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MTS Allstream Inc.

29 November 2010

by Access Key

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON K1A 0N2

Dear Mr. Morin:

Subject: TNC 2010-803, Usage-based billing for Gateway Access Services and third-party Internet access services – MTS Allstream comments

1. Pursuant to paragraph 8 of Telecom Notice of Consultation CRTC 2010-803, *Usage-based billing for Gateway Access Services and third-party Internet access services*, 28 October 2010 (TNC 2010-803), MTS Allstream Inc. (MTS Allstream) hereby submits its comments as to whether or not the usage-based billing (UBB) and excessive usage charge components of the incumbent local exchange carriers' (ILECs') wholesale aggregated ADSL access (WAA) services and the cable carriers' third-party Internet access (TPIA) services should be set at levels below the ILECs' and cable carriers' comparable retail rates.
2. In Telecom Regulatory Policy CRTC 2010-632, *Wholesale high-speed access services proceeding*, 30 August 2010 (the Broadband Access Policy), the Commission decided that the ILECs would not be required to unbundle their WAA services, either by allowing interconnection on a regional basis, as MTS Allstream proposed in its submissions, or by requiring the introduction of the less practical central office (CO) based ADSL access service. In the absence of an unbundled ADSL wholesale offering, the ILECs' WAA services continue to be the only way for competitive high-speed Internet service providers (ISPs) to reach all of the end-users that the ILECs can serve with their retail high-speed Internet services. Consequently, the rates the ILECs charge for their WAA services, including any usage component, should be reflective of the costs to provide those services, not the rates charged to retail Internet customers.

3. Applying UBB charges for an ILEC's WAA service on the basis of a threshold applied to a competitor's usage at the individual end-user level is already discriminatory. By allowing an ILEC to charge the same UBB rates on a wholesale basis as they do for their retail Internet services, the Commission is in effect sanctioning the ILEC giving itself an undue preference in the market place, contrary to section 27.(2) of the *Telecommunications Act*. This is the case for several reasons.
4. First, as MTS Allstream pointed out in its 17 November 2009 comments on the tariff notices (TNs)¹ filed by Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (collectively, Bell) to propose the introduction of UBB on its residential Gateway Access Service (GAS), competitors that use an ILEC's WAA service, such as Bell's GAS, are already paying for aggregate capacity on the ILEC's network. As MTS Allstream noted in those comments,

How a GAS customer allocates this capacity between its end-users should be its own concern, not that of Bell, as long as it does not exceed the total capacity it is purchasing. As Bell has shown in The Companies(CRTC)20Aug09-1 TN 242 & 7181, the average usage per usage per user for Wholesale Residence Basic service, at 32.52 GB per month, is well below the 60 GB monthly usage allowance per access. Therefore, wholesale GAS customers are already paying for far more capacity in aggregate than their end-users are consuming.
5. As a result, when UBB charges are applied based on the level of usage for each of a competitor's end-users, the competitor is being double charged for capacity it is already purchasing from the ILEC, whenever any of its end-users exceed the applicable usage thresholds, even if overall the competitor has not exceeded the allowable usage thresholds in aggregate for all of its end-users. Charging the same retail and wholesale usage rates would be doubly discriminatory.
6. Second, since the ILECs' retail rates are not regulated, an ILEC is not required to charge individual customers its posted usage rates, while it is more than likely that these rates

¹ Bell Aliant TN 242 and Bell Canada TN 7181.

will be the basis for the tariffed wholesale usage rates. Therefore, the ILECs will be able to undercut these rates on a retail basis wherever they choose to do so, even to the extent of not charging any usage fees to their own retail end-users.

7. The Commission provided some protection against this in Telecom Decision CRTC 2010-255, *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Applications to introduce usage based billing and other changes to Gateway Access Services*, 6 May 2010 (the Original UBB Decision), by requiring Bell to ensure equivalent wholesale treatment if it chose to waive UBB rates for its retail customers once wholesale UBB was approved. However, the Commission has removed this restriction in Telecom Decision CRTC 2010-802, *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application to review and vary Telecom Decision 2010-255 concerning usage-based billing for Gateway Access Services*, 28 October 2010 (the Revised UBB Decision). In doing so, the Commission concluded that "requiring the Bell companies to extend the same UBB promotions to GAS ISPs that they offer to their retail customers would unduly interfere with their operations in the retail Internet services market."²
8. However, this is exactly what the Commission is doing with respect to competitors that use Bell's residential GAS accesses. Because these competitors are required to pay for capacity that they are unable to use, and to compensate Bell if any of their end-users exceed the individual usage thresholds Bell sets for its own retail customers, they are more or less forced to mirror Bell's retail offerings in order to control their costs.
9. Third, in Telecom Regulatory Policy CRTC 2010-632, *Wholesale high-speed access services proceeding*, 30 August 2010 (the Broadband Access Policy), the Commission found that,

... without a speed-matching requirement for wireline aggregated ADSL access and TPIA services, it is likely that competition in retail Internet service markets would be unduly impaired. In the Commission's view, an

² Revised UBB Decision, paragraph 30.

ILEC and cable carrier duopoly would likely occur in the retail residential Internet service market, and competition might be reduced substantially in small-to-medium-sized retail business Internet service markets. The Commission considers that, in such circumstances, retail Internet service competition would not continue to be sufficient to protect consumers' interests.³

Forcing competitors to pay for capacity they are unable to use, and at the same time allowing the ILECs to charge retail UBB and excessive usage charges on their WAA services, will likewise inevitably result in a further diminishment of competitor presence in the retail market, to the detriment of consumers.

10. As members of the Canadian Association of Internet Providers (CAIP) discussed at the oral hearing for the proceeding that culminated in the Broadband Access Policy, small ISPs that rely on underlying infrastructure provided by the incumbents use DSL facilities not only for Internet access but for a variety of other services that "technically have nothing to do with traditional Internet access"⁴ and which, in many cases, bring a substantial level of innovation to the market⁵ – innovations that the ILECs themselves are often too large to develop profitably. This important source of innovation will be lost to the Canadian economy, if competitors are unable to thrive as a result of the control the Commission seems willing to grant the ILECs over their competitors' services.
11. At a minimum, the ILECs should be required to demonstrate that the UBB and excessive usage charges on their WAA services reflect the costs of providing the extra capacity that competitors are using over and above the capacity that they are paying for as part of the fixed rate WAA charges. While still inequitable if applied on an individual end-user basis, a cost-based rate calculated using all carrier demand would at least be somewhat less unfair than imposing the ILEC's retail usage rates.

³ Broadband Access Policy, paragraph 55.

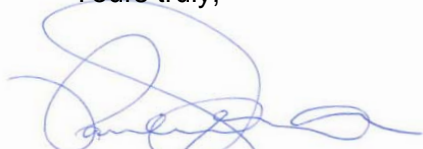
⁴ TNC 2009-261 Transcript, Vol. 2, 1 June 2010, paragraphs 2728 to 2738.

⁵ See, for example, the discussion at Vol. 2 of the TNC 2009-261 Transcript, paragraphs 2998 to 3011.

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12. In MTS Allstream's submission, usage rates for the ILECs' WAA services, and by extension the cable carriers' TPIA services, should be cost-based rates set at levels below the comparable rates for the incumbents' retail services.

Yours truly,



for Teresa Griffin-Muir
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Parties to TNC 2010-803

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