noted above, and (b) neither deters economically efficient competitive entry into the market nor promotes economically inefficient entry.
28. In light of the above, the Commission **denies** Quebecor Media's application.

Secretary General

Related documents

- *Disposition of review and vary applications with respect to wholesale high-speed access services: Introductory statement*, Telecom Regulatory Policy CRTC 2013-70, 21 February 2013

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.

- *Implementation date for the wholesale high-speed access services capacity model approved in Telecom Regulatory Policy 2011-703*, Telecom Decision CRTC 2012-60, 27 January 2012
- *Billing practices for wholesale residential high-speed access services*, Telecom Regulatory Policy CRTC 2011-703, 15 November 2011, as amended by Telecom Regulatory Policy CRTC 2011-703-1, 22 December 2011
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *Review of the use of company-specific working fill factors and the recovery of past introduction costs not fully recovered*, Telecom Regulatory Policy CRTC 2009-274, 14 May 2009