



Telecom Decision CRTC 2015-215

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Execulink Telecom Inc. – Application to review and vary Telecom Order 2014-499 regarding the company’s Direct Connect service rate

*The Commission **denies**, by majority decision, an application from Execulink Telecom Inc. to review and vary certain elements of Telecom Order 2014-499. In that order, the Commission approved on a final basis, with changes, the company’s proposed revision to its Direct Connect service rate.*

Background

1. In Telecom Regulatory Policy 2013-160, the Commission determined that costs for the small incumbent local exchange carriers’ (ILECs) direct connect (DC)¹ service had declined since they were first established in Telecom Decision 2005-3. The Commission therefore directed each small ILEC to file with the Commission revised tariff pages for DC service reflecting the rate of \$0.001661 per conversation minute charged by TELUS Communications Company (TCC) in its serving territory in Quebec (TCC in Quebec),² or to propose a revised DC service rate with a supporting cost study.
2. Pursuant to Telecom Regulatory Policy 2013-160, seven small ILECs, namely Amtelecom Limited Partnership; DMTS; KMTS; NorthernTel, Limited Partnership; Ontera; People’s Tel Limited Partnership; and TBayTel, filed applications to revise their DC service rates to reflect the rate approved for TCC in Quebec. These applications were approved on a final basis in Telecom Decision 2013-594. Execulink filed its application to revise its DC service rate with a supporting cost study on 2 August 2013.
3. In Telecom Order 2014-499, the Commission approved on a final basis, with changes, Execulink Telecom Inc.’s (Execulink) proposed revision to its DC service rate. Specifically, the Commission modified Execulink’s proposed monthly DC service rate of \$0.006072 per conversation minute to \$0.002175, and modified the associated proposed markup from 40% to 25%. The Commission also modified the company’s proposed cost study to exclude certain proposed costs.

¹ DC service enables a long distance service provider to connect to the ILEC and the end-customer at the local switch.

² This rate was approved in Telecom Order 2012-312.

4. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it uses to assess review and vary applications that are filed pursuant to section 62 of the *Telecommunications Act*. Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to
 - an error in law or in fact;
 - a fundamental change in circumstances or facts since the decision;
 - a failure to consider a basic principle which had been raised in the original proceeding; or
 - a new principle which has arisen as a result of the decision.

Application

5. The Commission received an application from Execulink, dated 24 October 2014, in which the company requested that the Commission review and vary certain determinations in Telecom Order 2014-499. Specifically, Execulink submitted that there was substantial doubt as to the correctness of that order, since, in its view, the Commission
 - erred in fact by ignoring or failing to take into account that it is appropriate to include certain pre-introduction expenses in regulatory economic studies for wholesale service undertakings mandated by the Commission as prescribed in the approved ILEC regulatory economic study manuals;
 - erred in fact by ignoring or failing to take into account its determination in Telecom Decision 2008-14 that only regulatory expenses that satisfy the definition of a fixed common expense are to be excluded from regulatory economic studies; and
 - ignored or failed to take into account the evidence filed in the Telecom Order 2014-499 proceeding and the Commission's determinations in Telecom Regulatory Policy 2013-160 relating to the appropriate markup for DC service for small ILECs such as Execulink.
6. As such, Execulink requested that the Commission vary Telecom Order 2014-499 by
 - including the external consultant expenses for Execulink's cost study as part of the company's DC service costs;
 - modifying the markup of Execulink's DC service rate from 25% to 35%; and
 - modifying the company's monthly DC service rate from \$0.002175 per conversation minute to \$0.004467 to include the proposed changes above.

7. The Commission received interventions regarding Execulink's application from Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies); MTS Inc. and Allstream Inc. (collectively, MTS Allstream); and the Canadian Independent Telephone Company Joint Task Force (CITC-JTF). The public record of this proceeding, which closed on 12 December 2014, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.
8. The Commission has identified the following issues to be addressed in this decision:
 - Did the Commission err by failing to consider that certain pre-introduction expenses can be included in regulatory economic studies for mandated wholesale service undertakings as prescribed in the approved ILEC regulatory economic study manuals?
 - Did the Commission err by failing to consider its determination in Telecom Decision 2008-14 that only fixed common regulatory expenses are to be excluded from regulatory economic studies?
 - Did the Commission err by failing to consider its determination in Telecom Regulatory Policy 2013-160 and the evidence filed in the Telecom Order 2014-499 proceeding regarding an appropriate markup for Execulink's DC service?

Did the Commission err by failing to consider that certain pre-introduction expenses can be included in regulatory economic studies for mandated wholesale service undertakings as prescribed in the approved ILEC regulatory economic study manuals?

9. Execulink argued that in Telecom Order 2014-499, the Commission erred in fact by excluding the company's cost study expenses from its cost study based on the definitions of regulatory expenses and pre-introduction expenses outlined in Telecom Decision 2008-14. Execulink added that the Commission ignored the fact that in the approved ILEC regulatory economic study manuals, paragraph 1.10, footnote 5 stipulates that pre-introduction costs are those incurred prior to the date of the Commission decision that mandated the wholesale service undertaking. Accordingly, Execulink submitted that any pre-introduction costs incurred following that date are direct, incremental, and causal to that undertaking and should be included in the associated cost study.
10. Execulink argued that, contrary to the Commission's determination in Telecom Order 2014-499 that the company could have chosen TCC in Quebec's rate for DC service as a proxy, the company had no choice but to adapt the mandated cost study approach and file a cost study since its costs were higher than the proxy rate, as attested by the higher Commission-approved rate. Execulink added that it had to hire an external consultant to help prepare its cost study to ensure that the study was specific to the circumstances of a small ILEC. As well, Execulink submitted that, as indicated in

Telecom Order 2014-499, a number of revisions were required to Execulink's cost study, resulting in increased expenses for the company.

11. The Bell companies supported the inclusion of a reasonable level of expenses associated with conducting cost studies and regulatory activities in the costs used to set the rate for Commission-mandated services. They submitted that costs causal to those services, whether for the mandated introduction of wholesale services or for related rate reassessments required by the Commission, should be included in the cost study. They noted the number of examples that Execulink provided of ILEC wholesale service cost studies where the Commission approved the inclusion of cost study expenses. However, the Bell companies submitted that the Commission must ensure that any such expenses included in the cost study be fully justified and reasonable. They added that the expenses claimed by Execulink do not appear to be reasonable and that the Commission should not approve the entire proposed amount.
12. MTS Allstream submitted that if the Commission allows Execulink to include cost study expenses in its cost study, no more than 50% of the actual expenses should be included. MTS Allstream added that some of Execulink's expenses may have been avoidable if Execulink had made more reasonable assumptions and if cost inputs had been included earlier in the process.
13. CITC-JTF supported Execulink's application, and noted that the Commission has previously permitted the inclusion of expenses used to undertake a cost study associated with a mandated wholesale service many times.

Commission's analysis and determinations

14. Paragraph 1.10, footnote 5 of the approved ILEC regulatory economic study manuals applies to pre-introduction expenses in situations where the Commission requires the ILEC to introduce a new service and to file tariffs with a supporting cost study. Since the DC service is an existing service, pre-introduction expenses do not apply and the cost study expenses at issue do not fall within the scope of paragraph 1.10, footnote 5 of the approved ILEC regulatory economic study manuals. Instead, since these cost study expenses relate to an existing service, they fall under the definition of regulatory fixed common costs and are to be excluded from the associated cost study, as set out in Telecom Decision 2008-14.
15. The Commission has examined the examples cited by Execulink of previous decisions in which the Commission approved cost study expenses associated with wholesale services. In all cases except one, the Commission did not explicitly address the issue of the cost study expenses. In the instance where the Commission did explicitly address the cost study expenses, the Commission requested that the ILEC spread these expenses over a ten-year period instead of a five-year period. The Commission considers that none of these cases demonstrates that an exception should be made in the present case to the costing principles set out in paragraph 1.10, footnote 5 of the approved ILEC regulatory economic study manuals and in Telecom Decision 2008-14.

16. Accordingly, the Commission finds that it did consider Execulink's request to include the company's cost study expenses in the cost study in light of the approved ILEC regulatory economic study manuals, and that it did not err by rejecting Execulink's submissions in the proceeding leading to Telecom Order 2014-499. The Commission therefore concludes that it did not err by failing to consider that certain pre-introduction expenses can be included in regulatory economic studies in specific circumstances as prescribed in the approved ILEC regulatory economic study manuals.

Did the Commission err by failing to consider its determination in Telecom Decision 2008-14 that only fixed common regulatory expenses are to be excluded from regulatory economic studies?

17. Execulink submitted that the Commission erred in denying the inclusion of the company's cost study expenses, since the Commission determined in Telecom Decision 2008-14 that only fixed common regulatory expenses are to be excluded from regulatory economic studies. Execulink argued that its one-time expenses for an external consultant, who the company claimed has specialized expertise in Phase II costing methods, are incremental and causal to its DC service and, as such, should be included as part of the cost study.

Commission's analysis and determinations

18. The choice of using internal resources or external consultants to produce cost studies and whether a cost study expense is a one-time cost have no bearing on the classification of cost study expenses as fixed common costs or incremental costs. Rather, it is the nature of the expense that determines this classification. In Appendix 1 of Telecom Decision 2008-14, the Commission defined expenses associated with the preparation of material in support of tariff applications, such as cost study expenses, as fixed common regulatory expenses to be excluded from cost studies. The Commission finds that in the proceeding leading to Telecom Order 2014-499, it did consider its determination in Telecom Decision 2008-14 and that it did not err in finding that Execulink's cost study expenses in question are fixed common regulatory expenses.

19. The Commission therefore concludes that it did not err by failing to consider its determination in Telecom Decision 2008-14 that only fixed common regulatory expenses are to be excluded from regulatory economic studies.

Did the Commission err by failing to consider its determination in Telecom Regulatory Policy 2013-160 and the evidence filed in the Telecom Order 2014-499 proceeding regarding an appropriate markup for Execulink's DC service?

20. Execulink submitted that the pricing rule for the small ILECs' DC service is currently being reviewed by the Commission as a result of its determination in Telecom Regulatory Policy 2013-160 that small ILECs would have the choice of (i) adopting

the TCC in Quebec DC service rate, or (ii) filing for Commission approval a revised DC service rate supported by a cost study that reflects current incremental or Phase II costs plus a markup. Execulink argued that in Telecom Regulatory Policy 2013-160, the Commission did not predetermine that it would rely upon a DC service rate markup approved in another proceeding, but rather that it would consider another markup proposal. Execulink also argued that the Commission appears to have erred by predetermining the 25% markup for the company's DC service rate and closing its mind to or ignoring the evidence relating to the proposed markup level that the company submitted in the proceeding leading to Telecom Order 2014-499.

21. In its current application, Execulink requested a markup of 35% for its DC service. The company submitted that the markup included in its DC service rate should be higher than that for TCC in Quebec and for Télébec, Limited Partnership since (i) those companies have much greater total network access services (NAS),³ and (ii) Execulink has smaller markets with fewer subscribers from whom to recover its higher costs. Execulink added that the Commission has recognized the different sizes of company operations in previous decisions, such as in Telecom Decision 2005-3, in which the Commission set different DC service rates for different-sized companies based on their traffic volumes (i.e. companies with less than 5 million conversation minutes, those with 5 to 20 million conversation minutes, and those with over 20 million conversation minutes).
22. The Bell companies submitted that the Commission has used the 25% markup for all small ILECs, regardless of whether or not they are affiliated with a larger carrier. They added that TBayTel, one of the seven small ILECs that chose to adopt TCC in Quebec's DC service rate, is not affiliated with a larger ILEC. The Bell companies argued that Execulink's higher costs are already captured in the 25% markup for the small ILECs' DC service rate, which is higher than the 15% markup included in the large ILECs' DC service rate.
23. MTS Allstream argued that the Commission's existing regulatory framework for interconnection services allows small ILECs a markup of 25%, and that reconsidering this framework is beyond the scope of this proceeding.
24. CITC-JTF supported Execulink's proposed markup adjustment for its DC service, arguing that the Commission should recognize the unique characteristics and operating realities of small ILECs.

Commission's analysis and determinations

25. The Commission does not generally establish markups based on a company's specific operating conditions and number of customers, but for groups of services and for large versus small ILECs. The Commission allows a different markup for a particular ILEC only under very specific circumstances.

³ A NAS is the line that provides subscribers with access to the telephone network.

26. The higher markup of 25% for small ILECs' interconnection services, as compared to 15% for large ILECs' interconnection services, takes into account the differences between the small ILECs' and the large ILECs' operating environments. As well, seven small ILECs of various sizes in terms of operating territory or number of customers, but much smaller than TCC in Quebec, adopted the TCC in Quebec proxy rate, which includes a 25% markup, for their DC services.
27. In the proceeding leading to Telecom Order 2014-499, Execulink had the opportunity to propose its own markup for its DC service. In four of the company's cost study submissions in that proceeding, Execulink proposed a markup of 25%, and in its last two submissions, it proposed a markup of 40%. In that proceeding, the Commission considered Execulink's submission regarding changing its markup and found that this change was not justified. Consequently, the Commission maintained the established 25% markup for the company's DC service.
28. Execulink did not provide any compelling evidence in the proceeding leading to Telecom Order 2014-499 or in the present proceeding to show that its situation is significantly different than those of the other small ILECs of various sizes to warrant a markup higher than 25% for its DC service.
29. Accordingly, the Commission concludes that it did not err by failing to consider its determination in Telecom Regulatory Policy 2013-160 and the evidence filed by Execulink in the Telecom Order 2014-499 proceeding regarding an appropriate markup for the company's DC service.

Conclusion

30. In light of all the above, the Commission finds that Execulink has failed to demonstrate substantial doubt as to the correctness of the Commission's determinations set out in Telecom Order 2014-499. The Commission therefore **denies**, by majority decision, Execulink's application to review and vary Telecom Order 2014-499.

Secretary General

Related documents

- *Execulink Telecom Inc. – Revision to Direct Connect service rate*, Telecom Order CRTC 2014-499, 26 September 2014
- *Regulatory framework for the small incumbent local exchange carriers and related matters*, Telecom Regulatory Policy CRTC 2013-160, 28 March 2013
- *TELUS Communications Company – Revised toll interconnection service rates in Quebec*, Telecom Order CRTC 2012-312, 29 May 2012
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011

- *Review of certain Phase II costing issues*, Telecom Decision CRTC 2008-14, 21 February 2008, as amended by Telecom Decision CRTC 2008-14-1, 11 April 2008
- *Direct toll and network access costing methodology for small incumbent local exchange carriers – Follow-up to Decision 2001-756*, Telecom Decision CRTC 2005-3, 31 January 2005