



Telecom Notice of Consultation CRTC 2013-80

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Ottawa, 21 February 2013

Call for comments

Review of outstanding wholesale high-speed access service issues related to interface rates, optional upstream speed rates, and modem certification requirements

File number: 8661-C12-201303487

Introduction

1. Wholesale high-speed access (HSA) services of large cable carriers and telephone companies (incumbents)¹ enable independent service providers to offer retail and other services to their own end-users. As a result of the availability of wholesale HSA services, residential and business end-users have greater choice in Internet service providers. The Commission has addressed issues related to the rates, terms and conditions applicable to these services in a series of decisions, including Telecom Regulatory Policy 2011-703² and Telecom Regulatory Policy 2011-704.³
2. These decisions approved new pricing rules and rates for most wholesale HSA services, but the application of these rules did not extend to certain other wholesale HSA services, which were not considered as part of those proceeding (legacy wholesale HSA services⁴). The Commission considers that, having decided the general principles on which rates for wholesale HSA services should be based, it is necessary to examine whether it would be appropriate to extend these principles, and to what extent, to those legacy wholesale HSA services. The Commission also notes that in the proceeding that led to Telecom Regulatory Policy 2011-703, and in the review and vary applications

¹ The large telephone companies are Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, MTS Inc., Saskatchewan Telecommunications, and TELUS Communications Company (TCC). The large cable carriers are Cogeco Cable Inc., Rogers Communications Partnership, Shaw Cablesystems G.P., and Videotron G.P.

² In Telecom Regulatory Policy 2011-703, the Commission decided that there are two acceptable billing models for residential wholesale HSA services: (1) a capacity-based billing model where independent service providers pay a monthly access rate per end-user (excluding usage) and a rate for the capacity that they require to support the usage demand of their end-users; and (2) a flat rate model where the independent service provider pays a flat monthly rate per end-user that includes some usage as well as a monthly interface rate that includes some usage sensitive costs.

³ In Telecom Regulatory Policy 2011-704, the Commission approved the flat rate billing model for the business wholesale HSA services of Bell Aliant, Bell Canada, and TCC and decided that the rates for these services would be based on costs plus an appropriate mark-up.

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

filed by incumbents and independent service providers with regard to that decision, parties have identified other issues related to legacy wholesale HSA services that warrant examination.

3. The Commission is initiating this proceeding and the proceeding initiated by Telecom Notice of Consultation 2013-79 to address the highest priority outstanding issues that have been brought to its attention. The specific issues that have been selected to be part of this proceeding have been chosen on the basis of their significance to the overall wholesale HSA service rates and to the parties.
4. Based on the criteria set out above, the Commission has decided to examine issues related to interface rates for the wholesale HSA services of Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (collectively, the Bell companies) and TELUS Communications Company (TCC), optional upstream speed rates for all incumbents' wholesale HSA services, and modem certification requirements for the large telephone companies' wholesale HSA services. The specific issues to be addressed by parties to the proceeding are described in greater detail below.

I. Interface rates for the Bell companies' and TCC's wholesale HSA services

5. In Telecom Regulatory Policy 2011-703, the Commission approved new interface rates for the wholesale HSA services of MTS Allstream Inc.,⁵ and Saskatchewan Telecommunications (SaskTel) based on associated costs plus a 30 percent markup.⁶ Interface rates for the Bell companies' and TCC's wholesale HSA services were approved prior to Telecom Regulatory Policy 2011-703, and reflect different rating principles and possibly different cost inclusions.
6. The Commission notes that in contrast to the telephone companies, cable carriers are not required to provide interfaces on a tariffed basis, and hence their wholesale HSA services are not included in this review.⁷
7. In light of the above, the Commission considers that the interface rates for the wholesale HSA services of the Bell companies and TCC likely do not reflect current rating approaches and should be reviewed. Accordingly, the Commission directs

⁵ 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. (collectively, MTS Allstream)

⁶ 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 an incumbent 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.

⁷ In Telecom Order 2007-230, the Commission approved the self-provision of interfaces by independent service providers using cable company networks.

the Bell companies and TCC to file updated cost studies and proposed rates for their wholesale HSA interface services using the pricing rules in effect for the interface services of MTS Inc. and SaskTel as set out in Telecom Regulatory Policy 2011-703 by **8 April 2013**.

II. Optional upstream speed rates

8. As noted in Telecom Decision 2013-36, incumbents are obliged to provide wholesale HSA services that match the upstream and downstream speeds of their retail Internet services (speed matching). In the event that any incumbent provides improved upstream speeds to its retail end-users, or even provides optional speed arrangements to its retail customers, those same capacities must be made available to independent service providers, consistent with the speed matching requirement.
9. The Bell companies currently provide an optional residential 7 megabit-per-second (Mbps) upstream speed for their residential and business wholesale HSA services offered in Ontario and Quebec.⁸ The Commission further notes that other incumbents may also be offering optional upstream speeds that are not currently identified in their wholesale HSA tariffs.
10. In light of the above, the Commission considers it necessary to establish the extent to which incumbents are offering optional upstream capabilities and to decide the rating principles that should apply to these options. Accordingly, the Commission directs each of the incumbents to file the following information by **7 March 2013**:
 - a) whether it offers optional business or residential upstream speeds at the retail level, and, if so, at what speeds and rates; and
 - b) whether the same optional upstream speeds are available to independent service providers.
11. In addition, the Commission invites parties to file comments, including supporting rationale and all evidence on which they rely, on the following:
 - a) whether the pricing approach for optional upstream speeds should be consistent with the pricing approach approved for similar other ancillary wholesale HSA services in Telecom Regulatory Policy 2011-703, namely Phase II costs⁹ plus a 30 percent markup; and

⁸ The Bell companies' current \$3.75 monthly rate for the optional residential wholesale HSA upstream speed of 7 Mbps was approved on an interim basis in Telecom Order 2011-377 and was not considered in Telecom Regulatory Policy 2011-703. In Telecom Order 2012-220, the Commission approved for the Bell companies an optional business wholesale HSA 7 Mbps upstream service at an interim rate of \$0 pending a more thorough evaluation of the costs.

⁹ 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.

- b) whether rates for the optional upstream services approved as a result of this process should be retroactive to the date that such rates were approved on an interim basis.¹⁰

12. The Commission notes that the record of the proceeding dealing with the Bell companies' proposed optional upstream speed rates¹¹ has been incorporated into this proceeding.

III. Modem certification requirements

13. The Commission notes that in order for independent service providers to make effective use of the wholesale HSA services provided by incumbents, their end-users must use modems that are compatible with the incumbent's network. At this time cable carriers with wholesale HSA services are obliged to observe modem certification processes established by the Commission, but no comparable obligations apply to the large telephone companies.¹²

14. The Commission is concerned that absent express modem certification requirements and processes that apply to large telephone companies, independent service providers may be placed at a competitive disadvantage and be exclusively dependent on telephone company-provided modems in order to provide competitive retail services.

15. In light of the above, the Commission intends to examine the need to have consistent modem certification requirements that apply to both cable carriers and telephone companies. Accordingly, the Commission invites parties to file comments, including supporting rationale and all evidence on which they rely, on whether specific modem certification guidelines are required for the large telephone companies and whether those guidelines should be consistent with those set out for cable carriers.

Procedure

16. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to this proceeding.¹³

¹⁰ Interim rates approved in Telecom Order 2012-220, dated 13 April 2012.

¹¹ The Bell companies' proposed optional upstream speed rates were originally filed in Bell Aliant Tariff Notice 400 and Bell Canada Tariff Notice 7345; these proposals were subsequently re-filed, with a supporting cost study in Bell Aliant Tariff Notice 411 and Bell Canada Tariff Notice 7357.

¹² In Telecom Order 2000-789, the Commission directed that each cable carrier include terms related to the availability of competitor-supplied modems, including modem certification requirements and processes in its wholesale HSA service tariff that are compatible with the cable carrier's access and distribution systems. Subsequently, in Telecom Decision 2004-37, the Commission established a certification process, specifications, fees, and timelines applicable to the cable carriers.

¹³ The Rules of Procedure set out, among other things, the rules for the filing, content, format, and service of interventions and interrogatories; the procedure for filing confidential information and requesting its disclosure; and the conduct of the public hearing. Accordingly, the procedure set out in this notice must be read in conjunction with the Rules of Procedure and their accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure."

17. The Bell companies, Cogeco Cable Inc., MTS Inc., Rogers Communications Partnership, SaskTel, Shaw Cablesystems G.P., TCC, and Videotron G.P. are made parties to this proceeding. These parties are to file the following information by **7 March 2013**:
 - a) Whether the company offers optional business or residential upstream speeds at the retail level and, if so, at what speeds and rates; and
 - b) Whether the same optional upstream speeds are available to independent service providers.
18. The Bell companies and TCC are directed to file cost studies and proposed rates for wholesale HSA interface services by **8 April 2013**.
19. Parties to this proceeding and interested persons who wish to become parties to this proceeding must file an intervention with the Commission regarding any of the issues identified in this Notice of Consultation, which in accordance with section 26 of the Rules of Procedure must explicitly state that the person wishes to be considered an intervener.
20. Interventions regarding the issues concerning rates for upstream speed options and modem certification requirements must be filed by **25 March 2013**.
21. Interventions regarding the issues concerning the wholesale HSA interface rates of the Bell companies and TCC must be filed by **17 April 2013**.
22. All persons who file at least one intervention as set out above are parties to this proceeding.
23. The Commission will post the interventions on its website shortly after the deadlines set out above. All documents required to be served on a party or parties to the proceeding must be served using the contact information contained in the interventions.
24. All parties may file reply comments concerning the rates for upstream speed options and modem certification requirements with the Commission, serving copies on all other parties by **2 April 2013**.
25. All parties may file reply comments concerning the rates for the wholesale HSA interfaces of the Bell companies and TCC with the Commission, serving copies on all other parties by **29 April 2013**.
26. The Commission will not formally acknowledge interventions or comments. It will, however, fully consider all submissions, which will form part of the public record of the proceeding.

27. Parties are reminded that, in accordance with the Rules of Procedure, if a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date. A document must be filed with the Commission by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. The Commission takes no responsibility for postal delays and will not notify parties if their submissions are received after the deadline. Late submissions will not be considered by the Commission and will not be made part of the public record.
28. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the

(Intervention/comment/answer form)

or

by mail to

CRTC, Ottawa, Ontario K1A 0N2

or

by fax to

819-994-0218

29. Electronic submissions should be in HTML format. Alternatively, Microsoft Word may be used for text and Microsoft Excel for spreadsheets. Submissions longer than five pages should include a summary.
30. Each paragraph of all submissions should be numbered. In addition, the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.

Important Notice

31. All information provided as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This includes personal information, such as full names, email addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information provided.
32. The personal information provided will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.

33. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
34. The information provided to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its search engine or a third-party search engine will not link directly to the information provided as part of this public process.

Location of CRTC offices

35. Submissions may be examined or will be made available promptly upon request at Commission offices during normal business hours.

Toll-free telephone: 1-877-249-2782
Toll-free TDD: 1-877-909-2782

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Secretary General

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 requesting enforcement of matching speed requirements with respect to third-party Internet access services provided by Rogers Communications Partnership*, Telecom Decision 2013-36, 31 January 2013
- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Introduction of a wholesale business fibre-to-the-node high-speed access service and an optional upstream speed*, Telecom Order CRTC 2012-220, 13 April 2012
- *Billing practices for wholesale business high-speed access services*, Telecom Regulatory Policy CRTC 2011-704, 15 November 2011
- *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
- *Interim rates for wholesale residential and business high-speed access services*, Telecom Order CRTC 2011-377, 15 June 2011
- *Cogeco Cable Canada Inc., Rogers Cable Inc., Shaw Cablesystems G.P., and Vidéotron ltée – Third-party Internet access using cable networks - Follow-up to Telecom Decision CRTC 2004-69*, Telecom Order CRTC 2007-230, 29 June 2007
- *Cable modems for third-party Internet access*, Telecom Decision CRTC 2004-37, 4 June 2004
- *Terms and rates approved for large cable carriers' higher speed access service*, Order CRTC 2000-789, 21 August 2000, as amended by Order CRTC 2000-789-1, 31 January 2001