



Telecom Decision CRTC 2006-71

Ottawa, 6 November 2006

Part VII application to revise the *Telecommunications Fees Regulations, 1995*

Reference: 8657-A53-200606692

In this Decision, the Commission addresses a request by Aliant Telecom Inc. and Bell Canada for revisions to the current telecommunications Fees Regulations. The Commission considers there is merit to initiating changes to the regulations such that telecommunications service providers, including those not required to file tariffs, would pay fees using the same approach that applies under the existing contribution regime.

The application

1. Aliant Telecom Inc.¹ and Bell Canada (the Companies) filed an application dated 26 May 2006, pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure*, requesting that the Commission revise the current regulations regarding telecommunications fees and, in particular, the basis on which telecommunications fees are determined and levied.
2. The Companies proposed that the Commission revise the basis for levying fees by increasing the number of fee-payers to include all telecommunications service providers (TSPs) and by expanding the fees revenue base by using Canadian telecommunications services revenues (CTSR).

Process

3. The Companies sent copies of their application to all TSPs listed on the Commission's website. Comments from interested parties were to be filed with the Commission and the Companies by 26 June 2006.
4. The following parties filed comments: AOL Canada Inc. (AOL Canada); MTS Allstream Inc. (MTS Allstream); Primus Telecommunications Canada Inc. (Primus); Rogers Communications Inc. (RCI); TELUS Communications Company (TCC); Xit télécom inc., on behalf of itself, Télécommunications Xittel inc., and 9141-9077 Québec inc. (Xit télécom); and Yak Communications (Canada) Inc. (Yak).
5. The Companies filed reply comments dated 6 July 2006.

¹ On 7 July 2006, Bell Canada's regional wireline telecommunications operations in Ontario and Quebec were combined with, among other things, the wireline telecommunications operations of Aliant Telecom Inc., Société en commandite Télébec, and NorthernTel, Limited Partnership to form Bell Aliant Regional Communications, Limited Partnership.

Issues raised by the Companies

6. The Companies noted that telecommunications fees were levied to recover costs that the Commission determined to be attributable to its responsibilities under the *Telecommunications Act* (the Act). The Companies also noted that the current regulations governing fees, the *Telecommunications Fees Regulations, 1995* (the Fees Regulations), stipulated that the costs of the Commission's telecommunications activities would be borne by tariff-filing Canadian carriers.
7. The Companies identified three broad issues. They submitted that, first, the current basis on which telecommunications fees were levied was inequitable; second, the fee-setting process was inconsistent with Treasury Board policies related to fees and cost recovery procedures; and third, the Commission's operating costs, and by extension the fees it charged to recover these costs, were substantial and increasing.

Basis for telecommunications fees

8. The Companies submitted that when the Fees Regulations were established in 1995, the bulk of the Commission's telecommunications regulation activities related to tariff filings. The Companies noted that the telecommunications industry had changed significantly since 1995, with most traditional service markets having been opened to competition, and new services and suppliers redefining the industry.
9. In their Part VII application, the Companies put forward three main points identifying perceived inequities in the current telecommunications fees methodology. They submitted that:
 - tariff-related work items represented a small subset of the Commission's telecommunications activities;
 - the fees formula was inequitable because the scope of organizations that drove regulatory activity and costs was much broader than simply those service providers that filed tariffs; and
 - the scope of revenues included in the fees calculation was inconsistent among fee-payers since some TSPs provided services such as Internet and wireless through a different entity from that which filed tariffs.
10. The Companies considered that in keeping with the Commission's decision to establish more equitable criteria for contribution payments in *Changes to the contribution regime*, Decision CRTC 2000-745, 30 November 2000, it would be appropriate to also establish more equitable criteria for telecommunications fees. They suggested that the Commission could broaden the base of parties bearing Commission costs by using the same criteria it used to determine both the base of contributing service providers and the base of revenues used to determine the ratio of contribution payable.
11. The Companies submitted that the Commission should secure funding from sources other than fee-payers for social initiatives such as the establishment and administration of a national do-not-call list (DNCL). The Companies noted that other industry regulators did not pass on

all of their costs to the companies they regulated and submitted that it was not inconsistent with the Act to recover a portion of the Commission's costs by means other than telecommunications fees.

Treasury Board policies and establishing service standards

12. The Companies considered that the current fee-setting process was inconsistent with the Treasury Board's policy on cost recovery as well as its *Policy on Service Standards for External Fees*. The Companies noted that the Treasury Board had established principles for government departments and agencies to follow in the development of user fees and cost recovery procedures, and that these principles included equity, efficiency, accountability, and service standards.
13. The Companies submitted that, consistent with Treasury Board principles and adopting the *User Fees Act* as a guide, the Commission should consult with the industry to establish measurable service standards associated with its activities and publish the related performance results on a quarterly basis. The Companies proposed a financial relief mechanism for fee-payers, to mitigate the harm that would be created by Commission decision-making delays if standards were not met.

Commission costs

14. The Companies noted that the Commission's new accelerated tariff approval process had reduced the average time to dispose of retail tariff applications by 50 percent. They were of the view that a material reduction in telecommunications fees could be expected as a result of this process improvement. They noted, however, that such a reduction had not materialized and telecommunications fees were expected to increase.
15. The Companies proposed that the Commission undertake a review of its cost structure and commit to reducing activities that did not contribute to the objectives of the Act. The Companies submitted that until changes could be implemented such that fees were calculated in a more equitable manner, the Commission should freeze fees at the 2005-2006 level. Finally, the Companies requested that the Commission make the 2006-2007 fees interim pending a review of the Fees Regulations.

Positions of other parties

16. TCC supported the Companies' request for changes to the Fees Regulations. TCC noted that there were a number of TSPs, such as resellers and Internet service providers, that did not file tariffs but who generated regulatory costs.
17. TCC noted that the recently-released *Telecommunications Policy Review Panel Final Report 2006* (the TPR report) and the Minister of Industry's recent proposed policy direction to the Commission pointed to the diminished importance of tariff-related activities as cost-drivers and underscored the point that the nature and scope of regulatory activity would change in the future.

18. MTS Allstream supported the Companies' proposal to broaden the base of fee-payers and proposed that the Fees Regulations be amended so that fees would be payable by all TSPs with annual telecommunications operating revenues greater than \$1 million. MTS Allstream noted that this would decrease the financial burden of the current fee-payers.
19. With regard to the Companies' request that the Commission undertake a review of its cost structure, MTS Allstream noted that the Companies themselves had been contributing to the Commission's ever-expanding workload, and that the initiation of such work was outside the Commission's control. Therefore, MTS Allstream considered the Companies' request that fees be frozen at the 2006 levels to be unreasonable.
20. RCI submitted that the Companies' requests in their Part VII application should be denied. It considered that the Commission did not pursue activities that did not contribute to the objectives of the Act, as the Companies had suggested. RCI noted that the mere fact that total costs were increasing did not mean that the Commission was not operating in an efficient manner.
21. Like MTS Allstream, RCI submitted that much of the intensive activity in the telecommunications side of the Commission over the past several years had occurred at the request of the Companies, or as a result of their actions. RCI also submitted that it was incorrect for the Companies to suggest that only activities that were labelled tariff applications were associated with tariffs. RCI considered that the Commission's commitment to dispose of tariffs more quickly required more resources and, therefore, would be expected to raise the Commission's costs, not reduce them.
22. With regard to service standards, RCI submitted that the Commission had been diligent in establishing service standards where appropriate, such as for retail tariff applications. RCI noted that the Commission's regulatory function meant that many of its activities were unpopular with the incumbent local exchange carriers. It suggested, however, that it would not be appropriate to eliminate these activities in the name of cost savings. RCI also opposed the Companies' proposal to implement a remedial action plan and financial relief mechanism for fee-payers in the event that service standards were not met. RCI noted that unanticipated Part VII requests often required re-allocation of resources, which in turn caused delays in other activities.
23. Primus submitted that only one of the Treasury Board's principles regarding user fees dealt with equity, and that the majority of the remaining principles dealt with standards of accountability and efficiency. It also submitted that these principles must be considered as a package if the Commission determined that greater equity was required with respect to which TSPs should pay telecommunications fees. Primus also submitted that since applications from industry associations, public interest advocacy groups, and individual citizens resulted in regulatory activity, there would be no reason to exclude them from any new, wider-ranging fees regime.
24. Yak took issue with the Companies' suggestion that CTSR was the basis for TSPs' contribution payments, noting that CTSR represented a service provider's gross telecommunications revenues, while contribution was assessed based on revenues net of certain deductions,

including intercarrier payments. Yak noted that CTSR net of these deductions yielded a service provider's contribution-eligible revenues, a significantly different revenue base than the CTSR mechanism the Companies appeared to be proposing. Yak submitted that allowing these deductions was critical to avoid a double-counting of revenues and a resulting disproportionate collection of payments from resellers.

25. Yak also questioned the validity of broadening the base of fee-payers for reasons of equity, while at the same time excluding some organizations that drove regulatory costs. The company submitted, however, that including such organizations might not be feasible. It noted that the administrative and enforcement costs of collecting fees from service providers other than carriers, as well as interest groups, might exceed the additional fees collected.
26. AOL Canada also addressed the issue of double-counting, noting that third parties that paid access fees to the tariff-filing carriers were already indirectly subsidizing the carriers' overall costs of operating the services.
27. AOL Canada submitted that recent government policy direction indicated that a re-examination of the Commission's priorities might soon be underway. It was of the view that making ad hoc changes to the Fees Regulations, such as those the Companies had proposed, before the upcoming reform process had been formally undertaken would contribute to business uncertainty, discourage investment and innovation, and ultimately harm the state of competition for telecommunications services in Canada.
28. Xit télécom supported broadening the base of fee-payers to include all TSPs and allocating the fees on the same revenue base as that used to assess contribution payments, but it opposed the Companies' proposals to freeze fees at the 2005-2006 level and to make the 2006-2007 fees interim. Xit télécom did not oppose a review of the Commission's cost structure, but considered even the Commission's current level of resources to be inadequate.

The Companies' reply comments

29. The Companies submitted that only two of the respondents had disagreed that the Fees Regulations were inequitable and in need of change. They noted that although there were alternative views on the revenue base that should be used to calculate the fees, only RCI and AOL Canada supported the status quo.
30. In response to RCI's assertion that regulation was applied through tariffs, the Companies considered that regulation was not exclusively expressed through the direction to file tariffs. The Companies cited the regulatory obligation to support high-cost serving areas through contribution payments and the competitive local exchange carrier obligation to provide local number portability as examples of non-tariff regulation. Further, the Companies noted the significant Commission resources needed for regulatory framework decisions that dealt with issues much broader in scope than tariffed services.
31. The Companies submitted that most respondents shared the Companies' concern with rising costs and the burden this placed on all fee-payers. The Companies noted that the proposed policy direction from the government directed the Commission to streamline its processes and reduce regulatory cost and burden.

Commission's analysis and determinations

Basis for telecommunications fees

32. The Commission considers that it is arguable that a more equitable recovery of the Commission's telecommunications costs would require all TSPs, and not just those that file tariffs, to participate in the payment of telecommunications fees. In this regard, the Commission notes that TSPs that do not file tariffs contribute to the Commission's regulatory costs while receiving the benefit of the Commission's telecommunications activities. The Commission considers that as the regulatory landscape evolves, the indication is that although tariffs will remain to some extent, there will be a move away from reliance on tariffs as one of the main regulatory drivers. As a result, the Commission considers that there is merit to initiating changes to the Fees Regulations.
33. The Commission notes that broadening the base of fee-payers to include all TSPs would mean that industry entrants in forborne markets such as long distance and wireless would pay fees where they did not previously do so. The Commission notes that while any fees regime under consideration would have winners and losers, the Commission's objective is to find the best balance between industry fairness and administrative cost.
34. In Decision 2000-745 the Commission implemented a new revenue-based contribution mechanism to subsidize the high cost of local service in rural areas. Although this new contribution mechanism resulted in increased costs for some users, the Commission considered a broadly based revenue regime to be the most appropriate system to support the policy objective of providing subsidies to high-cost serving areas.
35. The Commission notes that the Companies proposed that fees should be paid by all TSPs, whether or not they file tariffs, based on the ratio of their CTSR. Currently TSPs – including all related companies – with more than \$10 million annual total CTSR pay contribution fees. Contribution is assessed based on contribution-eligible revenues, which are comprised of the CTSR minus allowable revenue deductions. For example, the Commission determined in Decision 2000-745 that there should be a deduction for intercarrier payments to prevent the revenues from resold services from being assessed contribution more than once, to avoid double-counting the revenue. The Commission considers that the reasons it set out in Decision 2000-745 for allowing deductions from CTSR to arrive at contribution-eligible revenues should also apply to any new fees mechanism. Accordingly, the Commission considers that the Companies' proposal to use CTSR as the revenue base for allocating fees would not be appropriate.
36. The Commission considers that expanding the number of fee-payers to include every TSP offering service in Canada would be too administratively cumbersome. It was for this reason that the Commission considered it appropriate in Decision 2000-745 to establish a minimum revenue threshold for the current contribution regime. The Commission considers that, as with the contribution regime, the application of a \$10 million revenue threshold for fee purposes would be appropriate.

37. The Commission notes that the Companies proposed to exclude industry associations and consumer groups from any new fees methodology, while making a strong argument in their application that these groups play a significant role in driving regulatory costs. Since industry and consumer groups do not generate telecommunications revenues, the Commission considers it would be an artificial and arbitrary exercise to adjust the current revenue-based fees mechanism to include non-TSPs. The Commission also concurs with the view that the administrative and enforcement costs of collecting fees from organizations other than carriers might exceed the additional fees collected.
38. Regarding the Companies' assertion that the existing fees formula is inconsistent even among current fee-payers, the Commission agrees that the range of telecommunications services and, therefore, telecommunications revenues of different tariff-holding entities included in the telecommunications fee base may vary from one carrier to the next. The Commission considers that revised Fees Regulations structured using the same approach that applies under the contribution regime would address current inconsistencies due to different TSP corporate structures.
39. Accordingly, the Commission considers that a telecommunications fees regime that would increase the number of fee-paying companies and use the same approach that applies under the existing contribution regime, including a \$10 million revenue threshold and the same revenue deductions as apply under that regime, would be appropriate.

Treasury Board policies and service standards

40. The Commission notes that in 2004, the Treasury Board issued *Policy on Service Standards for External Fees*, which required government authorities that set fees to provide stakeholders with fundamental information on the services being provided and any associated service standards.
41. The *Policy on Service Standards for External Fees* requires that service standards be developed in consultation with paying and non-paying stakeholders and that they be reported annually to Parliament, starting with the 2005-2006 Departmental Performance Reports. The Commission notes that in 2002 it implemented service standards for its telecommunications applications, including tariff filings, intercarrier agreements, international licences, and Part VII applications. Since then, the Commission has also introduced initiatives to improve response time in processing applications, including greater use of mediation and dispute resolution, an expedited process for resolving competitive issues, and streamlined processes for international licensing and retail tariff filings.

Commission costs

42. The Companies' Part VII application proposed that the Commission undertake a review of its cost structure and commit to reducing activities that do not contribute to the objectives of the Act. The Companies further requested that the Commission freeze telecommunications fees at the 2005-2006 level and make 2006-2007 fees interim pending review of the Fees Regulations. Most respondents, to the extent they addressed these issues, did not support the Companies' requests.

43. The Commission considers that the Companies' assertion that the Commission is undertaking activities that do not contribute to the objectives of the Act is without merit. The Commission notes that many of the TPR report recommendations require amendments to the Act. However, until such time as legislative changes are enacted, the Commission is obligated to fulfill its mandate under the existing Act. As such, the Commission is not empowered to undertake activities unrelated to the objectives of the Act.
44. With respect to the Companies' request for a cost review, the Commission notes the government's emphasis on reducing regulatory costs in the future, but considers that embarking on a review of the Commission's cost structure now would require it to divert resources from other priorities already underway. Furthermore, the Commission notes that it has processes and mechanisms in place to ensure effective budgetary control and to regularly identify and implement opportunities for cost savings. Accordingly, the Commission **denies** the Companies' request for a review of the Commission's cost structure.
45. Regarding the Companies' request to freeze fees at last year's level, the Commission notes that this year's increase in telecommunications fees was primarily due to non-discretionary cost factors, such as increases in salary levels as a result of newly ratified collective agreements, which are outside of the Commission's control. Similarly, as noted by several respondents, the Commission does not control the initiation of many of the telecommunications activities driving its workload. The Commission considers that freezing the total amount of fees charged to fee-payers would be impractical and would seriously hamper the Commission's ability to dispose of the applications it receives. Accordingly, the Commission **denies** the Companies' proposal to freeze telecommunications fees at the 2005-2006 level.
46. With respect to the Companies' request to make the 2006-2007 fees interim, the Commission notes that there is no provision in the current regulations for making fees interim. Further, the existing Fees Regulations remain in effect until changed and, under section 68 of the Act, Treasury Board approval is required for any changes to the Fees Regulations. Accordingly, the Commission is not in a position to approve the Companies' request to make 2006-2007 fees interim.
47. Regarding the DNCL, the Commission issued *Proceeding to establish a national do not call list framework and to review the telemarketing rules*, Telecom Public Notice CRTC 2006-4, 20 February 2006, as amended by Telecom Public Notice CRTC 2006-4-1, 13 March 2006, following legislation passed in 2005. The Commission considers that the Companies' suggestion that the Commission should secure DNCL funding from sources other than fee-payers is being addressed through other Commission initiatives related to the above proceeding.

Conclusion

48. In light of the above, the Commission considers there is merit to initiating changes to the Fees Regulations, with the share of fees paid by each TSP being calculated using the approach that is used under the existing contribution regime for subsidizing local residential service in high-cost serving areas. This approach would exempt the TSPs with CTSR below \$10 million.

49. The Commission notes that changes to the Fees Regulations require Treasury Board approval and, as such, will require the initiation of government inter-departmental deliberations. The Commission intends to commence the necessary process to draft wording changes to the Fees Regulations. The Commission notes that, once drafted, the proposed regulations must be published in the *Canada Gazette* at least 60 days before their proposed effective date, and interested parties will be given opportunity to comment on the proposed regulations.

Secretary General

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