



Teresa Griffin-Muir

Vice President, Regulatory Affairs
Vice-présidente des Affaires réglementaires
MTS Allstream Inc.

28 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 13 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 reply 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 requested 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. MTS Allstream has received comments, dated 14 July 2006, submitted by the following parties: Bell Canada on behalf of itself and Northern Tel, Limited Partnership and Télébec, société en commandite (collectively, Bell); Bell Aliant Regional Communications, Limited Partnership and Saskatchewan Telecommunications (collectively, the Companies); TELUS; Cogeco Cable Inc., Quebecor Media Inc., Rogers Communications Inc. and Shaw Communications Inc. (collectively, the Cable Competitors); and the Consumer Groups.

¹ See PN 2006-8, at paragraph 5.

4. All parties provided general guidelines for the consideration of tariff applications involving rate ranges for tariffed services and agree that rate ranges may be appropriate in certain circumstances.
5. However, Bell goes farther to argue that rate ranges should be provided for services irrespective of the degree of competition that exists in respect of a service and proposed a model for rate ranges involving a public rate range within a confidential rate range that would fundamentally alter the nature and purpose of tariff applications. Under Bell's proposed range-within-a-range model, the incumbent would be able to change tariffed rates without notice to customers or to the Commission and would only be required to confirm, after the fact, that it had complied with the tariffed rate range.
6. MTS Allstream submits that Bell's proposal must be rejected and that confidential rate ranges should only be permitted on a case-by-case basis where there is a demonstrated need for such ranges in the public interest.
7. Failure on the part of MTS Allstream to address any specific aspects of the comments submitted by the parties to this proceeding that are not in the interests of MTS Allstream should not be taken as agreement or concurrence by MTS Allstream where such interpretation would be contrary to MTS Allstream's interest.

Rate ranges are inappropriate where competitive conditions are absent

8. Bell argues that the existence of competition in a market is not a pre-condition for rate ranges to be appropriate². Bell takes the position that rate ranges will somehow benefit consumers with more responsive pricing and more price competition, even where there is no price competition or competitive market behaviour. MTS Allstream submits that this proposition is clearly false and reiterates its position that confidential rate ranges should only be permitted where competitive conditions exist for that service, such that the specific direct harm likely to result from disclosure would outweigh the public interest in its disclosure.
9. Bell's claims that rate ranges and confidentiality allow parties to set and change prices in a manner similar to normal competitive market pricing behaviour, that the primary benefit

² Bell comments, 14 July 2006, paragraph 32.

of rate ranges is more responsive pricing and more price competition, and that rate ranges are an appropriate option to almost all tariffed services and circumstances³, simply do not hold true where the former monopoly remains dominant in a market and there are few or no competitive alternatives for a service. Competitive market forces simply do not exist to provide price discipline in the marketplace for those services where there is little or no competition. Without competitive prices to respond to, there is no incentive for an ILEC to reduce its prices and no need for pricing flexibility using confidential approved rate ranges.

10. Similarly, where there is minimal or limited competitive entry in a market, allowing extensive pricing flexibility in the form of rate ranges would permit an incumbent to target that competitive entry and, in effect, negate any price incentive offered by the competitor. Once the competitor is driven from the market, the incumbent would again be able to raise prices in the targeted market. With such market dominance, the public interest in being able to comment on proposed rate ranges clearly outweighs the ILEC's interest in keeping confidential rate ranges.
11. The other parties in this proceeding concur that rate ranges are only appropriate where there is a degree of competitive entry in the market. For example, TELUS submitted in its comments, that rate ranges, by definition, are sought in order to respond to competition⁴. The Companies submitted that the approval of a rate range should not be different than the approval of a single rate and stated that the continued use of regulatory measures such as ex parte and confidentiality should be available to applications proposing rate ranges in the same way as they apply to applications proposing a single rate⁵. The rules for ex parte filings and the maintenance of information in confidence of course involve an analysis of whether the public interest in disclosure outweighs any harm that would occur as a result of disclosure.
12. Similarly, the Cable Competitors noted that the fact that a service is regulated necessarily implies that the service is not subject to a level of competition sufficient to protect the interests of consumers⁶. The Consumer Groups submitted that consumers

³ Bell's comments, 14 July 2006, at paragraph 3, 21 and 47.

⁴ TELUS' comments, 14 July 2006, at paragraph 6.

⁵ The Companies' comments, 14 July 2006, at paragraph 16.

⁶ The Competitors' comments, 14 July 2006, at paragraph 13.

could be at risk if the ILECs take advantage of the flexibility of rate ranges where competition is not sufficient to protect the interests of consumers⁷. Clearly, Bell's proposal to use confidential rate ranges to have pricing flexibility for services that are not offered in competitive situations is not in the public interest.

13. Therefore, MTS Allstream again submits that it is necessary that rate ranges should only be proposed and approved for those services that are offered in competitive situations where the confidentiality of the range of rates must be maintained for competitive reasons that outweigh the public interest in public disclosure of proposed rates. In this respect, each tariff application submitted to the Commission requesting approval of a range of rates should include clear evidence that competitive conditions exist for that service and demonstrate 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.
14. A range of rates is not necessary where the conditions described above are not met, even if the range of rates was to be made public. The Commission's existing streamlined tariff approval process already permits modifications to services to be made in an efficient and timely manner. Moreover, where competitive forces are firmly at play, the Commission will simply forbear from regulating service in accordance with section 34 of the *Telecommunications Act*.

Bell's "Range-Within-a Range" must be rejected

15. Bell has proposed a model for rate ranges that would allow an ILEC to file a public rate range within a confidential rate range approved by the Commission. Bell proposes that the ILEC would not require prior Commission approval of a public rate range and would be able to charge any rate at any time within the public rate range. Bell suggests that the ILEC would only be required to file an annual document certifying that no rate was charged that did not fall within the public rate range.
16. MTS Allstream submits that Bell's proposed range-within-a-range model must be rejected outright. In practice, Bell's proposed model would make a mockery of the tariff

⁷ Consumer Groups' comments, 14 July 2006, at paragraph 4.

filing obligations and permit Bell to charge practically any rate at any time without notice to the Commission or to customers.

17. Where an incumbent, such as Bell, exerts significant market power in a market, the public interest in an open regulatory process clearly outweighs any desire on the part of the incumbent to change its rates without prior Commission approval. For instance, if the range-within-a-range model proposed by Bell was currently in effect, Bell would presumably have been able to implement its proposed \$0.80 per month rate increase for local residential services without any public knowledge or comment⁸. Clearly, the traditional public interest concerns dealing with an open regulatory process, the procedural rights of notice to parties adverse in interest, and a regulatory decision-making process derived from comment from interveners, all require in this instance that the public be afforded an opportunity to comment on the proposed \$0.80 per month, non-transitory rate increase proposed by Bell. Bell's proposal that incumbents certify annually that no rate was charged that did not fall within the public rate range is wholly insufficient to address these concerns.
18. Similarly, Bell's assurances that its range-within-a-range model would comply with existing regulatory safeguards, achieved through a "negative disallowance tariff approval regime" involving a statement of compliance provided by the ILEC at the time of filing, provides no true reassurance that the proposed model would not be used as a back-door means of achieving pricing flexibility or anti-competitive conduct that is otherwise prohibited. Bell has a proven record of violating the existing regulatory rules⁹ and an open regulatory process is required to ensure that the rules are respected to benefit customers and to enable the creation of a competitive environment.
19. MTS Allstream submits that Bell's range-within-a-range proposal highlights MTS Allstream's concern that rate ranges could be used as an implicit means of circumventing other regulatory rules. In fact, it is not clear what the purpose of a range-within-a-range would be unless it is to engage in rate de-averaging or other anti-competitive conduct. Proposed rate ranges are already dealt with by the Commission

⁸ See Bell's TN 6967, filed 7 July 2006.

⁹ By way of example: in Decision 2006-17, the Commission found that Bell violated winback restrictions for local exchange services; in Decision 2004-20, the Commission found that the proposed CSAs filed by Bell failed to comply with established rating criteria; and in Decision 2002-58 the Commission found that Bell was offering a bundled service without tariff approval.

under an expedited process. If the process already established by the Commission in respect of rate ranges continues to be followed, a rate change within an approved range would only have to be filed with the Commission two business days prior to the effective date of the change. Given the marketing and billing system changes that must be made any time a change in rates is made, it is inconceivable that Bell truly requires the “flexibility” to change rates on even shorter or no notice.

20. Accordingly, MTS Allstream submits that Bell’s proposed range-within-a-range model must be rejected and any request for additional pricing flexibility made in association with a request for a rate range must be explicitly made in the tariff application.

Conclusion

21. MTS Allstream maintains its position stated in its 14 July 2006 comments 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. 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, 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.

Yours truly,



for Teresa Griffin-Muir
Vice President – Regulatory Affairs

c.c.: John Maksimow, MTS Allstream, (204) 941-7643
Interested Parties to Public Notice 2006-8

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