



## Telecom Decision CRTC 2013-73

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Ottawa, 21 February 2013

### **Canadian Network Operators Consortium Inc. – Application to review and vary Telecom Regulatory Policies 2011-703 and 2011-704**

File number: 8662-C182-201202324

*In this decision, the Commission considers requests made by the Canadian Network Operators Consortium Inc. to review and vary certain decisions in Telecom Regulatory Policies 2011-703 and 2011-704.*

*The Commission revises the residential wholesale high-speed access (HSA) service rates set in Telecom Regulatory Policy 2011-703 for Bell Canada and Bell Aliant in Ontario and Quebec and TELUS Communications Company (TCC) in Alberta and British Columbia to correct costing errors, and makes these rates effective as follows: revised monthly flat rates for TCC are effective as of 15 November 2011, and revised capacity-based billing (CBB) model rates for Bell Canada and Bell Aliant in Ontario and Quebec are effective as of 1 February 2012.*

*The Commission has decided that the rates for business wholesale HSA services are to be the same as the rates for comparable residential wholesale HSA services. The Commission revises the business wholesale HSA service rates set in Telecom Regulatory Policy 2011-704 to reflect its decision and makes these rates effective as follows: revised monthly flat rates for TCC and for Bell Aliant in Atlantic Canada are effective the date of this decision, and application of the CBB model rates for business wholesale HSA service for Bell Canada and Bell Aliant in Ontario and Quebec are effective 45 days from the date of this decision.*

*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 application from the Canadian Network Operators Consortium Inc. (CNOc), dated 2 March 2012, in which CNOc requested that the Commission review and vary certain decisions made in Telecom Regulatory Policies 2011-703 and 2011-704. CNOc submitted that there is substantial doubt as to the correctness of the decisions in question on the basis of errors in fact and errors in law.
2. The Commission received comments regarding CNOc's application from Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (collectively the Bell companies); British Columbia Broadband Association; Cogeco Cable Inc. (Cogeco); MTS Inc. and Allstream Inc. (collectively,

MTS Allstream);<sup>1</sup> Quebecor Media Inc. on behalf of its affiliate Videotron G.P. (Videotron); Rogers Communications Partnership (RCP); Shaw Cablesystems G.P. (Shaw); TELUS Communications Company (TCC); and Vaxination Informatique (Vaxination).<sup>2</sup>

3. The public record of this proceeding, which closed on 5 October 2012, is available on the Commission's website at [www.crtc.gc.ca](http://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 assess review 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.

## Issues

5. The Commission has identified the following issues to be addressed in this decision:
  - I. Did the Commission err with respect to procedural fairness?
  - II. Did the Commission err in setting the markup<sup>3</sup> for business wholesale HSA service rates?
  - III. Did the Commission err in its costing approach with respect to
    - a) the use of conversions of volume measurements to peak traffic rather than peak traffic measurements?
    - b) the use of service demand on Internet services only, instead of all services sharing network capacity, to determine usage costs?
    - c) the use of a methodology that did not take into account the combined peak traffic of independent service providers?

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<sup>1</sup> 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.

<sup>2</sup> In this decision, the Cable carriers are Cogeco, RCP, Shaw, and Videotron.

<sup>3</sup> "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.

- d) the rejection of annual reviews to take into account the latest cost information and peak traffic trends?
- e) cost assumptions for the Bell companies in Ontario and Quebec?<sup>4</sup>
- f) cost assumptions for TCC in its territory in Alberta and British Columbia?

IV. Did the Commission err in mandating a two-year transition period for the migration from disaggregated to aggregated points of interconnection (POIs)<sup>5</sup> for cable carrier networks?

V. Should any changes made to rates in this decision be applied prospectively or retroactively?

6. CNOC's application also sought relief with respect to certain rate issues regarding the wholesale HSA services of Bell Aliant in its territory in Ontario and Quebec and Bell Canada (collectively, the Bell companies in Ontario and Quebec). CNOC submitted that these rate issues flow directly from Telecom Regulatory Policies 2011-703 and 2011-704 but do not involve requests to review and vary the decisions. These rate issues include i) monthly charges for optional increased upload speeds, ii) the rates for high-speed interfaces, and iii) terms related to the availability of certain modems. The Commission notes that these issues do not concern rates, terms, or conditions decided in Telecom Regulatory Policies 2011-703 and 2011-704. The Commission finds that these issues are therefore outside the scope of this proceeding since they do not otherwise involve the review and variance of the decisions in question. The Commission notes that these matters are being addressed in Telecom Notice of Consultation 2013-80, also issued today.

### **I. Did the Commission err with respect to procedural fairness?**

7. CNOC submitted that, in the proceedings that led to Telecom Regulatory Policies 2011-703 and 2011-704, the Commission erred in law by failing to conduct a sufficiently transparent process to enable parties to fully assess the information filed in confidence by the incumbents, thereby denying parties of their right to be heard. In CNOC's submission, the filing of information in confidence has become not only a means of protecting the economic interests of the owners of such information, it has also become a means by which incumbents can shelter information from public scrutiny, greatly diminishing the effectiveness of what is supposed to be a public and transparent regulatory process. CNOC submitted that the denial of procedural fairness to parties during the proceedings resulted in inflated and unsustainable rates that are not just and reasonable.

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<sup>4</sup> Bell Canada and Bell Aliant in its territory in Ontario and Quebec

<sup>5</sup> A POI is a location at which an independent service provider connects its network to a cable carrier's network in order to gain access to its own retail end-users through high-speed access paths on the cable carrier's network. A POI allows an independent service provider to support retail end-users within an authorized serving area.

8. CNOC proposed that the Commission conduct a more transparent rate review process in which counsel and experts for parties would have full access to information filed in confidence. CNOC submitted that this new process would involve the same procedures that have been in place for many years at the Canadian International Trade Tribunal (CITT) to deal with similar concerns, tailored to the Commission's circumstances.
9. The Bell companies and TCC submitted that there had been no issue of procedural fairness because the Commission followed the requirements of the Act. TCC also noted that CNOC did not submit that the Commission had failed to follow its processes regarding confidential information.
10. The Cable carriers, along with the Bell companies, submitted that while there was no breach of the duty of procedural fairness, CNOC should have raised its concern regarding procedural fairness at the first opportunity but failed to do so. The Cable carriers further submitted that CNOC failed to establish that it could not participate meaningfully in the original proceedings, as extensive comments were filed by CNOC in those proceedings. Finally, the Cable carriers argued that the issues identified in Telecom Notice of Consultation 2011-77, which initiated the proceeding that led to Telecom Regulatory Policy 2011-703, were all methodological and could be addressed fully without detailed costing data.
11. In reply, CNOC submitted that the established process is no longer procedurally fair to interested parties and the public at large because the wholesale services in question are important for promoting competition for a wide variety of retail services, the services' characteristics lead to a high risk of significant errors in setting rates, and the current communications environment has created increased expectations of transparency in the regulatory process.
12. CNOC further submitted that it had identified the procedural unfairness at the earliest possible opportunity. In its view, given that the Commission adopted its traditional approach to confidential information in the proceedings, the unfairness associated with the application of that approach became apparent only with the issuance of the two decisions in question, and it is therefore reasonable to seek a more transparent regulatory process for a subsequent review of the disputed rates.
13. Regarding the Cable carriers' submission that the issues were methodological in nature and did not require access to confidential information, CNOC noted that the rate errors in the decisions result from the lack of transparency in the original proceeding and are in addition to the grounds for dispute relating to the methodological considerations referred to by the Cable carriers.

#### **Commission's analysis and decisions**

14. The Commission notes that CNOC did not challenge any specific disclosure decisions during the proceedings leading to Telecom Regulatory Policies 2011-703 and 2011-704 or in its current application. Rather, CNOC argued that the traditional

approach to dealing with confidential information used in the proceedings is not procedurally fair to interested parties and that a new, more transparent process (based on the CITT's procedures) is required.

15. Pursuant to section 39 of the Act, a person may designate information submitted to the Commission as confidential where it falls within the categories of information identified in that section. Further, section 39 of the Act provides that once designated, such information cannot be publicly disclosed except where the Commission decides that such disclosure is in the public interest. Pursuant to the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure), parties may request disclosure of information designated as confidential in the course of proceedings before the Commission. In deciding on requests for disclosure, the Commission considers whether any specific, direct harm likely to result from disclosure of such information would outweigh the public interest in disclosure. When conducting this assessment, the Commission takes into account the extent to which disclosure of the information is required in order to allow parties to participate meaningfully in the proceeding.
16. The Commission notes that the confidentiality and disclosure process set out above was followed, in accordance with the requirements of the Act and the Rules of Procedure, in the proceedings leading to Telecom Regulatory Policies 2011-703 and 2011-704. Indeed, CNOC has not alleged any failure to comply with the governing statutory mandate regarding the disclosure of information designated as confidential. As noted above, the established process explicitly called for the consideration of CNOC's and other parties' interest in having an opportunity to scrutinize the information. As a result of this process, disclosure of a significant amount of cost information for the wholesale HSA services was required, particularly relating to the methodologies and other assumptions underlying the proposed costs. Generally speaking, disclosure of detailed, competitively sensitive information, such as the unit costs associated with certain network components, was not required.
17. The Commission considers that the mere fact that the rates established in the decision varied among the incumbents and were, in CNOC's view, inflated, does not demonstrate, as suggested by CNOC, that the process leading to the decisions was inconsistent with the principles of procedural fairness.
18. In light of all the above, the Commission finds that CNOC has failed to establish any error in law from a denial of procedural fairness in the proceedings leading to Telecom Regulatory Policies 2011-703 and 2011-704. The Commission also finds that it would be neither necessary nor appropriate to initiate another proceeding to reconsider the rates for the wholesale HSA services using a different process for the disclosure of confidential information, as requested by CNOC.
19. The Commission concludes that CNOC has not demonstrated substantial doubt as to the correctness of Telecom Regulatory Policies 2011-703 and 2011-704 on the basis of the process that was applied regarding the disclosure of confidential information.

## **II. Did the Commission err in setting the markup for business wholesale HSA service rates?**

20. CNOC submitted that the Commission erred in law and in fact in setting the business wholesale HSA service rates for the Bell companies and TCC by including a markup in these rates that is greater than the markup approved for the corresponding residential wholesale HSA service rates. In CNOC's submission, any differences in prices for these services should result only from underlying cost differences to provide the services. CNOC also submitted that where there are no cost differences, the rates should be the same.
21. CNOC further submitted that the Commission should not have set rates for business wholesale HSA services that reflect the perceived value of the retail services that are provisioned using these wholesale services. CNOC also submitted that the Commission's reference to the 25-percent level of competition among independent service providers in the retail business Internet market as rationale to support maintaining a higher markup for business wholesale HSA services was inappropriate. CNOC submitted that by approving a higher markup for business wholesale HSA services, the Commission will limit the degree of competition in the retail business Internet service market to its current level.
22. Finally, CNOC submitted that if the Commission does not vary its decision on the level of markup for business wholesale HSA services, incumbents will be allowed to overcharge independent service providers, who will be forced to recover those costs from their business end-users. CNOC stated that this policy would hurt Canadian businesses as they would have to cope with higher expenditures, which would make them less productive and less competitive.
23. MTS Allstream supported CNOC's request and submitted that the cost of provisioning a business or residential wholesale HSA service is exactly the same, and for this reason neither MTS Allstream nor any of the Cable carriers have differentiated tariffs for their wholesale HSA services. MTS Allstream also noted that TCC did not have differentiated tariffs for residential and wholesale HSA services prior to 2011.
24. MTS Allstream also submitted that applying a higher markup for business wholesale HSA services is contrary to the principle of relying on market forces to the maximum extent possible, as set out in the Policy Direction.<sup>6</sup> MTS Allstream argued that if the business market is willing to pay more for retail high-speed Internet services it should be for the market to decide, and not artificially determined by the wholesale rates that competitors are charged. MTS Allstream was of the view that the higher markups favour incumbents who price these services artificially high, while unnecessarily increasing competitors' costs.

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<sup>6</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006, subparagraph 1(a)(i)

25. The Bell companies submitted that it is legitimate for the markup to differ between business and residential wholesale HSA services to recognize the differences in i) the rates for the retail services that are ultimately provisioned using the services, ii) the marketshare of industry participants, and iii) the services themselves. The Bell companies argued that given the significant market share of independent service providers in the business retail Internet market, CNOC has failed to demonstrate any market failure resulting from the differentiated markups.
26. TCC submitted that residential and business wholesale HSA markups, taken together, provide the total markup it needs to recover fixed and common costs plus a risk premium associated with investments made to provide wholesale HSA services, and an adequate return to shareholders. TCC further submitted that if business wholesale HSA services markups were decreased, the Commission would be required to increase the markup on residential wholesale HSA services, since the combined markup must be suitable for all wholesale HSA facilities. Further, according to TCC, the Commission is free to consider a “value-of-service” rating approach when setting rates for these services.
27. In reply, CNOC submitted that value-of-service pricing has no place in setting the markup for the wholesale service as it is the wholesale customer, not the wholesale service provider, that adds value at the business retail level. With respect to TCC’s submission that residential and business wholesale HSA markups must be considered together, CNOC submitted that Telecom Regulatory Policy 2011-704 did not make such a finding, and CNOC rejected TCC’s suggestion that business wholesale HSA rates are cross-subsidizing residential wholesale HSA rates.

### **Commission’s analysis and decisions**

28. In Telecom Regulatory Policy 2011-704, the Commission denied CNOC’s request to include the same markups in rates for business and residential wholesale HSA services, noting the following: i) compared to retail residential Internet services, retail business Internet services typically include a number of additional features and are priced higher for comparable service speeds; ii) if an incumbent provides business and residential wholesale HSA services separately, rates for business wholesale HSA services have generally been set using higher markups compared to the residential wholesale HSA service; and (iii) this rating approach has not hindered independent service providers’ growth in the retail business high-speed Internet market, as evidenced by their significant overall market share. Further, the Commission found that it was appropriate to apply an even higher markup to the Bell companies’ dedicated wholesale HSA service<sup>7</sup> to recognize that it provides a higher quality of services than other wholesale HSA services.

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<sup>7</sup> The Bell companies refer to this service as “high speed access (HSA) service”, which is a dedicated service that is established using permanent virtual circuit technology. In Telecom Regulatory Policy 2011-704 the Commission set the rates for the non-legacy HSA service that makes use of fibre-to-the-node technology.

29. The Commission is of the view that business and residential wholesale HSA services provide essentially the same functionality use essentially the same network components, and typically have the same costs.<sup>8</sup> MTS Inc., Saskatchewan Telecommunications (SaskTel), and the Cable carriers have only a single wholesale HSA service that competitors use in their provision of retail services to both residential and business end-users. In addition, MTS Inc. and SaskTel's wholesale HSA services are similar to the Bell companies' dedicated wholesale HSA service. The Commission notes that all of these wholesale HSA services are priced at rates that include the lower residential wholesale HSA service markup.
30. The Commission notes that any additional value associated with retail business Internet services is generally created at the retail level by the provider, for example, through additional features such as multiple addresses, business websites, customized email addresses, and technical support, as referred to in Telecom Regulatory Policy 2011-704. The Commission notes that many of these additional features are typically not available for equivalent retail residential Internet services.
31. The Commission further notes that the markups approved for residential wholesale HSA services were found to appropriately compensate incumbents for their costs of providing these services. Given that business and residential wholesale HSA services, including the dedicated wholesale HSA service, use essentially the same network components and incur the same costs, the Commission is of the view that a lower markup would also appropriately compensate incumbents for their costs of providing business wholesale HSA services. Further, contrary to TCC's position, the Commission considers that that the higher markup for business wholesale HSA services was not intended to compensate for the lower markup for residential wholesale HSA services.
32. The Commission considers that the obligation to provide wholesale HSA services for competitor use advances the policy objectives of the Act, in particular, to enhance the competitiveness of business and residential retail high-speed Internet services.<sup>9</sup> The Commission is of the view that competition within the retail business Internet market should determine retail prices, and that higher business wholesale HSA service rates resulting from greater markups artificially favour the incumbents in question relative to the independent service providers that rely on the wholesale services in that market. The Commission is also of the view that the higher rates resulting from the greater markup for business wholesale HSA services interfere with the operation of competitive forces in the retail business Internet service market to a greater extent than necessary to meet the Act's policy objectives.
33. As a result, the Commission considers that the current market share of independent service providers in the retail business Internet services market does not justify maintaining the higher business wholesale HSA service markups.

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<sup>8</sup> Evidence from the proceeding leading to Telecom Regulatory Policies 2011-703 and 2011-704 showed that the access costs for residential and business wholesale HSA services at a given speed are essentially the same.

<sup>9</sup> In addition, wholesale HSA services may also be used in the provisioning of other retail services.

34. In light of the above and on review of the record of this proceeding, the Commission finds that there is substantial doubt as to the correctness of its decision in Telecom Regulatory Policy 2011-704 to approve rates for business wholesale HSA services with significantly higher markups than those contained in the rates for residential wholesale HSA services. Accordingly, the Commission concludes that in order to ensure that rates are just and reasonable, it is necessary to vary the rates approved in Telecom Regulatory Policy 2011-704 for the Bell companies and TCC. Taking account of the fact that residential and business wholesale HSA services are essentially the same, the rates for business wholesale HSA services approved herein are the same as those for equivalent residential wholesale HSA services.

### **III. Did the Commission err in its costing approach with respect to**

#### **a) the use of conversions of volume measurements to peak traffic rather than peak traffic measurements?**

35. CNOC submitted that the Commission erred in setting the monthly capacity rates<sup>10</sup> for the Bell companies in Ontario and Quebec, Cogeco, RCP, and Videotron by relying on conversions of monthly usage volumes<sup>11</sup> to peak traffic,<sup>12</sup> rather than direct estimates of peak traffic.
36. CNOC submitted that the monthly capacity rates are very sensitive to peak traffic and that the data based on applying a conversion factor to monthly usage volume forecasts will become increasingly inaccurate over time, leading to inaccurate monthly capacity rates. CNOC also submitted that there was no evidence that the Commission had tested the reasonableness of using conversion factors or the values of the conversion factors provided by the incumbents. CNOC stated that the use of a limited sample by the Bell companies in Ontario and Quebec to estimate the conversion factor could cause an overstatement of costs.
37. The Bell companies submitted that their costs were based on the usage costs of transporting a kilobit per second (Kbps) in the peak period and are not based on a conversion between monthly usage volume and peak traffic.
38. The Cable carriers submitted that they derived total usage costs based on the facilities required to support peak traffic on their networks. They stated that they could derive unit costs for usage in terms of a cost per unit of usage volume expressed in Gigabytes or a cost per unit of capacity at the peak period expressed in megabits per second (Mbps). Further, the monthly capacity rate derived by dividing total usage costs by peak capacity would be the same as the rate derived by applying a conversion factor to the rate per unit of usage volume.

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<sup>10</sup> The monthly capacity rate is set to recover costs for usage-sensitive equipment and related expenses.

<sup>11</sup> Monthly usage volume is expressed as the number of Gigabytes per month.

<sup>12</sup> Peak traffic is expressed as the number of monthly peak megabits per second (Mbps) or kilobits per second (Kbps).

## **Commission's analysis and decisions**

39. The Commission notes that parties agreed that the costs of usage-sensitive equipment are driven by peak-period traffic. The Commission further notes that some incumbents (that is, MTS Inc., Cogeco, and Videotron) measure and forecast the peak traffic in their network, which they use as inputs to estimate usage costs (direct method). In contrast, the Bell companies in Ontario and Quebec, and RCP measure and forecast usage volumes, which they convert to peak traffic to determine usage costs (indirect method).
40. The Commission considers that the direct method is the preferred approach to determine usage costs. However, the Commission recognizes that if the conversion factor that relates usage volume to peak traffic is accurate, the direct method and the indirect method produce equivalent results.
41. The Commission considers that requiring all incumbents to implement a direct method to determine usage costs would be inefficient as it would entail significant additional costs and time to implement for those incumbents that use the indirect method. The Commission therefore finds that it would not be appropriate to direct incumbents to introduce new network measurements or change their forecasting methods in order to determine usage costs.
42. In light of the above, the Commission finds that it did not err when it allowed incumbents to develop usage cost estimates by using the indirect method. The Commission therefore concludes that CNOC has failed to demonstrate substantial doubt as to the correctness of this decision.

### **III. Did the Commission err in its costing approach with respect to**

#### **b) the use of service demand of Internet services only instead of all services sharing network capacity to determine usage costs?**

43. CNOC submitted that the Commission erred in setting the monthly capacity rates for the Bell companies in Ontario and Quebec, Cogeco, RCP, and Videotron, and the business wholesale HSA rates for the Bell companies and TCC, by calculating the usage unit costs based on peak usage of Internet services only, instead of all services sharing an incumbent's network. CNOC submitted that future demands for services such as video will swamp Internet demand, leading to large unit cost declines for the associated shared facilities.
44. CNOC submitted that the Commission should have obtained actual unit cost data from incumbents and verified how these costs will be affected by the peak usage demand of all the services that would use the shared equipment over time, rather than considering the decline of unit costs over time through annual adjustments to equipment unit costs.

45. The Bell companies and TCC submitted that they had used the Commission-approved capacity costing approach<sup>13</sup> to determine costs.
46. The Bell companies submitted that unit costs will change if additional services justify purchase of larger higher-capacity equipment with lower cost per unit. They also submitted that the Commission addressed the potential lowering of equipment unit costs over time through its annual 10-percent reduction of costs. TCC submitted that its equipment unit costs reflected economies of scale.
47. The Cable carriers submitted that the costs for traffic-sensitive network resources included in their wholesale HSA service<sup>14</sup> cost studies reflect only Internet services. The Cable carriers also stated that they have followed previous Commission directives on proportions of costs to be attributed to their wholesale HSA services. In reply, CNOC submitted that the growth of video services could make the cost attributions outdated and require an all-service-demand approach to confirm or modify the referenced attribution levels.

### **Commission's analysis and decisions**

48. The Commission notes that the Bell companies and TCC have used the Commission-approved capacity costing approach to determine the shared equipment costs of their wholesale HSA services that are attributable to equipment shared with other services.
49. Similarly, the costing approach used by the Cable carriers to determine wholesale HSA service equipment costs is consistent with Commission directives from past decisions in the context of attributing certain costs to a service.
50. The Commission notes that, contrary to CNOC's assertion, it did apply equipment unit cost changes based on historical cost data from the incumbents in its determinations of annual unit cost adjustments for future study years.
51. The Commission further notes that in Telecom Regulatory Policies 2011-703 and 2011-704, it rejected similar arguments made by CNOC in the proceedings leading to those decisions, stating that annual equipment unit cost changes have implicitly taken into account the expected increases in capacity over time. The Commission notes that CNOC has not provided evidence in the proceeding to demonstrate any error in the Commission's decisions regarding the costing of shared facilities by

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<sup>13</sup> In Telecom Order 2008-237, the Commission approved each large telephone company's regulatory economic studies manual, including the use of the capacity costing approach, to determine the incremental costs of shared facilities. Under the capacity costing approach, the capacity unit cost is derived by dividing the cost of the shared facility by its capacity and adjusting that result to take into account the non-service-producing, or spare, capacity. Capacity costs are assigned to a service making use of the shared facility, based on that service's relative use of that facility's capacity (for example, measured in terms of peak-traffic usage). Therefore, if one service has greater use of the shared facility, it will consume a greater proportion of the capacity and thus incur higher costs.

<sup>14</sup> The Cable carriers' wholesale HSA services are also called "wholesale third-party Internet access services."

incumbents in Telecom Regulatory Policies 2011-703 and 2011-704. The Commission considers that the costing approach employed to attribute shared equipment costs to wholesale HSA services remains appropriate.

52. In light of the above, the Commission finds that it did not err by allowing the Bell companies in Ontario and Quebec, Cogeco, RCP, and Videotron to develop equipment unit costs for their monthly capacity rates and by allowing the Bell companies and TCC to develop equipment unit costs for their business wholesale HSA service rates based on service demand for Internet services only, instead of all services sharing network capacity. The Commission therefore concludes that CNOC has failed to demonstrate substantial doubt as to the correctness of these decisions.

### **III. Did the Commission err in its costing approach with respect to**

#### **c) the use of a methodology that did not take into account the combined peak traffic of independent service providers?**

53. CNOC submitted that the Commission erred in setting the monthly capacity rates for the Bell companies in Ontario and Quebec, Cogeco, RCP, and Videotron by using peak usage methodology that does not take into account the combined peak traffic of independent service providers.
54. CNOC submitted that because the peak usage of individual independent service providers occurs at different times, their combined peak usage will be less than the mathematical sum of their individual peak usages. Since it is the combined peak usage rather than the sum of individual peak usages that determines the costs of providing network capacity to independent service providers, the costs to serve independent service providers and the associated monthly capacity rates need to be reduced so that incumbents will not be overcompensated. CNOC submitted that monthly capacity rates that are not adjusted to reflect this statistical impact are not just and reasonable.
55. CNOC proposed that the monthly capacity rates be adjusted by multiplying the incumbent's monthly capacity rate by the following factor: [actual peak wholesale HSA service demand from all wholesale HSA service customers during the incumbent's peak period] divided by [the sum of subscribed demand across all wholesale HSA customers].
56. The Cable carriers submitted that adoption of CNOC's proposal would require incumbents to measure both overall peak and individual independent service providers' peak traffic, which was a factor that contributed to the Commission's

rejection of the 95<sup>th</sup> percentile model<sup>15</sup> that CNOC proposed in the proceeding leading to Telecom Regulatory Policy 2011-703. The Bell companies submitted that CNOC was essentially arguing for the 95<sup>th</sup> percentile model again in its application.

57. The Bell companies further submitted that the capacity purchased by an independent service provider reflects the costs of provisioning the capacity in the peak hour of the Bell companies in Ontario and Quebec, regardless of whether the independent service provider uses the capacity in or outside of the peak hour. Because independent service providers can use capacity at any time, they should pay for the ability to use that capacity.
58. The Cable carriers submitted that there is a risk that they would be under-compensated because of the likelihood that independent service providers would fill up capacity at times other than the peak period and potentially increase costs by driving network augmentation at nodes of the network at an accelerated rate. The risk of under-compensation under the capacity model was greater than the potential for over-compensation claimed by CNOC.

### **Commission's analysis and decisions**

59. The Commission notes that one reason for mandating the CBB model<sup>16</sup> is that it appropriately shifts to the independent service providers the risk and responsibility associated with planning for their appropriate capacity requirements and managing the impact their end-users will have on their purchased capacity and hence on the incumbents' networks. Given that under the CBB model an independent service provider has the ability to provide services that use its purchased level of capacity at any time, including during the incumbent's peak period, the Commission considers that its approach to determine usage costs and rates prescribed in Telecom Regulatory Policy 2011-703 remains appropriate.
60. Accordingly, the Commission finds that it did not err in the approach used in determining monthly capacity rates that does not account for the fact that the combined peak traffic usage of independent service providers may be less than the sum of their individual peak traffic usages. The Commission therefore concludes that CNOC has failed to demonstrate substantial doubt as to the correctness of this decision.

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<sup>15</sup> CNOC proposed that the 95<sup>th</sup> percentile approach be used to determine each independent service provider's usage for wholesale HSA services for billing purposes. With this approach, traffic is measured at regular intervals at the interconnection point between the incumbent and the independent service provider on an ongoing basis during the month. The highest five percent of measurements are discarded as outliers and the next highest measurement is used for billing purposes.

<sup>16</sup> 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 Mbps, to recover network transport costs, and a separate monthly access rate on a per end-user basis to recover access costs.

### **III. Did the Commission err in its costing approach with respect to**

#### **d) the rejection of annual reviews to take into account the latest cost information and peak traffic trends?**

61. CNOC submitted that the Commission erred in setting monthly capacity rates for the Bell companies in Ontario and Quebec, Cogeco, RCP, and Videotron by failing to mandate annual reviews of the monthly capacity rates to take into account the latest cost information and peak traffic trends.
62. CNOC submitted that monthly capacity rates are very sensitive to changes in peak traffic patterns and the usage costs that incumbents incur for telecommunications facilities, and that these key inputs are very difficult to predict beyond a year or two.
63. CNOC further submitted that there is a high likelihood that monthly capacity rates will be reviewed frequently through Part 1 applications and that automatic annual reviews would be more efficient for all parties. CNOC noted that during the proceeding leading to Telecom Regulatory Policy 2011-703, it, along with Cogeco, RCP, and Videotron, all requested annual reviews to ensure that rates remain appropriate.
64. The Cable carriers submitted that their request for annual reviews of rates based on current usage data in the proceeding leading to Telecom Regulatory Policy 2011-703 was specifically intended to address concerns related to under-recovery of costs when a fixed rate is set for the entire cost study period.
65. The Bell companies submitted that increases in peak traffic demand have no impact on the costs underlying the monthly capacity rates, and that CNOC has overlooked the fact that the significant cost decreases are already built into the monthly capacity rates more than adequately addresses CNOC's concern.
66. Vaxination submitted that given the traditional process, an annual review is not feasible and that a review of key inputs should take place on a biannual basis to reduce the regulatory burden.
67. In reply, CNOC submitted that rate adjustments to reflect actual cost declines over time would be preferable to reliance on a rate of decline in costs assumed by the Commission for the entire 10-year study period. CNOC further submitted that it does not disagree with the Commission's use of an approach of fixing rates over a multi-year study period based on average economic costs over that study period, but that periodic reviews of study data that has changed are required to reflect dynamic retail markets.
68. CNOC proposed that the Commission update the monthly capacity rate for a given incumbent by modifying the annual cost or demand data for the year in which an update is introduced and all subsequent years of the study, while retaining the annual

cost and demand data associated with the study years prior to the update. The Commission could then follow the standard economic study approach to determine the revised service rates.<sup>17</sup>

### **Commission's analysis and decisions**

69. The Commission notes that CNOC's proposal to review key inputs on an annual basis represents a modification to the Commission's traditional approach of fixing wholesale service rates over a multi-year study period based on average economic costs incurred during that study period. The Commission considers that this modified approach is untested, is equally based on forecast information, and provides no guarantee that it is any more accurate than the currently approved approach.<sup>18</sup>
70. The Commission considers that a mandated annual review would involve significant administrative effort and costs for all parties and would still be based on forecasts and be subject to errors. In the Commission's view, annual reviews would not be efficient, minimally intrusive, or proportionate to their purpose, and therefore would be inconsistent with the Policy Direction.
71. The Commission notes that parties can apply to review the approved monthly capacity rates if circumstances warrant it (for example, if there is evidence that costs have changed significantly and the rates are no longer just and reasonable).
72. In light of the above, the Commission finds that it did not err in rejecting annual reviews of the monthly capacity rates that take into account the latest cost and peak traffic trends and forecasts. The Commission therefore concludes that CNOC has failed to demonstrate substantial doubt as to the correctness of this decision.

### **III. Did the Commission err in its costing approach with respect to**

#### **e) Cost assumptions for the Bell companies in Ontario and Quebec**

73. In the course of investigating the issues raised by CNOC's application, the Commission asked the Bell companies to submit detailed cost information associated with the usage portion of the monthly capacity rates. These usage costs primarily consist of switching/routing and transmission equipment used in the transport of network traffic, including BRAS<sup>19</sup> equipment.

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<sup>17</sup> The standard economic approach to determine the revised service rates are detailed in the incumbents' approved regulatory economic studies manuals filed with the Commission, namely i) determine the present worth of demand and annual costs, ii) divide the present worth of annual costs by the present worth of demand to determine monthly costs, and iii) apply an appropriate markup to monthly costs to determine monthly fixed rates.

<sup>18</sup> For example, there is no guarantee of an appropriate recovery of the costs incurred by the incumbents given that the preceding year's actual results are not used in the assessment of revised rates going forward.

<sup>19</sup> BRAS – Broadband Remote Access Server – is a switching device that, among other things, enables the incumbent to separate and route the traffic of its end-users and each independent service provider's end-users.

74. In addition to the information requested, the Bell companies in Ontario and Quebec submitted evidence that identified seven material errors in the information used to determine the monthly capacity rates in Telecom Regulatory Policy 2011-703. The Bell companies in Ontario and Quebec indicated that these errors related to a number of incorrect cost study assumptions regarding i) the relationships between the types of router line cards, ii) the types of transceivers associated with BRAS equipment, iii) the mix of core router types, iv) the mix of edge router types, v) the use of incorrect values for router capacities, vi) the average number of network hops, and vii) outdated Warehouse & Distribution (W&D) factors.<sup>20</sup> The Bell companies in Ontario and Quebec submitted revised usage cost studies updated to correct the seven errors that they alleged were made in their initial usage cost studies.
75. The Bell companies in Ontario and Quebec also filed revised wholesale HSA service access (without usage) cost studies. They submitted that these cost studies needed to be updated to correct an error that was made in the initial cost studies by using outdated W&D factors.
76. CNOC submitted that the degree of information filed in confidence makes it difficult to evaluate the costs. However, parties questioned the assumptions related to (a) the use of more expensive edge routers, (b) low utilization of the BRAS equipment capacity, and (c) the credibility of the number of network hops.

## **Commission's analysis and decisions**

### ***Proposed adjustments to correct seven errors***

77. The Commission has reviewed the evidence submitted by the Bell companies in Ontario and Quebec in respect of the seven errors that they allege were made in their usage cost studies and is satisfied that they have properly substantiated five of these errors, with the exception of the alleged errors identified as items iii) and iv) above. The Commission has also reviewed the evidence submitted in respect to the error related to outdated W&D factors that the Bell companies in Ontario and Quebec allege was made in their access (without usage) cost studies and is satisfied that they have properly substantiated the error. The Commission therefore finds that there is substantial doubt as to the correctness of the decision in this regard and that the monthly capacity rates and the monthly access rates (without usage) approved in Telecom Regulatory Policy 2011-703 should be amended to correct these errors.
78. With respect to items iii) and iv), the Commission notes that in their submission, the Bell companies in Ontario and Quebec identified changes to the mix of core and edge router types that reflect both a change in the mix of routers as well as the inclusion of new router types. However, the new router types that were proposed were not identified in their earlier submission<sup>21</sup> on growth technology routers<sup>22</sup>

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<sup>20</sup> W&D factors are used to determine the expenses associated with the storage, handling of new material, and material returned to the warehouse.

<sup>21</sup> The Companies(CRTC)05Apr11-8 TRP 2010-632, submitted 20 April 2011

<sup>22</sup> Routers considered to be deployed in the future to meet growing network demand needs

provided in the proceeding leading to Telecom Regulatory Policy 2011-703. The Commission further notes that, shortly after the issuance of Telecom Regulatory Policy 2011-703, the Bell companies in Ontario and Quebec filed a cost study<sup>23</sup> in support of their new business 25 Mbps wholesale HSA service in Ontario and Quebec that relied on the same mix of core and edge routers as that proposed in the proceeding leading to Telecom Regulatory Policy 2011-703.

79. The Commission finds that the Bell companies in Ontario and Quebec have not provided credible evidence to support their proposal to change the mix of core router types and edge router types in their usage cost studies, which would result in increased costs to provision the wholesale HSA services. Accordingly, the Commission concludes that the Bell companies in Ontario and Quebec have failed to demonstrate substantial doubt as to the correctness of Telecom Regulatory Policy 2011-703 in respect of the mix of core router types and edge router types employed by them in the cost studies supporting the monthly capacity rates established in Telecom Regulatory Policy 2011-703.

### **BRAS costs**

80. The Commission has reviewed the evidence submitted by the Bell companies in Ontario and Quebec regarding their BRAS costs for their operations in Ontario and Quebec and notes that their assumed level of utilization of the BRAS<sup>24</sup> amounts to only approximately two percent use of the maximum BRAS capacity. The Commission further notes this assumed level of utilization is significantly lower than other incumbents that provision BRAS in their network. The Commission considers that this assumption significantly underestimates the utilization of the BRAS in the network of the Bell companies in Ontario and Quebec.
81. Accordingly, the Commission finds that the BRAS costs included in the usage cost studies supporting the monthly capacity rates established in Telecom Regulatory Policy 2011-703 for the Bell companies in Ontario and Quebec are significantly overstated and therefore concludes that there is substantial doubt as to the correctness of the decision in this regard. The Commission has consequently adjusted the BRAS capacity to reflect a utilization of 20 percent, consistent with that of other incumbents. This adjustment results in a cost reduction of BRAS costs per 100 Mbps increment of approximately 83 percent.

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<sup>23</sup> The Companies(CRTC)14Jun12-4 TNs 411/7345, submitted 6 July 2012

<sup>24</sup> The Bell companies in Ontario and Quebec submitted that although the maximum capacity of a BRAS is 50 gigabits per second (Gbps), which can support a maximum of 96,000 end-users, they limit the utilization of the BRAS in order to ensure that the impact on end-users is minimized in case of a BRAS failure.

82. The Commission notes that in determining the adjusted monthly capacity rates for the Bell companies in Ontario and Quebec that incorporate the impacts of the above corrections, it has relied on the usage cost information that is consistent with the cost decision of Telecom Regulatory Policy 2011-703.<sup>25</sup>

### **III. Did the Commission err in its costing approach with respect to**

#### **f) cost assumptions for TCC in its territory in Alberta and British Columbia?**

83. In the course of investigating the issues raised by CNOC's application, the Commission asked TCC to submit detailed cost information associated with the usage portion of its wholesale HSA service flat rates in Alberta and British Columbia. These usage costs primarily consist of switching/routing and transmission equipment used in the transport of network traffic, including BRAS equipment.
84. TCC indicated that it estimates its BRAS costs per end-user based on usage assumptions per end-user per access speed<sup>26</sup> and corresponding unit costs (expressed as a cost per Kbps).
85. TCC denied that any calculation error had been committed. TCC further submitted that the additional Commission interrogatories posed to TCC were not related to the issues raised by CNOC in its review and vary application and there is no justification for any further review of TCC's wholesale HSA costs and rates in Alberta and British Columbia.

### **Commission's analysis and decisions**

86. The Commission notes that CNOC challenged the incumbents' rates and cost submissions in its review and vary application, and that the interrogatories addressed to TCC were related to the appropriateness of the usage costs supporting the rates charged by TCC for its wholesale HSA services in Alberta and British Columbia. The Commission also notes that TCC had the opportunity to respond to matters raised in the interrogatories and to comment in this regard in the proceeding. The Commission therefore considers that it was appropriate to inquire into and review TCC's usage costs in order to ensure that the residential wholesale HSA service flat rates in Alberta and British Columbia established in Telecom Regulatory Policy 2011-703 were just and reasonable.

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<sup>25</sup> Cost study provided in the attachment to the interrogatory response "The Companies (CRTC)13Jul12-2 CNOC R&V TRP 2011-703."

<sup>26</sup> TCC refers to usage as "bandwidth consumption per end-user per access-speed;" TCC determines the BRAS usage by applying a booking ratio of 10 to 1 to the bandwidth that the end-user subscribes to (for example, 15 Mbps, 25 Mbps) on a dedicated basis. For example, if 10 end-users subscribe to the 25 Mbps access speed, TCC would assume that on average, the usage for each of the 10 end-users would be 2.5 Mbps (25 Mbps divided by 10 end-users) on a dedicated basis.

87. The Commission notes that TCC's proposed BRAS usage assumptions per end-user per access speed are much higher than those proposed by other incumbents in the proceeding leading to Telecom Regulatory Policy 2011-703. The Commission further notes that TCC provided no evidence to support its proposed higher level of BRAS usage per end-user per access speed.
88. Accordingly, the Commission finds that the record does not support TCC's BRAS usage costs used in setting its residential wholesale HSA service flat rates in Alberta and British Columbia in Telecom Regulatory Policy 2011-703 and that these costs are unreasonable. The Commission therefore concludes that there is substantial doubt as to the correctness of the decision in this regard. Therefore, the Commission has adjusted TCC's BRAS costs per end-user in Alberta and British Columbia by relying on the other carriers' average wholesale HSA usage assumptions per end-user per access speed. As a result, TCC's BRAS costs in Alberta and British Columbia have been reduced by 76 percent for the 6 Mbps access speed, 77 percent for the 15 Mbps access speed, and 80 percent for the 25 Mbps access speed.

#### **IV. Did the Commission err in mandating a two-year transition period for the migration from disaggregated to aggregated POIs for cable carrier networks?**

89. CNOC submitted that the Commission had erred in law by setting an unreasonably short two-year transition period<sup>27</sup> for migration from disaggregated to aggregated POIs that did not allow for reasonably priced transport solutions. CNOC therefore requested that the Commission extend the transition period for the change to aggregated POIs for Cogeco, RCP, Shaw, and Videotron by an additional year.
90. CNOC submitted that it was necessary, during the two-year transition period, for independent service providers to continue to make arrangements with third parties to lease transport facilities between the disaggregated POIs and their own networks in order to increase their customer base. CNOC further submitted that these third parties are reluctant to make the investments necessary to provide transport facilities for this purpose at reasonable rates unless the independent service providers were willing to enter into three-year term contracts.
91. The Cable carriers submitted that extending the transition period was not justified, noting that the Commission decided that the Cable carriers were to implement aggregated POIs in Telecom Regulatory Policy 2010-632 and that the transition period established in Telecom Regulatory Policy 2011-703 will not expire until

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<sup>27</sup> In Telecom Regulatory Policy 2010-632, the Cable carriers were required to make changes to their wholesale HSA services to reduce the number POIs (POI aggregation) where independent service providers connect their networks to a cable carrier's network to access their own retail end-users. In Telecom Regulatory Policy 2011-703, the Commission mandated a two-year transition period for the migration of end-users from disaggregated to aggregated POIs to allow independent service providers the time necessary to fulfill or modify their existing term contracts and business or marketing plans.

November 2013, more than three years after the initial decision. The Cable carriers submitted that this transition period already affords independent service providers more than enough time to modify their existing term contracts for transport facilities.

92. The Cable carriers further submitted that CNOC's request would penalize cable carriers with disaggregated POIs by requiring them to invest in maintaining those POIs while also making new investments to turn up and maintain aggregated POIs. The Cable carriers submitted that CNOC's request is an attempt to postpone the transition for as long as possible, giving them a competitive advantage.
93. CNOC submitted that although Telecom Regulatory Policy 2010-632 created the obligation for the Cable carriers to deploy aggregated POIs, it was not until the proceeding leading to Telecom Regulatory Policy 2011-703 that independent service providers started receiving implementation details in sufficient detail to enable them to make their own corresponding business arrangements. CNOC noted that these implementation details relate to matters such as the extent of aggregation, which varies by cable carrier, and planned locations of aggregated POIs.
94. CNOC submitted that if independent service providers cannot obtain an extension to the transition period to match typical three-year terms of any agreements for transport facilities into which they entered before Telecom Regulatory Policy 2011-703, a number of them may have to terminate those agreements early, incurring significant termination charges.
95. CNOC also submitted that additional investments required on the part of the Cable carriers, if an extension is granted, will not be extensive in light of the fact that not all independent service providers will take advantage of the full three years to transition to aggregated POIs. In addition, the extension will not dissuade independent service providers from making the transition to aggregated POIs given its ultimate inevitability.

#### **Commission's analysis and decisions**

96. The Commission notes that the two-year transition period mandated in Telecom Regulatory Policy 2011-703 sought to strike an appropriate balance between allowing the independent service providers a sufficient time period to migrate from disaggregated to aggregated POIs and minimizing the costs incurred by the Cable carriers in supporting two types of wholesale HSA services during the transition.
97. Based on the record of the proceeding, the Commission has further analyzed the financial impacts of CNOC's proposal to extend the transition by one year from the perspective of both the affected cable carriers<sup>28</sup> and the independent service providers who would benefit from such an extension.

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<sup>28</sup> Not all cable carriers have disaggregated POIs and need to transition to aggregated POIs.

98. Based on this review, the Commission finds that, for those cases where an independent service provider has signed a three-year contract for transport facilities for a specific disaggregated POI before 15 November 2011, it would be appropriate to extend the two-year transition period at the specific disaggregated POI by six months for the affected independent service provider. The Commission is of the view that this conditional six-month extension would strike an appropriate balance between mitigating the financial impacts on independent service providers as well as affected cable carriers that may have to absorb additional costs related to the maintenance of disaggregated POIs during the extended transition period.
99. In light of the above, the Commission concludes that there is substantial doubt as to the correctness of its decision in Telecom Regulatory Policy 2011-703 to impose a transition period of two years from the date of that decision for the migration of certain end-users from disaggregated to aggregated POIs. The Commission therefore approves in part CNOC's request and decides that, for those cases where an independent service provider has signed a three-year contract for transport facilities for a specific disaggregated POI before 15 November 2011, the independent service provider is allowed an additional six months to complete its migration from that disaggregated POI, that is, on or before 15 May 2014. For all other situations, the two-year transition period is maintained. Independent service providers currently interconnecting at an existing disaggregated POI will continue to be allowed to add end-users and POI capacity at that POI during the extended transition period.

**V. Should any changes made to rates in this decision be applied prospectively or retroactively?**

100. CNOC submitted that it expected that the outcome of this proceeding would result in significant changes to the rates approved in Telecom Regulatory Policies 2011-703 and 2011-704. CNOC further submitted that during the period in which the Commission is assessing CNOC's application, the existing rates would no longer be just and reasonable.
101. Accordingly, CNOC requested that the Commission make the monthly capacity rates and the business wholesale HSA service access rates interim and, once the Commission issues its final decision in this proceeding, adjust the rates retroactively to the date they were made interim.
102. The Cable carriers submitted that the monthly capacity rates are already interim pursuant to Telecom Decision 2012-60,<sup>29</sup> and should remain interim pending the outcome of all related review and vary proceedings. The Cable carriers also submitted that the Commission should not forego retroactive adjustments to the rates, or any other terms or conditions, should it be found that such adjustments would not benefit the independent service providers.

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<sup>29</sup> Telecom Decision 2012-60 made all terms and conditions interim as of 1 February 2012.

103. Vaxination submitted that any threat of retroactive billing of unknown amounts adds to uncertainty in the market and prevents independent service providers from proceeding with their business plans.
104. The Bell companies submitted that interim status for business wholesale HSA service rates approved in Telecom Regulatory Policy 2011-704 is not necessary because the interim regime introduced in Telecom Decision 2012-60<sup>30</sup> provides a sufficient regulatory measure to ensure that all parties are treated fairly while the Commission decides the final terms and conditions of the wholesale HSA services approved in Telecom Regulatory Policy 2011-703.
105. TCC submitted that there is no basis for making business wholesale HSA service rates interim because CNOC's request relates to the Commission's policy decision of applying higher markups for business wholesale HSA service rates than residential wholesale HSA service rates, rather than to an error in underlying service costs. CNOC disagreed, submitting that the fact that it is challenging a Commission policy decision should not deprive independent service providers of having business wholesale HSA service rates made interim given that the Commission may find that existing rates are no longer just and reasonable.

### **Commission's analysis and decisions**

106. The Commission notes that the wholesale HSA service rates of incumbents using the CBB model<sup>31</sup> were approved on an interim basis effective 1 February 2012. The Commission also notes that the rates of incumbents using a residential wholesale HSA flat-rate billing model<sup>32</sup> were made final on 15 November 2011, as were the rates of the companies using a business wholesale HSA flat-rate billing model.<sup>33</sup>
107. 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 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, except as discussed below, it is necessary and appropriate to apply these rate adjustments retroactively to the date of service implementation to ensure that the rates are at all times just and reasonable and in furtherance of the policy objectives set out in the Act.

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<sup>30</sup> Telecom Decision 2012-60 also introduced an interim regime that allows independent service providers to combine residential and business traffic, incurring capacity charges on the combined traffic but also receiving a 10 percent discount on the final rates approved in Telecom Regulatory Policy 2011-704 for business access services.

<sup>31</sup> Incumbents opting for the residential CBB billing model: The Bell companies, MTS Allstream, Cogeco, RCP, and Videotron.

<sup>32</sup> Incumbents using the flat-rate billing model for residential wholesale HSA service: TCC, SaskTel, Bell Aliant (in Atlantic Canada), and Shaw.

<sup>33</sup> Incumbents using the flat-rate billing model for business wholesale HSA service: The Bell companies in Ontario and Quebec, TCC, and Bell Aliant (in Atlantic Canada).

108. Accordingly, the Commission finds that the rate adjustments approved in this decision for the CBB model for the residential services of the Bell companies in Ontario and Quebec are to be effective 1 February 2012, and the rate adjustments approved in this decision for TCC's flat-rate residential model in Alberta and British Columbia are to be effective 15 November 2011.
109. The Commission does not, however, consider it necessary or appropriate to apply retroactively the changes to business wholesale HSA service rates, as these changes were not the result of costing errors. The Commission therefore finds it appropriate to approve effective **21 February 2013** the rate adjustments determined in this decision for the business wholesale HSA services for TCC and Bell Aliant in Atlantic Canada that use the flat-rate model.
110. The Commission notes that in Telecom Decision 2013-72, also issued today, the Commission decided that incumbents must use the same model for both residential and business wholesale HSA services and approved a CBB model for the business wholesale HSA service provided by the Bell companies in Ontario and Quebec, effective 45 days from the date of the decision. In order to be consistent with the implementation schedule approved in Telecom Decision 2013-72, and to allow for an efficient and expedient transition to the CBB model, the Commission considers it appropriate to approve, effective **8 April 2013**, the rate adjustments determined in this decision for the business wholesale HSA services of the Bell companies in Ontario and Quebec.

## **VI. Revised wholesale HSA service rates**

111. In light of its determinations above, the Commission finds that the revised residential and business wholesale HSA service rates for each incumbent, listed in the tables in the Appendix to this decision, are just and reasonable. Accordingly, the Commission approves on a final basis the monthly rates set out in the Appendix, effective as of the dates set out above.
112. The final wholesale HSA service rates identified in the Appendix include the following markups:
- a markup of 30 percent for residential access rates for TCC's 1 and 1.5 to 6 Mbps service,
  - a markup of 40 percent for all other residential access rates and monthly capacity rates
  - markups for rates for all business services comparable to those of the corresponding residential services
113. The Commission directs the Bell companies and TCC to issue, by **13 March 2013**, tariff pages that reflect the rates set out in the Appendix.

## Policy Direction

114. 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.

115. 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), (b), (c), (f) and (h).<sup>34</sup> The Commission considers that the rates approved in this decision were established with a view to ensuring that competitors pay rates constituting Phase II<sup>35</sup> costs plus a reasonable markup, while the incumbent providers legitimately recover 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, the rates for these services (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

- *Review of outstanding wholesale high-speed access service issues related to interface rates, optional upstream speed rates, and modem certification requirements*, Telecom Notice of Consultation CRTC 2013-80, 21 February 2013
- *Canadian Network Operators Consortium Inc. – Application requesting relief to address implementation of the capacity model approved in Telecom Regulatory Policy 2011-703*, Telecom Decision CRTC 2013-72, 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

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<sup>34</sup> 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.

<sup>35</sup> 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.

- *Implementation date for the 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 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
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *Review of billing practices for wholesale residential high-speed access services*, Telecom Notice of Consultation CRTC 2011-77, 8 February 2011, as amended by Telecom Notices of Consultation CRTC 2011-77-1, 17 March 2011, and 2011-77-2, 8 April 2011
- *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010
- *Regulatory Economic Studies Manuals – Follow-up proceeding to Telecom Decision 2008-14*, Telecom Order CRTC 2008-237, 25 August 2008

## Appendix

### Approved wholesale HSA service rates for the Bell companies in Ontario and Quebec, Bell Aliant in Atlantic Canada, and TCC

#### *Bell Aliant in Atlantic Canada – Business Access rate*

Speed	Monthly access rate
13 Mbps	\$30.27

#### *Bell companies in Ontario and Quebec – Residential Access rates*

Speed	Monthly access rate (without usage)
6 Mbps	\$25.47
7 Mbps	\$25.47
10 Mbps	\$25.61
12 Mbps	\$25.61
16 Mbps	\$25.60
25 Mbps	\$25.62

#### *Bell companies in Ontario and Quebec – Business Access rates*

Speed	Monthly access rate (without usage)
10 Mbps FTTN	\$25.61
16 Mbps FTTN	\$25.60
16 Mbps HSA-FTTN	\$25.60

#### *Bell companies in Ontario and Quebec – Monthly capacity rate*

Speed	Monthly capacity rate per 100 Mbps
100 Mbps	\$1,036.49

#### *TCC Alberta and British Columbia – Residential*

Speed	Monthly access rate
1 Mbps	\$17.40
1.5 to 6 Mbps	\$17.97
15 Mbps	\$26.51
25 Mbps	\$29.84

#### *TCC Alberta and British Columbia – Business*

Speed	Monthly access rate
1.5 to 6 Mbps	\$17.97
15 Mbps	\$26.51

#### *TCC Quebec – Business*

Speed	Monthly access rate
6 Mbps	\$18.77

