



Telecom Decision CRTC 2009-87

Ottawa, 23 February 2009

MTS Allstream Inc. – Application concerning TELUS Communications Company's rate increase for regulated interexchange channel services

File number: 8661-M59-200813859

The Commission approves MTS Allstream's application regarding TCC's interexchange channel services charges.

1. The Commission received an application by MTS Allstream Inc. (MTS Allstream), dated 14 October 2008, in which the company requested that the Commission declare certain interexchange (IX) channel services rate increases implemented by TELUS Communications Company (TCC) to be of no force and effect. MTS Allstream also requested that the Commission direct TCC to issue correct billing statements to remove the rate increases and to refund any amounts paid in excess of the existing approved rates.
2. MTS Allstream submitted that as of 7 September 2008, TCC had changed its methodology for calculating the rates charged for multiple IX channel services under its General Tariff sub-items 503.3.2b and 503.3.2c without the Commission's approval of a tariff change.
3. The Commission received comments from Rogers Communications Inc. (RCI). The public record of this proceeding, which closed on 24 November 2008, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Should the Commission declare TCC's rate increase to be of no force and effect, and direct TCC to issue revised billing statements?

MTS Allstream's application

4. MTS Allstream submitted that TCC had changed its interpretation regarding its General Tariff sub-items 503.3.2b and 503.3.2c to eliminate the application of lower rates for certain multiples of DS-0 channels up to DS-1 capacity and for certain multiples of DS-1 channels up to DS-3 capacity. MTS Allstream indicated that those sub-items clearly state that the DS-1 and DS-3 IX rate tables will be used for pricing channel services up to the DS-1 and DS-3 capacities, respectively, on non-forborne routes.
5. MTS Allstream submitted that the title of the DS-1 rating table in sub-item 503.3.2b, "DS-1 Channels or channels occupying up to DS-1 capacity," clearly mandates the aggregating of DS-0 channels up to DS-1 capacity and applying the DS-1 rate when appropriate.

6. MTS Allstream noted that TCC's approved rate for a DS-1 IX channel is lower than the rate charged for 13 DS-0 IX channels and that this DS-1 IX channel has the equivalent digital capacity of up to 24 DS-0 IX channels. MTS Allstream submitted that TCC's previous interpretation, which is used by all other incumbent local exchange carriers (ILECs), permitted customers to benefit from the application of the DS-1 rate when more than 12 DS-0 channels were provisioned on a single tariffed IX route.
7. In addition, MTS Allstream indicated that prior to changing its methodology, TCC was using a crossover rating matrix that prescribed the lowest price combinations for multiple DS-0 IX channel services when ordered on a regulated route.
8. MTS Allstream submitted that TCC's action constituted an effective price change and that, since these services were tariffed and subject to the price cap regime, TCC was flouting the mandatory requirements of the *Telecommunications Act* and the Commission's price cap rules by proceeding to implement these increases without Commission approval.

Positions of other parties

9. RCI supported MTS Allstream's view. It requested that the Commission declare that TCC's effective rate increases for regulated inter-office digital channels are of no force, given TCC's failure to seek and obtain regulatory approval for those increases.
10. TCC submitted that while channel capacity aggregation pricing is permitted, it is not in fact explicitly or implicitly mandated in the language within the approved tariff. TCC also submitted that the titles of sub-items 503.3.2b and 503.3.2c only support a voluntary non-discriminatory application of a channel capacity aggregation pricing policy.
11. TCC submitted that modifying its policy regarding this voluntary IX channel capacity aggregation pricing had not affected any individual rating elements or conditions of its General Tariff. TCC also submitted that as there was no tariff change associated with the policy modification, there was no requirement to obtain Commission approval.

Commission's analysis and determinations

12. The Commission notes that MTS Allstream and RCI both submitted that the wording of the title of the DS-1 rating table in sub-item 503.3.2b mandates the channel capacity aggregation pricing to the DS-1 rate. However, the Commission also notes TCC's alternative interpretation that the tariff permits, but does not mandate, aggregate pricing.
13. The Commission notes that MTS Allstream submitted that TCC's interpretation of the tariff is contrary to the long-standing commercial practices of TCC and of the other ILECs, and that if the current tariff language is ambiguous or permits only a voluntary application of channel capacity aggregation pricing, then a significant potential for unjust discrimination exists.
14. The Commission notes that for many years the Commission, TCC, and the other ILECs have interpreted this tariff as providing for channel capacity aggregation pricing of circuit billing on a single tariffed route. The Commission also notes that TCC developed and used a crossover rating matrix in its business offices to ensure that its clients benefited from this aggregation.

15. However, the Commission notes that TCC suggested that the tariff should be interpreted as permitting either invoicing of multiple channels on a per-channel basis or on an aggregate capacity basis. The Commission considers that this tariff should not be open to such an interpretation because a tariff that permits the use of voluntary rating discounts without directing when those discounts are to apply could invite an arbitrary and unjust discriminatory application of the tariff. Consequently, the Commission considers that endorsing TCC's proposed interpretation would be inconsistent with past Commission practice of interpreting tariffs in a manner that ensures predictability and fairness.
16. In light of the above, the Commission **approves** MTS Allstream's application. The Commission directs TCC to re-instate its channel capacity aggregation pricing policy for IX digital services and to refund any additional increased charges it may have collected since the date on which it changed its tariff interpretation and business policy in this regard.

Secretary General

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>