



Telecom Order CRTC 2007-21

Ottawa, 25 January 2007

Bell Aliant Regional Communications, Limited Partnership for services provided in the Atlantic Provinces

Reference: Tariff Notices 180, 180A, 180B, 200, and 212

ADSL Access Service and ADSL WAN Service

In this Order, the Commission renders its determinations on a final basis with respect to a number of Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) competitor asymmetric digital subscriber line (ADSL) service tariff applications. The Commission also confirms the final classification of Bell Aliant's competitor ADSL services as Category II competitor services. The Commission notes that, in finalizing the tariffs under review in this Order, it considered the importance of providing comparable competitor ADSL access services across the incumbent local exchange carriers' operating regions.

Introduction

1. The rates, terms, and conditions of the proposed tariffs of the major incumbent local exchange carriers' (ILECs)¹ asymmetric digital subscriber line (ADSL) services provided to competitors have been the subject of a lengthy industry consultation and negotiation process. As a result of this process, each ILEC, including Aliant Telecom Inc. (Aliant Telecom), now part of Bell Aliant Regional Communications, Limited Partnership (Bell Aliant),² filed tariff applications for its competitor ADSL services. The Commission has approved these applications on an interim basis for all ILECs except Bell Canada, which has received final approval, to allow the services to be introduced on an expedited basis.
2. The Commission has not approved tariffs for Bell Aliant's competitor ADSL services on a final basis, due in part to results of the industry consultation and negotiation process, which resulted in a number of unresolved issues with respect to the rates, terms, and conditions for these services, as well as disparities between Bell Aliant's services and other ILECs' competitor ADSL services.
3. This Order disposes of outstanding issues related to the above-referenced tariff applications for Bell Aliant's competitor ADSL services. The Commission considers matters related to Bell Aliant's ADSL Access Service and ADSL WAN³ Service separately in this Order.

¹ In this Order, the term "ILECs" refers to Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, MTS Allstream Inc., Saskatchewan Telecommunications, and TELUS Communications Company.

² 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.

³ WAN stands for "wide area network."

ADSL Access Service

The application and interim order

4. The Commission received an application by Bell Aliant dated 18 October 2005, under Tariff Notice 180 (TN 180), as amended by Tariff Notice 180A (TN 180A) dated 24 October 2005 and Tariff Notice 180B (TN 180B) dated 21 April 2006, to introduce, as a Category II competitor service, Aliant Telecom General Tariff item 626 – ADSL Access Service.
5. Bell Aliant submitted that its ADSL Access Service provided digital subscriber line service providers (DSLSPs) and competitive local exchange carriers (CLECs) with a high-speed data path between the end-users' premises and a Bell Aliant serving wire centre. It also submitted that its ADSL Access Service provided for an aggregated high-speed service provider interface, which allowed for the aggregation of the end-user traffic associated with a single service provider and delivery of that traffic to the competitor's network over suitable facilities.
6. The Commission approved the introduction of Bell Aliant's ADSL Access Service as proposed in TNs 180, 180A, and 180B on an interim basis, with changes, in *Aliant Telecom Inc. – Asymmetric digital subscriber line access service*, Telecom Order CRTC 2006-178, 12 July 2006 (Order 2006-178).

Process related to comments and reply comments

7. The Commission received comments regarding TNs 180 and 180A dated 18 November 2005 from Primus Telecommunications Canada Inc. (Primus), 21 November 2005 from Net Idea Telecommunications Inc. (Net Idea), and 23 November 2005 from the Independent Members of the Canadian Association of Internet Providers (IMCAIP) and MTS Allstream Inc. (MTS Allstream). Bell Aliant submitted reply comments dated 5 December 2005. On 14 December 2005, the Commission suspended the tariff notice proceeding so that Bell Aliant could undertake negotiations with interested parties. Net Idea submitted additional comments dated 28 February 2006.
8. The Commission received comments with respect to TN 180B dated 24 April 2006 from Auracom/Interhop Internet Services; 16 May 2006 from Xit telecom inc., on behalf of itself and Télécommunications Xittel inc.; 19 May 2006 from Net Idea; 23 May 2006 from Cybersurf Corporation (Cybersurf) and IMCAIP; and 24 May 2006 from MTS Allstream. Bell Aliant submitted reply comments dated 1 June 2006.

Positions of parties

9. Net Idea and IMCAIP submitted that competitor ADSL services should be considered to be essential services and priced at Phase II costs plus a 15 percent mark-up.
10. All interveners expressed concern regarding the rate levels, mark-ups, and rate structure proposed for Bell Aliant's ADSL Access Service. IMCAIP and Cybersurf submitted that the service charges proposed by Bell Aliant were too high.

11. MTS Allstream, IMCAIP, and Net Idea objected to the concept of rates based on minimum commitments, arguing that they created a barrier to entry and were not cost-justified. MTS Allstream and IMCAIP submitted that the service should be provided with the option of a non-contracted monthly rate.
12. MTS Allstream submitted that the appropriate rates for a competitor ADSL access service should be based on a reasonable mark-up over cost and should be independent of access speed, volume commitments, or terms. MTS Allstream further submitted that this rate structure was the only way to prevent Bell Aliant and other ILECs from controlling or dictating competitors' retail offers for these services. IMCAIP submitted that there should be no volume-based or term-based rates associated with Bell Aliant's proposed ADSL Access Service. IMCAIP further submitted that the link between Bell Aliant's proposed rates and associated volume commitments artificially increased competitor costs and had no link to Bell Aliant's actual costs.
13. Net Idea requested that the service charge be lowered or eliminated, arguing that the high one-time service charge placed competitors at a competitive disadvantage when setting up a service.

Reply comments

14. In reply to comments proposing that its ADSL Access Service should be viewed as an essential service and priced with a 15 percent mark-up, Bell Aliant submitted that it had filed the service as a Category II competitor service in compliance with all Commission directives.
15. In reply to interveners' comments regarding the proposed pricing levels, Bell Aliant noted that it had priced its ADSL Access Service based on Phase II costs plus an appropriate margin, consistent with the pricing principles applicable to Category II competitor services. Bell Aliant submitted that, accordingly, its pricing for the ADSL Access Service was appropriate.
16. In reply to comments regarding its proposed rate structure, including its volume and term pricing options, Bell Aliant submitted that it had chosen these options in order to balance the divergent interests of the interveners.

Commission's analysis and determinations

17. The Commission notes that it has recently initiated a proceeding to review the regulatory issues related to competitor services in *Review of regulatory framework for wholesale services and definition of essential service*, Telecom Public Notice CRTC 2006-14, 9 November 2006 (Public Notice 2006-14). The Commission also notes that, for reasons discussed in Public Notice 2006-14, it expects to issue a decision on issues in that proceeding by mid-2008. In view of this and the period of time during which the competitor ADSL service issues under consideration in this Order have been outstanding, the Commission considers it appropriate to dispose of these issues on a final basis.
18. The Commission notes that, as with other services provided by ILECs, cable carriers, and CLECs at regulated rates to other competitors, the regulatory status of the competitor ADSL services approved in this Order is within the scope of the proceeding begun in Public Notice 2006-14.

Service classification

19. The Commission notes that Bell Aliant proposed to introduce its ADSL Access Service under the Aliant Telecom General Tariff as a Category II competitor service and that the Commission granted this service, including the proposed classification, interim approval in Order 2006-178.
20. The Commission notes that Net Idea and IMCAIP requested that Bell Aliant be directed to lower the rates for its ADSL Access Service through re-classification of its ADSL Access Service to a Category I competitor service. The Commission notes that it considers the nature of the facility in question and circumstances relevant to its supply by competitors and third parties when it assesses whether to classify a competitor service as a Category I competitor service. A competitor service that does not meet the criteria for a Category I competitor service is classified as a Category II competitor service.
21. The Commission considers that competitors have other service alternatives to Bell Aliant's ADSL Access Service. The Commission notes that these other options for providing retail high-speed Internet services include co-locating their own ADSL equipment in Bell Aliant's central offices and using unbundled local loops, or using an incumbent cable carrier's third-party Internet access services.
22. Accordingly, the Commission **denies** the interveners' requests to have Bell Aliant's ADSL Access Service classified as an essential service and with rates based on Category I competitor service classification. The Commission determines that Bell Aliant's ADSL Access Service should be classified as a Category II competitor service on a final basis.

Issues related to rates, terms, and conditions

23. The Commission notes that it has addressed, in interim orders, a number of significant issues with respect to Bell Aliant's ADSL Access Service rates. The Commission also notes, however, that Bell Aliant's interim rate structure for its ADSL Access Service contains certain terms and conditions, as discussed below, that are either inconsistent with those offered by other ILECs or, in the Commission's view, unduly restrict a competitor's ability to provision services in the retail market. In finalizing Bell Aliant's ADSL Access Service, the Commission has had regard to various considerations, including the need to approve similar rates, terms, and conditions for comparable competitor ADSL services across ILECs so that competitors in all parts of the country have the same range of options available to them and can compete in multiple markets.

Availability of additional speed offerings

24. The Commission determines that should Bell Aliant introduce a speed upgrade to one of its retail Internet speed offerings with no corresponding price change, it is to issue, at the same time, revised ADSL Access Service tariff pages that match this retail service speed change with no corresponding price change.

25. Similarly, the Commission determines that should Bell Aliant introduce a new retail Internet service speed, it is to file, at the same time, proposed revisions to its ADSL Access Service tariff to include this new speed offering, with a supporting cost study.

Volume-based rates

26. The Commission notes that Bell Aliant's interim rate structure for its ADSL Access Service contains volume-based rates. The Commission notes that MTS Allstream and IMCAIP argued that volume-based rates, whereby the per end-user rate paid by a competitor declines with the increased number of ADSL end-users, are not appropriate for Bell Aliant's ADSL Access Service. These parties submitted that volume commitments artificially increase competitors' costs and are not required to recover Bell Aliant's costs.
27. The Commission notes that the use of volume-based rates is a generally accepted pricing principle for services that benefit from economies of scale (that is, costs decline as volume increases). The Commission also notes, however, that the majority of ADSL access costs per end-user relate to the provisioning and maintenance of the access facility itself. Each access facility is provided discretely to an end-user, and in the Commission's view the associated costs do not vary significantly with the number of ADSL accesses provided. The Commission considers, therefore, that volume-based rates for Bell Aliant's current ADSL Access Service are not cost-justified.
28. The Commission also notes that the competitor ADSL rates proposed by MTS Allstream and Saskatchewan Telecommunications (SaskTel), which have been approved on an interim basis, do not contain volume-based rates for ADSL accesses. The Commission further notes that volume-based rates have not been approved in respect of rates for the access component of other ILEC competitor services, such as Competitor Digital Network and Ethernet, and the cable carriers' third-party Internet access (TPIA) services.
29. In light of the above, and in order to provide consistency across the ILECs, the Commission concludes that Bell Aliant's current volume-based rate structure for the access component of its ADSL Access Service is not appropriate. The Commission therefore determines that Bell Aliant's rate structure should not reflect volume-based rates.
30. Accordingly, the Commission directs Bell Aliant to modify its rates for its ADSL Access Service as follows:

ADSL access	Contract period Rate per month	
	One-year (\$)	Three-year (\$)
2 Mbps service, each access	26.00	25.00
5 Mbps service, each access	30.00	29.00

Service charges

31. With respect to requests that Bell Aliant should reduce the service charge for its ADSL Access Service, the Commission considers that based on submitted costs, the rates proposed by Bell Aliant are reasonable. The Commission further notes that such service charges are designed to

recover the one-time service installation costs arising from each order for new service. The Commission also notes that Bell Aliant's proposed service charge is similar to the service charges approved for MTS Allstream and SaskTel for similar services. The Commission therefore finds that the service charge proposed by Bell Aliant is appropriate.

Month-to-month rates

32. The Commission notes that there is currently no uniform approach among ILECs with respect to the issue of month-to-month rates⁴ for competitor ADSL services. While Bell Aliant only offers MCP-based rates, MTS Allstream offers only a month-to-month rate option for its equivalent competitor ADSL service. The Commission also notes that in the retail market, it is a common practice to offer both MCP-based rates and higher month-to-month rates. The Commission considers that offering the option of either MCP-based rates or month-to-month rates would remove a barrier to competitors being able to compete in the retail market on a more equitable basis – for example, by permitting competitors to offer trial promotions for a limited period of time.
33. In light of the above, the Commission considers that Bell Aliant should revise its ADSL Access Service tariff to include a month-to-month rate option associated with the ADSL access components of its ADSL Access Service.

Contract renewals

34. The Commission notes that in the current tariff pages, Bell Aliant requires competitors to subscribe to MCPs of either one or three years. The Commission further notes that upon the expiry of a contract, competitors only have the option of renewing with MCP-based rates.
35. With respect to contract renewals, in the Commission's view, the practice of locking competitors into subsequent contracts at the contract's expiry date could create additional difficulties for competitors when planning their retail offerings. The Commission recognizes that competitors benefit from lower monthly rates when ILECs offer such long-term contract periods. However, the Commission also considers that without the option of transferring to month-to-month rates at the expiry of their contracts, competitors would be unduly restricted with respect to the retail service offerings they could provide.
36. In light of the above, the Commission concludes that Bell Aliant should file proposed tariff revisions to modify its ADSL Access Service tariff to include the option to renew a contract at the then-available MCP-based rates or optionally to transfer to the month-to-month rates.

Final approval and direction

37. In light of the above, the Commission **approves on a final basis**, with the changes noted above, Bell Aliant's TN 180, as amended by TNs 180A and 180B, effective the date of this Order. In addition, the Commission directs Bell Aliant to:

⁴ In this Order, the term "month-to-month rates" refers to monthly rates subject to a minimum contract period of one month; the term "MCP-based rates" refers to monthly rates subject to a minimum contract period that is greater than one month.

- issue revised tariff pages for Aliant Telecom General Tariff item 626 – ADSL Access Service, within 30 days of the date of this Order, reflecting the Commission's determinations with respect to the removal of volume-based rates, effective the date of this Order;
- file, within 30 days of the date of this Order, proposed tariff revisions to modify Aliant Telecom General Tariff item 626 – ADSL Access Service, to include month-to-month rates for the service; and
- file, within 30 days of the date of this Order, proposed modifications to the wording in the tariff pages for Aliant Telecom General Tariff item 626 – ADSL Access Service, to indicate that competitors that renew their contracts may use the then-available MCP-based rates or may optionally transfer to the month-to-month rates.

ADSL WAN Service

The applications and interim order

38. The Commission received an application by Bell Aliant dated 29 May 2006, under Tariff Notice 200 (TN 200), to introduce, as a Category II competitor service, Aliant Telecom General Tariff item 624 – ADSL WAN Service. Bell Aliant submitted that its ADSL WAN Service was a broadband access service based on ADSL technology that would allow a CLEC or a DSLSP to establish a high-speed data access path between its end-user's premises and one of three carrier-to-carrier interface points.
39. The Commission approved the introduction of Bell Aliant's ADSL WAN Service as proposed in TN 200 on an interim basis, with changes, in *Bell Aliant Regional Communications, Limited Partnership – Asymmetric digital subscriber line wide area network service*, Telecom Order CRTC 2006-217, 23 August 2006, as amended by Telecom Order CRTC 2006-217-1, 29 August 2006 (Order 2006-217).
40. Pursuant to Order 2006-217, the Commission also received an application by Bell Aliant dated 22 September 2006, under Tariff Notice 212 (TN 212). This application proposed to amend Aliant Telecom General Tariff item 624 to introduce rates for ADSL WAN Service Access, to allow for a customer-provided modem.
41. The Commission approved the tariff modifications proposed by Bell Aliant in TN 212 on an interim basis in Telecom Order CRTC 2006-260, 4 October 2006.

Process related to comments and reply comments

42. The Commission received comments regarding TN 200 dated 29 June 2006 from MTS Allstream and 30 June 2006 from IMCAIP. The Commission received reply comments dated 11 July 2006 from Bell Aliant.
43. No comments were received with respect to the modifications proposed in TN 212.

Positions of parties

44. MTS Allstream and IMCAIP submitted that the proposed ADSL WAN Service rates were much higher than the rates for equivalent services offered by other ILECs, which provided Bell Aliant with a competitive advantage in the provision of DSL-based services in its operating territory.
45. The interveners submitted that Bell Aliant's rate structure artificially increased competitors' costs by basing rates on volume and term commitments. The interveners requested that the Commission eliminate rating based on volume and term commitments in favour of a single monthly rate option.
46. IMCAIP requested that the Commission classify Bell Aliant's ADSL WAN Service as an essential service and set the rates at Category I competitor service levels, that is, Phase II costs plus a 15 percent mark-up. IMCAIP noted that the ADSL WAN Service was used with many other applications, in addition to carrying Internet traffic. IMCAIP argued that the facilities used to provision the ADSL WAN Service met the definition of an essential facility, in that they were exclusively or predominately provided by a single supplier and were required as an input for competitors to provision their own broadband services.

Reply comments

47. Bell Aliant submitted that its rate structure was designed to use volume-based and term-based rates to bring lower rates to customers. Bell Aliant also submitted that its tariff structure was similar to other service providers' tariffs for similar services.
48. Regarding the proposed rating of the service, Bell Aliant submitted that its proposed rates were developed with appropriate mark-ups for such discretionary services. Bell Aliant noted that it had provided the Commission with a Phase II cost study for its ADSL WAN Service, in compliance with Commission requirements.
49. With respect to IMCAIP's request that the Commission consider classifying ADSL WAN Service as an essential service, Bell Aliant submitted that its competitor ADSL services, such as ADSL WAN Service, were non-essential.

Commission's analysis and determinations

Service classification

50. Consistent with the above determinations with respect to Bell Aliant's ADSL Access Service, the Commission **denies** IMCAIP's request to classify ADSL WAN Service as a Category I competitor service and determines that the ADSL WAN Service should be classified as a Category II competitor service on a final basis.

Availability of additional speed offerings

- 51. Consistent with the above determinations with respect to Bell Aliant's ADSL Access Service, the Commission determines that should Bell Aliant introduce a speed upgrade to one of its retail Internet speed offerings with no corresponding price change, it is to issue, at the same time, revised ADSL WAN Service tariff pages that match this retail service speed change with no corresponding price change.
- 52. Similarly, the Commission determines that should Bell Aliant introduce a new retail Internet service speed, it is to file, at the same time, proposed revisions to its ADSL WAN Service tariff to include this new speed offering, with a supporting cost study.

Volume-based rates

- 53. Consistent with the above determinations regarding Bell Aliant's ADSL Access Service, the Commission concludes that Bell Aliant's current rate structure for its ADSL WAN Service should not include volume-based rates. Accordingly, the Commission directs Bell Aliant to modify its rates for ADSL WAN Service as follows:

ADSL WAN access	Contract period Rate per month	
	One-year (\$)	Three-year (\$)
Service with company-provided modem, each access	70.00	60.00
Service with customer-provided modem, each access	61.00	52.00

Month-to-month rates

- 54. Regarding the request from interveners for month-to-month rates in Bell Aliant's tariff for ADSL WAN Service, the Commission considers that, for the reasons cited above with respect to the company's ADSL Access Service, offering competitors the option of either MCP-based rates or month-to-month rates would provide them with greater flexibility to compete in the retail market.
- 55. Accordingly, the Commission concludes that Bell Aliant should file proposed tariff revisions to modify its ADSL WAN Service tariff to include month-to-month rates for this service.

Contract renewals

- 56. Regarding the ability to renew contracts using either MCP-based rates or month-to-month rates in Bell Aliant's tariff for ADSL WAN Service, the Commission considers that, for the reasons cited above with respect to the company's ADSL Access Service, offering competitors the option of either renewing with MCP-based rates or month-to-month rates would provide them with greater flexibility to compete in the retail market.

57. Accordingly, the Commission concludes that Bell Aliant should file proposed tariff revisions to modify its ADSL WAN Service tariff to include the option to renew a contract at the then-available MCP-based rates or at the month-to-month rates.

Final approval and direction

58. In light of the above, the Commission **approves on a final basis**, with the changes noted above, Bell Aliant's TNs 200 and 212 effective the date of this Order. In addition, the Commission directs Bell Aliant to:

- issue revised tariff pages for Aliant Telecom General Tariff item 624 – ADSL WAN Service, within 30 days of the date of this Order, reflecting the Commission's determinations with respect to the removal of volume-based rates, effective the date of this Order;
- file, within 30 days of the date of this Order, proposed tariff revisions to modify Aliant Telecom General Tariff item 624 – ADSL WAN Service to include month-to-month rates for its service; and
- file, within 30 days of the date of this Order, proposed modifications to the wording in the tariff pages for Aliant Telecom General Tariff item 624 – ADSL WAN Service to indicate that competitors that renew their contracts may use the then-available MCP-based rates or may optionally transfer to the month-to-month rates.

Secretary General

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