

Application for Reclassification of Ethernet Services and Ancillary Relief

CRTC reference 8661-M59-201115403

**Comments on the
MTS Allstream Part 1 Application**

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Introduction

1. Vaxination Informatique is in receipt of the November 25 Part 1 Application from MTS Allstream and offers its comments.

2008-17 and Policy Direction

2. The Policy Direction document directs the Commission to seek solutions which will foster competition, hence reducing the need for regulation. The 2008-17 policy provides a metering mechanism to define how much regulation is necessary. By itself, it does not create or improve the level of competition. 2008-17 is a report card on competition, and not a mechanism to achieve the goals of the Policy Direction.
3. When the TRP 2008-17 was published, it reclassified certain services based on assumptions of increased competition within a few years.
4. In some cases, The Commission set forth consultations such as ADSL-CO (2009-261) in the hopes of fostering greater facilities based competition. This consultation originally intended to have ISPs deploy their own DSLAMs in central offices and use competitive ethernet services to link all COs to their own premises. The outcome of this proceeding (TRP 2010-632) concluded that it was not a feasible approach and that the GAS service was essential to preventing a duopoly situation. However, it stopped short of re-evaluating the various components of GAS against the metrics of 2008-17 despite major assumptions made in 2008 no longer being true.
5. Similarly, in the recent TRP 2011-703, the Commission specifically refused to reclassify the various portions of the GAS service against 2008-17.
6. When market conditions change, the Commission must be willing to re-evaluate a service's classification, especially if the original classification was made based on certain assumptions which did not materialise.
7. To this end, the MTS-Allstream application warrants the Commission agreeing to retest the wholesale ethernet service against the metrics defined in 2008-17 based on data of existing market conditions.

Are wholesale Ethernet services replicable ?

8. In the case of the POTS voice telephone service, the Commission has acknowledged that different regions could have different levels of competition and as a result, deregulation is happening on a region per region basis.
9. Similarly, there are urban cores with sufficient competing ethernet services to warrant deregulation, however, there are many areas where there is insufficient competition to warrant deregulation.
10. In the case of POTS, when a citizen subscribes to company-X instead of the incumbent, his new telephone service is able to call any number in the world, obtain similar features etc. In essence, he gets a total solution from a different vendor and only has to deal with 1 vendor to get this full solution to call the whole world. In a different city, another citizen could order service from company Y and this would have no impact on the first citizen.
11. In the case of wholesale ethernet services, the Commission must consider cases such as:
 - city 1 is served only by incumbent
 - city 2 is served by incumbent and Acme Inc.
 - city 3 is served by incumbent and Anvil Inc.
12. In the above case, the commission would declare city 1 has having insufficient competition to be de-regulated, forcing the incumbent to provide services to all companies at a fair price, even companies who compete ferociously against Bell for retail/business solutions.
13. If only city-1 remains regulated, then the company would have to seek services from Acme and Anvil in the other cities because the incumbent would have the right (as a deregulated entity) to not provide services at an affordable rate.
14. While this would provide the company with connections in all 3 cities, they would have to deal with 3 different vendors, possibly requiring 3 separate interconnections to their facilities, whereas dealing with a single vendor would allow aggregation of traffic to a single connection, single bill and thus offer lower cost. This is different from POTS where citizens may have different service providers in different cities.
15. Because wholesale ethernet services are a key component to building telecommunications solutions, the ability of friends and foes to access this basic service at affordable rate is critical to enabling competitive services at a higher level.
16. During the 2010-632 hearings, the CEO of Bell Canada made it very clear that in unregulated services, Bell Canada wants to be able to choose with whom it does business. Rightly so, corporations generally do not wish to help their competitors.
17. Because wholesale ethernet is a core service used to build many types of solutions (including GAS), allowing the incumbents free reign on its provision implicitly allows the incumbents to prevent foes from building telecom solutions that compete against the incumbent's other products. Therefore, unless-until wholesale ethernet is competitively available everywhere, its deregulation cannot be seen as competitively neutral since it would give the incumbents the ability to reduce competition in many other services that make use of wholesale ethernet.

Rural services

18. While the Commission might find sufficient competition levels in major urban centres to warrant deregulation, there are vast swaths of geography in this nation that do not benefit from such competition.
19. As a result, a small facilities-based ISP in a rural region that makes use of fixed wireless for last mile access would still need fast ethernet services to reach an urban centre where it can connect to internet transit providers.
20. Because such independent provider would be considered a competitor against the incumbent's own wireless offering, the incumbent could sell the ethernet service at an inflated cost to render the local ISP un-competitive.
21. For such a small ISP, laying fibre from the rural area to the urban centre potentially very far away is not realistic. And in urban areas the municipality can make it exorbitant for a small company to use city conduits to lay its own fibre.
22. Therefore, at the very least, the Commission must acknowledge that in areas where there is insufficient level of existing competition, premature de-regulation should not happen and reclassification of the service should be considered.
23. Competition happens when the market is large enough for a competitor to invest in its own facilities. However, when the market is small or the company is a startup, availability of affordable core telecom service such as wholesale ethernet is a requirement to foster competition in retail services.

Conclusion

24. The Commission must not be afraid to acknowledge that some forecasts of increased competition did not materialise, and it must not be afraid to acknowledge that some types of wholesale services have become key to increased competition at the retail.
25. As a result, the Commission must be willing to re-classify services, using the TRP 2008-17, based on current market conditions, even if they have to acknowledge that competitive levels have not increased since the original classification.
26. In the case of wholesale ethernet services, they have become far more important to service providers who wish to provide services to their own customer (thus increasing competition), and widespread availability of competitive ethernet based services has not materialised with large areas still not served by multiple providers.
27. The Commission must recognize this current reality by re-classifying the wholesale ethernet services.

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