



Telecom Decision CRTC 2011-44

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Ottawa, 25 January 2011

Usage-based billing for Gateway Access Services and third-party Internet access services

File number: 8661-C12-201015975

In this decision, the Commission determines that usage-based billing rates for an incumbent telephone carrier's wholesale residential Gateway Access Services or equivalent services, and for an incumbent cable carrier's third-party Internet access services, are to be established at a discount of 15 percent from the carrier's comparable usage-based billing rates for its retail Internet services.

Introduction

1. In Telecom Notice of Consultation 2010-803, the Commission initiated a proceeding to consider rate levels for the usage-based billing (UBB) components of the incumbent local exchange carriers' (ILECs) wholesale Residence Gateway Access Services or equivalent services (GAS), and of the large cable carriers' wholesale third-party Internet access (TPIA) services.¹
2. UBB is an economic Internet traffic management practice (ITMP) whose purpose is to manage Internet traffic on an incumbent carrier's facilities. Where an ILEC or a cable carrier has UBB rates, the rate structures of its retail Internet service and its GAS or TPIA service are generally the same: there is a flat-rate component that provides access and a pre-set amount of monthly usage, and there is a UBB rate component, whereby usage above pre-set thresholds is subject to further charges.
3. This decision addresses the issue on which Telecom Notice of Consultation 2010-803 requested comment, namely whether UBB rates for wholesale GAS and TPIA services should be set at levels below the carriers' respective comparable UBB rates for retail Internet services and, if so, to what extent. It also addresses associated implementation matters.

¹ GAS and equivalent ILEC services and cable carrier TPIA services are mandated wholesale services that competitors use as an input to provide various retail services, notably retail Internet services.

4. The Commission received submissions from ILECs and cable carriers that charge or may charge wholesale UBB rates, and from competitors that pay or may pay those rates.² The Commission also received a large number of public comments, generally opposing UBB.
5. The public record of this proceeding, which closed on 9 December 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Positions of parties

6. The cable carriers and the ILECs (collectively, the carriers), excluding MTS Allstream Inc. (MTS Allstream), submitted that wholesale UBB rates should not be discounted relative to comparable retail UBB rates. They submitted that UBB rates shape end-user behaviour and that different UBB rates would lead to different behaviours by carriers' and competitors' end-customers. Bell Canada and Bell Aliant Regional Communications, Limited Partnership (collectively, the Bell companies), along with TELUS Communications Company, submitted that, without a wholesale UBB discount, competitors can still differentiate their retail services, both in terms of rates and using other methods. The Bell companies submitted that there is no basis on which to determine an appropriate level of discount.
7. The competitors and MTS Allstream submitted that wholesale UBB rates should be discounted relative to comparable retail UBB rates. The competitors generally submitted that discounted wholesale rates would provide a margin from which competitors can recover additional costs associated with wholesale UBB, including activities related to customer inquiries and potential discrepancies between carrier usage bills and competitor records. The competitors also generally noted that, because retail UBB charges are not prepaid, there is a risk that customers will not pay them. In general, the competitors submitted that the financial risk is more significant for competitors than for carriers because unlike carriers, whose retail UBB rates are not cost-based, competitors must pay wholesale UBB rates to carriers as a direct cost.
8. The competitors also generally submitted that discounted wholesale UBB rates would permit continued retail service differentiation. They argued further that allowing a discount would reduce what they characterized as an anti-competitive cross-subsidy from competitors to carriers that results from wholesale UBB rates not being cost-based. The competitors generally submitted that GAS and TPIA services are one input among others they use to provide retail Internet services, that these wholesale services are not resale versions of the carriers' retail Internet services, and therefore

² In this decision, "ILECs" refers to Bell Aliant Regional Communications, Limited Partnership, Bell Canada, MTS Allstream Inc., Saskatchewan Telecommunications, and TELUS Communications Company; "cable carriers" refers to Cogeco Cable Inc., Quebecor Media Inc., on behalf of its affiliate Videotron Ltd., Rogers Communications Inc., and Shaw Communications Inc.; and "competitors" refers to the Canadian Association of Internet Providers, the Canadian Network Operators Consortium, Distributel Communications Limited, and Vaxination Informatique.

that symmetrical wholesale UBB charges are not appropriate. The Canadian Network Operators Consortium (CNOc) proposed that wholesale UBB rates be discounted by a minimum of 50 percent relative to retail rates, to redress various disadvantages faced by competitors relative to carriers.

Commission's analysis and determinations

9. The Commission notes that carriers' retail UBB rates are market-based and are not subject to prior Commission approval – that is, they are forborne from regulation. The Commission also notes that the flat-rate component of the carriers' retail Internet service rates recovers most, if not all, of the associated retail UBB costs. In the Commission's view, this situation provides carriers with the flexibility to adjust or waive retail UBB rates on a promotional basis.
10. However, the Commission considers that, for competitors, carriers' wholesale UBB rates are an additional, direct, and unavoidable cost that competitors will need to recover from rates paid by their retail customers. The Commission also considers that wholesale UBB charges will result in additional customer care costs for competitors, including a review of the relevant carrier's wholesale usage records and associated UBB charges.
11. Further, the Commission notes its view in Telecom Regulatory Policy 2010-632 that services provided by smaller competitors bring pricing discipline, innovation, and consumer choice to the retail Internet service market. The Commission considers that, in the absence of a discount on carriers' wholesale UBB rates relative to their comparable retail UBB rates, smaller competitors' ability to continue to differentiate their retail Internet services would be unduly impaired.
12. In light of the above, the Commission concludes that wholesale UBB rates should be established at a discount relative to carriers' comparable retail UBB rates and that, in the absence of such a discount, the wholesale UBB rates would not be just and reasonable, contrary to subsection 27(1) of the *Telecommunications Act* (the Act).
13. Regarding the amount of the wholesale UBB discount, the Commission considers that if it is too large, the effectiveness of UBB as an economic ITMP will be reduced, while if it is too small, competitors' capacity to recover costs will be undermined.
14. The Commission concludes that a discount of 15 percent for carriers' wholesale UBB rates relative to their retail UBB rates recognizes these considerations appropriately.

Implementation

15. CNOc requested a minimum period of 90 days for implementation. The Bell companies submitted that implementation of the determinations in this decision must not delay the implementation of wholesale UBB rates as set out in Telecom Decision 2010-802. The Bell companies also submitted that they would require 60 days from the date of this decision to implement any required changes to their billing systems.

16. The Commission notes that wholesale UBB rates were approved for the Bell companies in Telecom Decision 2010-255, which was issued on 6 May 2010. The Commission considers that wholesale UBB rates for GAS should be implemented by the Bell companies without undue delay. The Commission considers that the Bell companies' proposed period for the implementation of discounted wholesale UBB rates is unduly long.
17. Accordingly, the Commission directs the Bell companies, as well as cable carriers with tariffed UBB rates for TPIA services, to implement discounted wholesale UBB rates on the basis set out in this decision, by 1 March 2011. The Commission further directs carriers whose wholesale tariffs contain UBB rates to issue revised tariffs reflecting the determinations in this decision, by 1 March 2011.

Policy Direction

18. The Commission considers that its determinations in this decision advance the telecommunications policy objectives set out in paragraphs 7(b), (c), and (f) of the Act.³ The Commission further considers that its determinations are consistent with the Policy Direction⁴ requirements that (a) the measures in question be efficient and proportionate to their purpose and interfere with competitive market forces to the minimum extent necessary to meet the relevant policy objectives, and (b) the measures neither deter economically efficient competitive entry into the market nor promote economically inefficient entry.
19. The Commission notes that wholesale GAS and TPIA services are regulatory measures related to network access regimes. The Commission considers that its determinations in this decision are consistent with the Policy Direction requirement that determinations related to such regimes should ensure their competitive neutrality to the greatest extent possible.

Secretary General

³ The cited policy objectives of the Act are
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; and
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.

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

Related documents

- *Usage-based billing for Gateway Access Services and third-party Internet access services*, Telecom Notice of Consultation CRTC 2010-803, 28 October 2010
- *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010
- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Applications to introduce usage-based billing and other changes to Gateway Access Services*, Telecom Decision CRTC 2010-255, 6 May 2010