Telecom Decision CRTC 2013-76

PDF version

Ottawa, 21 February 2013

Rogers Communications Partnership – Application to review and vary Telecom Regulatory Policy 2011-703

File number: 8662-R28-201201699

In this decision, the Commission considers the requests made by Rogers Communications Partnership (RCP) to review and vary certain elements of Telecom Regulatory Policy 2011-703 related to cost inclusions used in the development of rates for RCP's wholesale high-speed access (HSA) services, as well as other cable carrier wholesale HSA services.

The Commission varies RCP wholesale HSA service rates by removing the cost adjustment associated with cable modem terminating system equipment cards, and also varies Cogeco Cable Inc., RCP and Videotron G.P. wholesale HSA service monthly capacity rates so that these rates are applied to only downstream increments. The Commission ***denies*** *all other requests made by RCP.*

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 amended[1] application from Rogers Communications Partnership (RCP), dated 1 March 2012, in which RCP requested that the Commission review and vary certain elements of Telecom Regulatory Policy 2011-703 related to the CBB model rates[2] for RCP's wholesale HSA services.[3]

2. RCP submitted that the Commission made a number of errors in fact and in law in Telecom Regulatory Policy 2011-703, which demonstrate substantial doubt as to the correctness of the original decision. According to RCP, these errors affect the tariffed rates for its wholesale HSA service and deny RCP the ability to fully recover its costs of providing the services in contravention of sections 27 and 47 of the *Telecommunications Act* (the Act). RCP also submitted that Telecom Regulatory Policy 2011-703 discriminates against cable carriers vis à vis incumbent local

---

[1] Replacing RCP's Part 1 Application dated 10 February 2012

[2] 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.

[3] The cable carriers' wholesale HSA services are also called wholesale third-party Internet access services.

exchange carriers (ILECs), against whom they compete, by applying a higher level of productivity for cable carriers' access equipment, while also denying them comparable markups on higher-speed fibre-based Internet service costs.[4]

3. The Commission received comments regarding RCP's application from the Canadian Network Operators Consortium Inc. (CNOC), Cogeco Cable Inc. (Cogeco), Shaw Cablesystems G.P. (Shaw), Quebecor Media Inc., on behalf of itself and its affiliate Videotron G.P. (Videotron) (collectively, Quebecor Media), and Vaxination Informatique (Vaxination). The public record of this proceeding, which closed on 3 August 2012 is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

4. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it would use to assessreview 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.

5. The Commission has identified the following issues to be addressed in this decision:

    I. Did the Commission err in setting the Working Fill Factors (WFFs) for some of RCP's equipment?

    II. Did the Commission err in setting a five-year life estimate for RCP's cable modem terminating system (CMTS) cards?

    III. Did the Commission err in calculating monthly capacity rates for all cable carriers?

    IV. Did the Commission err in capping the wholesale HSA service trouble reporting and repair expenses for all cable carriers?

    V. Did the Commission err in setting different annual unit cost changes for access equipment costs for cable carriers and ILECs?

    VI. Did the Commission err by adjusting wholesale HSA service costs as a result of changing the study start date for all cable carriers?

    VII. Should the revised wholesale HSA service CBB model final rates be applied retroactively?

---

4 While RCP made submissions in this proceeding regarding the additional 10 percent markup afforded to the ILECs' newer wholesale HSA services, it did not make a specific request for a Commission decision on this matter. The Commission addresses the issue of whether the Commission erred by not granting the same additional 10 percent markup for the cable carriers' wholesale HSA services in the context of Shaw's review and vary application in Telecom Decision 2013-77.

I. Did the Commission err in setting the WFFs for some of RCP's equipment?

6. RCP submitted that the Commission erred in setting WFFs at 75 percent and not using its proposed WFFs at 60 percent. RCP noted that its practice is to segment nodes and add CMTS ports[5] when Internet volume reached 60 percent of capacity during peak periods. RCP stated that its approach produces higher quality service for its customers.

7. CNOC opposed RCP's request, stating that RCP is properly recovering its costs under the Commission's regime established in Telecom Regulatory Policy 2011-703.

8. In reply, RCP submitted that CNOC's submission is factually incorrect.

Commission's analysis and decisions

9. WFF[6] measures average utilization of shared facilities and is used to calculate Phase II costs.[7] A lower WFF will result in higher costs.

10. The Commission notes that RCP's proposed 60 percent WFF value for both CMTS and node segmentation equipment was based on the 60 percent capacity trigger point (i.e. the point at which RCP begins segmenting nodes and adding CMTS ports for the purpose of expanding network capacity). The Commission further notes that capacity trigger point and WFF are not synonymous because the capacity trigger point proposed by RCP does not reflect the average measure of utilization whereas WFF does. There is typically a delay between the capacity trigger point and the point when the capacity expansion is completed, and during this delay period, the capacity utilization can continue to increase beyond 60 percent. Accordingly, the Commission considers that the capacity trigger point should not be used in lieu of average WFF to calculate Phase II costs.

11. The Commission further notes that, in response to interrogatories in the proceeding leading to Telecom Regulatory Policy 2011-703, RCP stated that "the capacity expansion is triggered at 60 percent with the intention of completing it prior to reaching 75 percent capacity" and provided a graph that showed that capacity utilization sometimes reached a level as high as 90 percent.

12. In light of the above, the Commission finds that that it did not err when it set RCP's WFFs for both CMTS and node segmentation equipment at 75 percent. The Commission therefore concludes that RCP has failed to demonstrate substantial doubt as to the correctness of this decision.

---

[5] CMTS equipment is used to provide high-speed services to cable subscribers, and node segmentation equipment is used to provide additional fibre segmentation to increase bandwidth for Internet customers.

[6] In Telecom Regulatory Policy 2009-274, WFF was defined as a measure of the utilization of a shared facility that is used to recognize the non-working capacity (e.g. spare units, etc.) of the shared facility and to apportion the cost of this non-working capacity to the per-unit cost of the working capacity.

[7] 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.

II. Did the Commission err in setting a five-year life estimate for RCP's CMTS cards?

13. RCP submitted that the Commission erred in setting a five-year life estimate for its CMTS cards, noting that it had proposed a four-year life estimate based on the company's current accounting life for that asset. RCP further submitted that advances in CMTS cards are taking place at a rapid rate, making it cost-effective to upgrade them every four years. RCP indicated that the accounting life estimate for CMTS cards is assessed on an annual basis by both RCP and its external auditor. RCP further submitted that the life estimate for its CMTS cards cannot be benchmarked against other cable companies due to different network capabilities, provisioning standards, and costs.

14. CNOC stated that it agreed with the Commission's application of a five-year life estimate arrived at by using a benchmark across cable companies. CNOC argued that RCP is only entitled to recover costs that are prudently incurred to provide the CMTS functionality, and not any costs that RCP incurs or wishes to incur.

Commission's analysis and decisions

15. In Telecom Decision 2006-77, the Commission decided that for wholesale HSA service cost study purposes, it was appropriate to use the economic life estimate of an asset equal to that asset's accounting life.

16. The Commission notes that it would be consistent with its decisions in Telecom Decision 2006-77 to set the economic life for RCP's CMTS cards based on the accounting life for that asset. The Commission considers that RCP has provided evidence demonstrating that the accounting life for RCP's CMTS cards is four years, and that the accounting life is assessed on an annual basis by RCP and its external auditor.

17. Accordingly, in light of the above, the Commission concludes that there is substantial doubt as to the correctness of its decision to set a five-year life estimate for RCP's CMTS cards and that it is appropriate to approve a four-year life estimate for RCP's CMTS cards.

III. Did the Commission err in calculating monthly capacity rates for all cable carriers?

18. RCP submitted that the traffic used in the monthly capacity rate[8] calculation included both upstream and downstream capacity increments, and that therefore the approved monthly capacity rate should apply to both upstream and downstream capacity increments in order for it to recover traffic-related costs.

19. Cogeco and Quebecor Media supported RCP's request.

---

[8] In Telecom Regulatory Policy 2011-703, the Commission set the monthly capacity rate per 100 Mbps increments for all cable carriers

20. Cogeco, Quebecor Media, and RCP submitted that they are not opposed to applying the monthly capacity rate to only downstream traffic as long as this rate is re-calculated so as to recover the traffic-related costs. CNOC also supported this alternative approach noting that independent service providers order capacity increments based on only their downstream traffic forecasts.

Commission's analysis and decisions

21. Based on RCP's clarification and a review of Cogeco's, RCP's, and Videotron's monthly capacity rates calculation, the Commission agrees with RCP that if the approved monthly capacity rate is to be applied to only downstream capacity increments, it would not recover all usage costs.

22. The Commission also notes that CNOC, Cogeco, RCP, and Quebecor Media are in support of having a monthly capacity rate that applies only to downstream capacity increments provided that the monthly capacity rate is re-calculated such that when applied to downstream traffic increments, it recovers all usage costs plus the appropriate markup.

23. Accordingly, the Commission concludes that there is substantial doubt as to the correctness of the Commission's decision to use cable carriers' proposed traffic estimates in the monthly capacity rate calculations and finds it appropriate to modify the monthly capacity rate for Cogeco, RCP, and Videotron such that it be applied to only downstream increments and in a manner that recovers all usage costs plus a 30 percent markup.[9]

IV. Did the Commission err in capping the wholesale HSA service trouble reporting and repair expenses for all cable carriers?

24. RCP submitted that its trouble reporting and repair expenses are higher for its wholesale HSA service than for its own retail Internet service, noting that the average wholesale HSA service trouble ticket is significantly more complicated than the average trouble ticket received from a retail Internet customer. Accordingly, RCP submitted that the Commission should allow all cable carriers to recover 100 percent of their proposed wholesale trouble reporting expenses, rather than 80 percent of their equivalent retail Internet expenses, as established in Telecom Regulatory Policy 2011-703.

25. Cogeco and Shaw supported RCP's request.

26. CNOC opposed RCP's request, submitting that higher wholesale trouble ticket expenses arise because of inefficiencies in the cable carriers' processes. CNOC indicated that, for example, unnecessary disconnections have occurred because RCP's installers have not properly tagged wholesale HSA service upon installation, and trouble tickets have been handled via email communication.

---

[9] The Commission-approved markup is being disclosed as per Telecom Regulatory Policy 2012-592

Commission's analysis and decisions

27. The Commission notes that since first-line support for wholesale HSA service end-users is provided by the independent service providers, several activities required for retail support are not necessary (e.g. end-user contact and diagnostics). In previous decisions,[10] the Commission decided that a cable carrier's trouble reporting and repair expenses for a wholesale end-user should, therefore, generally be less than those for the cable carrier's own retail Internet end-user.

28. While RCP submitted that its trouble reporting and repair expenses are higher for wholesale HSA service than for its own retail Internet service, as indicated in Telecom Decision 2006-77, the Commission expects cable carriers to achieve efficiencies in the provision of wholesale HSA service support activities going forward in a manner comparable to their retail Internet service as they gain experience in providing the wholesale service over the study period. The Commission notes that the record of this proceeding does not establish any reason to modify this expectation.

29. In light the above, the Commission finds that it did not err when it set the cable carriers' wholesale trouble reporting and repair expenses at 80 percent of the cable carrier's equivalent retail Internet expenses. The Commission therefore concludes that RCP has failed to demonstrate that there is substantial doubt as to the correctness of this decision.

V. Did the Commission err in setting different annual unit cost changes[11] for access equipment costs for cable carriers and ILECs?

30. In Telecom Regulatory Policy 2011-703, the Commission decided it would be appropriate to apply annual unit cost changes to access equipment[12] of minus 10 percent for cable carriers and minus 5 percent for ILECs to reflect anticipated price changes and productivity improvements over the study period.

31. RCP submitted that it had provided cost numbers broken down between access-driven and usage-driven costs, which showed that the majority of the equipment was access-driven. RCP further submitted that the Commission's decision is discriminatory and not implemented in a symmetrical and competitively-neutral manner across incumbents.

32. Cogeco, Shaw, and Quebecor Media supported RCP's claim.

33. CNOC submitted that in light of the evidence on record, the Commission's decision is correct.

---

[10] For example, in Telecom Decision 2006-77 and Order 2000-789

[11] Annual unit cost changes reflect forecasts of year-over-year cost level changes for equipment net of productivity improvement (e.g. anticipated efficiencies in provisioning equipment over time); these were also referred to as net capital increase factors in Telecom Regulatory Policy 2011-703.

[12] Access equipment includes equipment that is dedicated to an end-customer (e.g. frame of CMTS), for which the costs do not depend on the usage of each end-user; usage-driven equipment includes switches, routers, and most CMTS parts, for which the costs depend on the usage of each end-user.

Commission’s analysis and decisions

34. The Commission notes that the annual unit cost changes associated with access equipment were set separately for ILECs and cable carriers based on the evidence submitted by them in the proceeding leading to Telecom Regulatory Policy 2011-703. In that proceeding, the ILECs provided historical annual unit cost changes separately for access equipment and usage-driven equipment. In contrast, the cable carriers provided the access equipment and usage-driven equipment costs for each year of the cost study, but contrary to their claim, did not provide historical annual unit cost changes separately for access equipment and usage-driven equipment. On the basis of the ILECs’ evidence, the Commission was able to establish separate annual unit cost changes for the ILECs’ access and usage-driven equipment. On the basis of the cable carriers’ evidence, the Commission established common annual unit cost changes for the cable carriers’ access and usage-driven equipment.

35. The Commission notes that no new evidence was provided by RCP in its review and vary application to support the use of minus five percent annual unit cost changes for its access equipment.

36. In the circumstances, the Commission finds that it did not err in setting different annual unit cost changes associated with access equipment costs for cable carriers and ILECs. The Commission therefore concludes that RCP has failed to demonstrate that there is substantial doubt as to the correctness of this decision.

VI. Did the Commission err by adjusting wholesale HSA service costs as a result of changing the study start date for all cable carriers?

37. In Telecom Regulatory Policy 2011-703, the Commission decided that the appropriate start date for RCP’s cost study, as well as for other network providers, was 1 July 2011, rather than RCP’s proposed cost study start date of 1 January 2011. This start date was chosen because it was in line with the month the service was introduced. As a result, the Commission adjusted costs included in the cost study of each cable carrier to reflect the anticipated equipment unit cost reductions over the six-month delay period. This adjustment was referred to as the study start date adjustment.

38. RCP noted that a proper cost study has all variables measured at the same time to maintain internal consistency, and that the Commission erred in reducing equipment costs while leaving all other variables unchanged. RCP submitted that if net unit cost adjustments are applied as a result of the six-month delay period, then adjustments must also be made to account for increased costs actually sustained (due to increased traffic volumes and inflation on equipment and operating expenses) during this period. RCP also submitted that its traffic volume increased significantly over this period (about 30 percent). Alternatively, RCP submitted that the Commission undo the study start date adjustment.

39. Cogeco and Shaw supported RCP’s request.

40. CNOC submitted that RCP's request be denied because the increase in traffic demand is already reflected by the declining unit costs.

Commission's analysis and decisions

41. The Commission notes that in Telecom Regulatory Policy 2011-703, the Commission adjusted the cable carriers' cost studies to reflect the six-month delay in introducing the new wholesale HSA service by applying the anticipated equipment cost reductions over this six-month delay period. However, in making this adjustment, the Commission did not consider cost changes due to increased traffic volumes and inflation on operating expenses over this same delay period. The Commission notes that the cost changes over the six-month delay period due to inflation on operating expenses, net of productivity improvements, are minimal.

42. The Commission considers that while all cost changes should be reflected in the cost study, the cable carriers have not demonstrated that additional costs incurred during the delay period would not be recovered under the approach taken. Specifically, although traffic volumes would increase over the six-month delay period and would cause equipment costs per end-user to increase, there would be no impact on the costs underlying Cogeco's, RCP's, and Videotron's CBB model rates for the following reasons. Firstly, the access (without usage) rate component will not be impacted because rates are set to strictly recover non-usage costs that do not depend on traffic volumes. Secondly, in the case of the monthly capacity rate component, this rate is set to recover costs for a pre-determined capacity (i.e. 100 Mbps), independent of traffic volumes used by the independent service providers in a given month.

43. In light of the above, for the cable carriers that have adopted the CBB model, namely Cogeco, RCP, and Videotron, the Commission finds that it did not err in calculating the study start date adjustment without including the increased costs associated with increased traffic volumes. The Commission therefore concludes that RCP failed to demonstrate substantial doubt as to the correctness of this decision.[13]

VII. Should the revised wholesale HSA service CBB model final rates be applied retroactively?

44. RCP submitted that its wholesale HSA service CBB model rates are interim and that any revised rates should be effective as of 10 February 2012, the date of its review and vary application.

[13] The Commission notes that the issue of the study start date adjustment was also raised by Shaw in its application dated 3 February 2012 to review and vary Telecom Regulatory Policy 2011-703. InTelecom Decision 2013-77, the Commission decided that it is appropriate to undo the study start date adjustments that were made to Shaw's monthly flat rates in Telecom Regulatory Policy 2011-703.

Commission's analysis and decisions

45. Cogeco's, RCP's, and Videotron's wholesale HSA service CBB model rates are currently approved on an interim basis.

46. The Commission notes that in the course of this proceeding, it has found errors in the service costs, as discussed above, upon which the original rates were based. The Commission finds that to the extent they are based on incorrect costs, the CBB model rates are not just and reasonable and that rate adjustments are required in order to bring these rates into compliance with the Act. Further, the Commission finds that it is necessary and appropriate to apply these rate adjustments retroactively to the date of service implementation, i.e., 1 February 2012, to ensure that the rates are at all times just and reasonable and in furtherance of the policy objectives set out in the Act.

Wholesale HSA service rates and implementation

47. In light of the above, the Commission finds that the CBB model rates for Cogeco's, RCP's, and Videotron's wholesale HSA service set out in the Appendix to this decision, which reflect the decisions made above, are just and reasonable. The Commission approves these rates on a final basis, effective 1 February 2012, which was the date the CBB model rates were initially implemented and made interim.

48. The Commission directs Cogeco, RCP, and Videotron to issue, by **25 March 2013** tariff pages that reflect this decision and the rates as set out in the Appendix.

Policy Direction

49. 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.

50. 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*).[14] The Commission considers that the CBB model rates approved in this decision are established with a view to ensuring that competitors pay rates constituting Phase II costs plus a reasonable markup, while the incumbent provider

---

[14] 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.

legitimately recovers the costs that are incurred. The Commission therefore considers that in accordance with subparagraphs 1(*a*)(*ii*) and 1(*b*)(*ii)* of the Policy Direction,[15] the rates for this service (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

Related documents

- *Application by Shaw Cablesystems G.P. – Application to review and vary certain aspects of Telecom Regulatory Policy 2011-703,* Telecom Decision CRTC 2013-77, 21 February 2013

- *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

- *Confidentiality of information used to establish wholesale service rates,* Telecom Regulatory Policy CRTC 2012-592, 26 October 2012

- *Implementation date for 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

- *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010

- *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

- *Cogeco, Rogers, Shaw, and Videotron - Third-party Internet access service rates,* Telecom Decision CRTC 2006-77, 21 December 2006

- *Terms and rates approved for large cable carriers' higher speed access service,* Order CRTC 2000-789, 21 August 2000

---

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

Appendix

Approved wholesale HSA service CBB model rates for Cogeco, RCP and Videotron

Monthly capacity rate per 100 Mbps	
Cogeco	$2,556
RCP	$1,400
Videotron	$2,031

Speed	**RCP Monthly access rates per end-user** (excluding usage)
0.5 Mbps	$12.06
3 Mbps	$12.44
10 Mbps	$14.45
15 Mbps	$19.51
25 Mbps	$21.50
50 Mbps	$23.32