



Telecom Order CRTC 2024-33

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Reference: Part 1 application posted on 30 March 2022

Ottawa, 12 February 2024

Public record: 8662-D11-202201424

Distributel Communications Limited – Request to revise the interim access rates for disaggregated wholesale high-speed access services

Summary

The Commission received an application from Distributel Communications Limited (Distributel) requesting that the interim access rates for disaggregated wholesale high-speed access (HSA) services be revised to align them with the access rates for aggregated wholesale HSA services where they share the same technology and speed band.

Aggregated and disaggregated wholesale HSA services allow competitors to access the networks of large incumbent telephone and cable companies, and offer more choice of Internet services to Canadians. The Commission sets the rates that competitors pay to access those networks.

The Commission **denies** Distributel's application.

In Telecom Notice of Consultation 2023-56, the Commission launched a comprehensive review of the wholesale HSA service framework. In launching that review, the Commission explained that there have been significant challenges in implementing the current framework. Specifically, the Commission noted that the disaggregated wholesale HSA service has not fulfilled its mandate and requires reconsideration.

In that ongoing proceeding, parties have been invited to comment on the same issues as are raised by Distributel in this application, including the future of disaggregated services, and whether any changes should be made to the existing rates. Accordingly, the Commission considers that it is not appropriate to rule in favour of Distributel's request at this time because its application is duplicative of the ongoing proceeding.

Application

1. On 28 March 2022, Distributel Communications Limited (Distributel) filed an application requesting that the Commission establish revised interim access rates for disaggregated wholesale high-speed access (HSA) services. Distributel's application seeks to ensure that disaggregated wholesale HSA access rates are not higher than the access rates for aggregated wholesale HSA services where the access components for

each service use the same underlying technology and are within the same tariffed speed band.

2. Distributel submitted that the relief requested would remove one of the barriers that impedes the deployment of disaggregated wholesale HSA services and hinders the Commission's prior objective¹ of incenting a transition to disaggregated wholesale HSA services so that Canadians can benefit from increased facilities-based competition.
3. Specifically, Distributel requested that the Commission grant the following relief:
 - Amend the interim access rates for the disaggregated wholesale HSA services offered by Bell Canada, Cogeco Communications Inc. (Cogeco), Rogers Communications Canada Inc. (RCCI), and Videotron G.P. (Videotron) by establishing access rates for disaggregated wholesale HSA services that are the same as the access rates for aggregated wholesale HSA services where
 - each access component is in the same tariffed speed band;
 - each access component is offered over the same facilities; and
 - the current interim rate for the disaggregated wholesale HSA access component is higher than the rate for the equivalent aggregated wholesale HSA access component.
 - State a general expectation that when disaggregated wholesale HSA services not currently offered² become available from HSA service providers,³ the access rates for disaggregated wholesale HSA services offered by each will, at a minimum, not be higher than their respective aggregated wholesale HSA access rates that are in the same tariffed speed band and offered over the same access facilities.
4. The Commission received interventions from Bell Canada, Cogeco, the Competitive Network Operators of Canada (CNOc), EGATE Networks Inc. (EGATE), the Public Interest Advocacy Centre (PIAC), RCCI, Saskatchewan Telecommunications (SaskTel), TekSavvy Solutions Inc. (TekSavvy), TELUS Communications Inc. (TCI), and Videotron.

¹ In Telecom Regulatory Policy 2015-326, the Commission stated that it made its determinations to achieve various objectives, notably to provide Canadians with more choice for high-speed connectivity, thereby enabling them to fully leverage the benefits of the broadband home or business. Increased choice is expected to drive competition, resulting in further investment in high-quality telecommunications networks, innovative service offerings, and reasonable prices for consumers.

² Disaggregated wholesale HSA services are currently available from Bell Canada, Cogeco, RCCI, and Videotron at interim rates that were approved on 29 August 2017 in Telecom Order CRTC 2017-312.

³ Bell Canada; Bell MTS; Bragg Communications Incorporated, carrying on business as Eastlink; Cogeco; RCCI; SaskTel; Shaw Cablesystems G.P.; TCI; and Videotron.

Positions of parties

5. Bell Canada⁴ supported harmonizing aggregated and disaggregated access rates, noting that the underlying network elements are the same. SaskTel raised concerns about differences in technology, material costs, and labour rates in its operating territory, which it argued could lead to rate discrepancies. SaskTel also disagreed with the application, expressing that it anticipated determinations from Telecom Notice of Consultation 2020-187 and believed that revising interim rates without considering various proposed aggregation models and ongoing regulatory reviews would be premature.
6. TCI submitted that access rates should align where technology and cost elements are the same. However, it opposed Distributel's request, arguing that setting the expectation of equal access rates across both services without proper investigation may not align with the Commission's obligation under the *Telecommunications Act* to ensure rates are just and reasonable.
7. Cogeco, RCCI, and Videotron emphasized that Telecom Notice of Consultation 2020-187 was still under consideration at the time that the application was submitted, and the network configuration for the disaggregated service needed re-evaluation. RCCI added that Distributel's request sought guarantees that final rates will not exceed interim rates and should be denied because only rates based on Phase II cost studies should be considered just and reasonable.
8. CNOC, EGATE, PIAC, and TekSavvy supported Distributel's request for relief, given the impact on competitors' business and investment plans.
9. CNOC submitted that it agreed with Distributel's concerns about competitors facing arbitrary cost increases for the same retail access on disaggregated versus aggregated wholesale HSA services. It added that by correcting the interim disaggregated rates, obstacles to deployment and use of disaggregated wholesale HSA services by competitors will be removed.

Commission's analysis

10. Since the filing of Distributel's application, the Commission made determinations in Telecom Decision 2023-53 regarding the disaggregated wholesale HSA service framework (Notice of Consultation 2020-187). In particular, the Commission determined that the disaggregated wholesale HSA service framework has not fulfilled its mandate and requires reconsideration. Specifically, the Commission concluded that there is no effective way to reconfigure disaggregated wholesale HSA services to make the services more viable. The Commission determined that the network configuration for disaggregated wholesale HSA services will remain in Ontario and

⁴ On 2 September 2022, Bell Canada announced the acquisition of Distributel.

Quebec pursuant to existing tariffs and will not be introduced in other markets at this time.

11. At the same time, the Commission initiated Telecom Notice of Consultation 2023-56 to conduct a fulsome review of the wholesale HSA service framework. In that notice, the Commission explained, among other things, that there are many outstanding issues and concerns associated with the wholesale HSA service framework, and that the framework has not met its objective of facilitating vibrant and sustainable competition in the retail Internet services market.
12. The Commission invited interveners to comment on the future of disaggregated wholesale HSA services. This includes the potential demand for the services and whether the Commission should consider changes to the existing disaggregated wholesale HSA service rates. The considerations encompass determining whether the interim rates for disaggregated wholesale HSA services should be made final, exploring the appropriateness of rate reductions, addressing the method of recovering the associated costs, and evaluating the suitability of alternative rate-setting approaches such as final offer arbitration.
13. With respect to the rates for the aggregated wholesale HSA service, the Commission noted that the underlying costs upon which the rates were established in Telecom Decision 2021-181 may no longer be appropriate, given the developments in technology and service delivery that have occurred since those costs were last reviewed. Therefore, the Commission set all existing aggregated wholesale HSA rates as interim, including the access rates to which Distributel refers to in its application, and directed incumbent carriers to file tariff applications with proposed rates for their aggregated wholesale HSA services. The proposed rates and supporting cost studies remain under review at this time.
14. As such, finalization of rates for aggregated wholesale HSA services, and determinations related to the disaggregated service, are dependent on the findings resulting from the current review of the wholesale HSA service framework.
15. Given the Commission's stated expectation in Telecom Notice of Consultation 2023-56 that the demand for disaggregated wholesale HSA will remain limited at least in near term, as well as the determinations related to setting interim rates for the aggregated wholesale HSA service, the Commission considers that it is not appropriate at this time to rule in favour of Distributel's request. Parties have been invited, in Telecom Notice of Consultation 2023-56, to comment on issues raised by Distributel in this application, and the record for that Notice is still ongoing.

Conclusion

16. In light of the above and considering the determinations made in Telecom Decision 2023-53 and the ongoing proceeding related to Telecom Notice of Consultation 2023-56, the Commission **denies** Distributel's application.

Secretary General

Related documents

- *Notice of hearing – Review of the wholesale high-speed access service framework*, Telecom Notice of Consultation CRTC 2023-56, 8 March 2023; as amended by Telecom Notices of Consultation CRTC 2023-56-1, 11 May 2023; 2023-56-2, 4 July 2023; and 2023-56-3, 6 November 2023
- *Network configuration for disaggregated wholesale high-speed access services*, Telecom Decision CRTC 2023-53, 8 March 2023
- *Requests to review and vary Telecom Order 2019-288 regarding final rates for aggregated wholesale high-speed access services*, Telecom Decision CRTC 2021-181, 27 May 2021
- *Call for comments – Appropriate network configuration for disaggregated wholesale high-speed access services*, Telecom Notice of Consultation CRTC 2020-187, 11 June 2020; as amended by Telecom Notice of Consultation CRTC 2020-187-1, 22 July 2020
- *Interim rates for disaggregated wholesale high-speed access services in Ontario and Quebec*, Telecom Order CRTC 2017-312, 29 August 2017; as amended by Telecom Order CRTC 2017-312-1, 12 September 2017
- *Review of wholesale wireline services and associated policies*, Telecom Regulatory Policy CRTC 2015-326, 22 July 2015; as amended by Telecom Regulatory Policy CRTC 2015-326-1, 9 October 2015