



Teresa Griffin-Muir

Vice President, Regulatory Affairs
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MTS Allstream Inc.

14 July 2006

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Dear Ms. Rhéaume:

Subject: Telecom Public Notice CRTC 2006-8: *Rate ranges for services other than voice over Internet protocol services*

1. Pursuant to the procedures established at paragraph 12 of Telecom Public Notice CRTC 2006-8, *Rate ranges for services other than voice over Internet protocol services* (PN 2006-8), dated 9 June 2006, MTS Allstream Inc. (MTS Allstream) submits the following comments.
2. The Commission initiated PN 2006-8 to establish guidelines for dealing with applications requesting approval of rate ranges for tariffed services. PN 2006-8 requests parties to comment on the services or groups of services for which, and the circumstances under which, rate ranges would be appropriate, and on any other regulatory issues related to rate ranges¹.
3. In PN 2006-8, the Commission indicated that the call for comments on guidelines regarding the use of rate ranges stemmed from three recent tariff notice applications for non-VoIP services². As noted by the Commission in PN 2006-8, these applications follow the Commission's approval of ranges of rates for a number of services delivered using VoIP protocol³.

¹ See PN 2006-8, at paragraph 5.

² See SaskTel TN 107, Bell Canada TN 6946 and TN 6947.

³ For example, in Telecom Decision CRTC 2006-11, *Bell Digital Voice Lite*, 9 March 2006, the Commission approved a range of rates, in confidence, within which Bell Digital Voice Lite service would be priced and

4. MTS Allstream submits that rate ranges should only be permitted under section 25 of the *Telecommunications Act* where there is a demonstrated need for such ranges in furtherance of the public interest. Further, rate ranges must not be used as an implicit means of circumventing other regulatory rules otherwise not permitted. In this respect, MTS Allstream notes that all other pricing rules, such as bundling rules and the prohibition against rate de-averaging, must continue to apply where a range of rates is approved for a tariffed service. Finally MTS Allstream submits that these guidelines should apply to all services for which a range of rates is required and that treatment of rate ranges should not differ on the basis of technology underlying the service.
5. MTS Allstream submits that a determination of which services or groups of services for which rate ranges are appropriate and the circumstances under which rate ranges for services or groups of services would be appropriate need to be considered together as they are related. MTS Allstream submits that rate ranges should only be permitted where there is a demonstrated need for a rate range in furtherance of the public interest.
6. In this respect, the existing criteria used to determine whether it is appropriate to allow an ex parte tariff filing could serve as a model for determining whether it is in the public interest to allow a confidential range of rates for a tariffed service. In Telecom Decision CRTC 94-19, *Review of regulatory framework*, 16 September 1994, the Commission identified the following considerations that are to be used in determining ex parte tariff treatment of a tariff application as appropriate:

These would include traditional public interest concerns, such as the procedural rights to notice of parties adverse in interest, the public interest in an open regulatory process and the benefit to the regulatory decision-making process derived from comment by interveners. Relevant considerations would also include concerns related to the public interest in the effective operation of the competitive marketplace. The latter would include (1) the desirability of relying to a greater extent on market forces, minimizing the extent to which the regulatory process provides market participants with a competitive advantage and permitting the telephone companies to benefit from superior performance, new service/marketing

ideas, etc. to the greatest extent possible, and (2) the potential for harm or prejudice to the competitive position of the telephone companies⁴.

7. MTS Allstream submits that an evidentiary basis for any rate range is necessary and, therefore, a tariff application proposing approval of a range of rates for a service must include sufficient information to establish that competitive conditions exist for that service such that the specific direct harm likely to result from such disclosure would outweigh the public interest in its disclosure.
8. MTS Allstream submits that the conditions described above are the only circumstance under which approval of a range of rates is appropriate. In non-competitive situations, market conditions do not warrant increased flexibility in the setting of rates for a service and there is no justification to keep the range of rates confidential. Where services are offered in a non-competitive situation, the traditional public interest concerns dealing with an open regulatory process, the public interest procedural rights to notice of parties adverse in interest, and a regulatory decision-making process derived from comment from interveners, clearly outweigh any desire to keep the rates confidential⁵. Nor was it clear in these instances that the incumbent had lost a significant amount of market share or that there was a sufficient competitive environment to outweigh the public interest in the public disclosure of the rates.
9. Further, MTS Allstream submits that a range of rates is not necessary where the conditions described above are not met even if the range of rates were to be made public as proposed by Bell Canada is TN 6947. The Commission's existing streamlined tariff approval process already permits modifications to services to be made in an efficient and timely manner.

All Other Pricing Rules Apply

10. MTS Allstream submits that all existing pricing rules that apply to services that are approved on the basis of a single rate must still continue to apply to services that are

⁴ Decision 94-19, at paragraph 113.

⁵ While the Commission has approved rate ranges for certain VoIP services on the basis that the ILEC would be placed at a competitive disadvantage without a confidential rate range (see for example, Telecom Decision CRTC 2006-11), the Commission did not define what constitutes a competitive situation nor did it establish criteria that would need to be met to show that a competitive situation exists for a service that would justify the use of a confidential range of rates.

approved on the basis of a range of rates. For example, approved ranges must continue to satisfy the imputation test requirements, the range of rates for promotions must satisfy the Commission's competitive safeguards set out in Decision 2005-25, the range of rates for service bundles must be subject to the Commission's bundling rules set out in Decision 2005-27, and any rate range must comply with the rate-de-averaging prohibition established in Decision 2002-34.

11. MTS Allstream is concerned that confidential rate ranges could, in some cases, be used as a back door means of obtaining further pricing flexibility without the thorough analysis that is necessary. For this reason, any request for additional pricing flexibility made in association with a request for a rate range must be explicitly made in the tariff application. For instance, any request for rate de-averaging must be explicit and cannot be hidden within an application for confidential rate ranges.

Technological Neutrality

12. In addition, MTS Allstream submits that any guidelines for the filing and approval of rate ranges must recognize the principles of technological neutrality which underlies the regulatory framework for local exchange service competition⁶. Thus, even though the Commission has called for comments on the use of rate ranges for services other than VoIP services, MTS Allstream submits that any guidelines pertaining to rate ranges must also apply to VoIP-based services. The Commission has found that there is no distinction between VoIP services and other types of services⁷. Therefore, there should be no difference in the regulatory treatment of VoIP services or in the economic principles that are applied in the rate regulation of VoIP and non-VoIP services.

Post Approval Process

13. MTS Allstream submits that the existing process already being applied in respect of VoIP services where a confidential range of rates has been approved can be applied to all services where a range of confidential rates has been approved by the Commission.

⁶ For example, see Telecom Decision CRTC 97-8, Local Competition, 1 May 1997, paragraph 7.

⁷ Telecom Decision CRTC 2005-28, Regulatory framework for voice communication services using Internet Protocol.

That is, (i) tariff pages for the service should clearly specify which rate elements are offered on the basis of approved rate ranges, (ii) tariff pages should be revised to reflect a rate change within the approved range and be filed with the Commission no less than 2 business days prior to the effective date, (iii) revised tariff pages should be issued (posted on the ILEC's website) no later than the effective date of the rate change, and (iv) customers should be notified of a rate change using the ILEC's normal communication channels 30 days in advance of implementing the rate change on the customers' bill.

Conclusion

14. MTS Allstream submits that rate ranges should only be approved for those services that are offered in competitive situations where confidentiality of the range of rates must be maintained for competitive reasons and outweigh the public interest in public disclosure of proposed rates. In this way, each tariff application submitted to the Commission requesting approval of a range of rates should include justification to support the competitive conditions of the service and the need to maintain confidentiality for the rate range for the service consistent with the current considerations established by the Commission for ex parte applications. The Commission's other pricing rules that apply for the approval of a single rate for a service must continue to apply for the approval of a range of rates for a service. There also should be no distinction in the application of the pricing rules that are used in the approval of the rates for VoIP and non-VoIP services.

Yours truly,



for Teresa Griffin-Muir
Vice President – Regulatory Affairs

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Interested Parties to Public Notice 2006-8

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