



Telecom Order CRTC 2007-22

Ottawa, 25 January 2007

Bell Canada and Bell Aliant Regional Communications, Limited Partnership for services provided in Ontario and Quebec

Reference: Bell Canada Tariff Notices 6886, 6904, 6972, and 6972A
Bell Aliant Regional Communications, Limited Partnership Tariff Notices 24
and 24A

Gateway Access Service and High Speed Access Service

In this Order, the Commission renders its determinations on a final basis with respect to a number of competitor asymmetric digital subscriber line (ADSL) tariff applications by Bell Canada and Bell Aliant Regional Communications, Limited Partnership for services provided in Ontario and Quebec. 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. On 19 November 2004, Bell Canada filed tariff applications for certain competitor asymmetric digital subscriber line (ADSL) services following discussions with various competitors that used these services. These industry negotiations formed the basis of the proposed tariffs, and the Commission received several letters of support from industry participants requesting that the Commission approve Bell Canada's tariffs.
2. These tariffs were given final approval by the Commission in *Bell Canada – Gateway Access Service and High Speed Access Service*, Telecom Order CRTC 2005-62, 17 February 2005. In that Order, the Commission approved rates for Bell Canada's Gateway Access Service (GAS) at the speeds of 128 kilobits per second (Kbps), 3 megabits per second (Mbps), and 4 Mbps for residential customers, as well as speeds of 3 Mbps and 4 Mbps for business customers. The Commission also approved rates for Bell Canada's High Speed Access Service (HSA) at the speed of 4 Mbps for both residential and business customers.¹
3. The Commission notes that the industry consultations that took place to arrive at Bell Canada's rates, terms, and conditions in its tariffs occurred over two years ago and that market conditions have continued to evolve. For example, Bell Canada has made subsequent tariff applications proposing certain speed changes to its GAS and HSA services. The Commission approved these subsequent applications on an interim basis.

¹ Together, Bell Canada's GAS and HSA services comprise its competitor ADSL services.

4. In this Order, the Commission disposes of the tariff changes that have been approved on an interim basis. The Commission also addresses other outstanding issues related to Bell Canada's competitor ADSL services and similar competitor ADSL services provided by Bell Aliant Regional Communications, Limited Partnership (Bell Aliant)² in Ontario and Quebec.
5. The Commission notes that the remaining incumbent local exchange carriers (ILECs)³ have also followed an industry negotiation process to develop tariffs for their competitor ADSL services. The Commission approved the resulting competitor ADSL tariffs for all ILECs other than Bell Canada on an interim basis to allow the services to be introduced on an expedited basis. The Commission has not approved tariffs for these other ILECs on a final basis due in part to an 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 across the ILECs' competitor ADSL services. The Commission has taken into account these disparities and unresolved issues in making its final determinations regarding these tariff applications.
6. The Commission notes that in conjunction with this Order, it is issuing companion orders to dispose of the other ILECs' competitor ADSL access service tariff applications on a final basis.

Process

Applications and interim orders

7. The Commission received an application by Bell Canada dated 5 August 2005, under Tariff Notice 6886 (TN 6886), which proposed to modify General Tariff item 5410 – Gateway Access Service.
8. Bell Canada proposed to expand the scope of its GAS capability to include access speeds of 256 Kbps and 512 Kbps for business customers. It also proposed to upgrade the existing 128 Kbps GAS access speed for residential customers to 256 Kbps, with no change to the existing GAS rates.
9. The Commission approved on an interim basis the revisions to Bell Canada's GAS service proposed in TN 6886 in Telecom Order CRTC 2005-299, 18 August 2005.
10. The Commission received an application by Bell Canada dated 15 September 2005, under Tariff Notice 6904 (TN 6904), which proposed to modify General Tariff item 5410 – Gateway Access Service and General Tariff item 5420 – High Speed Access Service.
11. Bell Canada submitted that the revisions reflected the upgrade of the access speeds for GAS from 4 Mbps to 5 Mbps for residential end-users and from 4 Mbps to 6 Mbps for residential and business end-users. Bell Canada noted that there was no change to the existing rates for these upgrades.

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 Regional Communications, Limited Partnership.

³ In this Order, the term "ILECs" refers to Bell Aliant Regional Communications, Limited Partnership, Bell Canada, MTS Allstream Inc., Saskatchewan Telecommunications, and TELUS Communications Company.

12. The Commission approved on an interim basis the revisions to Bell Canada's GAS and HSA service proposed in TN 6904 in Telecom Order CRTC 2005-337, 27 September 2005.
13. The Commission received an application by Bell Canada dated 26 July 2006, under Tariff Notice 6972 (TN 6972), as amended by Tariff Notice 6972A (TN 6972A) dated 6 September 2006, which proposed to modify General Tariff item 5410 – Gateway Access Service. The Commission also received an identical application by Bell Aliant dated 26 July 2006, under Tariff Notice 24 (TN 24), as amended by Tariff Notice 24A (TN 24A) dated 6 September 2006, which proposed to modify its General Tariff item 5410 – Gateway Access Service for its operating territory in Ontario and Quebec (Bell Aliant in Ontario and Quebec).
14. Bell Canada, on behalf of itself and Bell Aliant in Ontario and Quebec, submitted that the revisions reflected the upgrade of the access speeds for GAS from 3 Mbps to 5 Mbps for residential end-users and from 256 Kbps to 512 Kbps and 3 Mbps to 6 Mbps for business end-users. Bell Canada and Bell Aliant in Ontario and Quebec also proposed to modify the names of their GAS offerings.
15. The Commission approved on an interim basis the further revisions to Bell Canada's GAS as proposed in TN 6972 and amended by TN 6972A in *Bell Canada – Gateway Access Service*, Telecom Order CRTC 2006-258, 4 October 2006 (Order 2006-258). The Commission also approved on an interim basis the further revisions to Bell Aliant's GAS as proposed in TN 24 and amended by TN 24A in *Bell Aliant Regional Communications, Limited Partnership – Gateway Access Service*, Telecom Order CRTC 2006-255, 2 October 2006 (Order 2006-255).

Process related to comments and reply comments

16. With respect to TN 6886, the Commission received comments dated 12 August 2005 from Managed Network Systems Inc. (MNSi) and 2 September 2005 from MTS Allstream Inc. (MTS Allstream). The Commission received reply comments dated 12 September 2005 from Bell Canada.
17. With respect to TN 6904, the Commission received comments dated 17 October 2005 from MTS Allstream. The Commission received reply comments dated 27 October 2005 from Bell Canada.
18. With respect to TN 6972, the Commission received comments dated 23 August 2006 from Primus Telecommunications Canada Inc. (Primus) and 25 August 2006 from MTS Allstream. The Commission received reply comments dated 5 September 2006 from Bell Canada. MTS Allstream submitted that comments filed regarding Bell Canada TN 6972 applied equally to Bell Aliant TN 24.

Bell Canada's and Bell Aliant's GAS and HSA services

Positions of parties

19. With respect to TN 6886, MTS Allstream submitted that the higher competitor margins for higher-speed services such as Bell Canada's 6 Mbps service were not enough to offset the losses incurred by competitors from selling lower-speed Internet services. MTS Allstream also

submitted that this was an effect of the margin squeeze resulting from Bell Canada's special promotional deals and the very low rates being offered by Bell Canada to its own retail customers.

20. MTS Allstream was of the view that eliminating the price distinctions by access speed in the competitor ADSL services tariffs would be more reflective of costs since they did not vary significantly by speed. MTS Allstream suggested that this would prevent Bell Canada from introducing retail Internet services and pricing changes prior to making a similar service available to competitors.
21. MNSi submitted that the speed changes proposed by Bell Canada in TN 6886 put competitors at a disadvantage. MNSi noted that while Bell Canada had increased the basic ADSL profile from 128 Kbps to 256 Kbps for competitors, it had re-introduced the 128 Kbps service to its retail residential customers for \$19.95 per month. MNSi submitted that Bell Canada should not be permitted to withdraw the 128 Kbps competitor residential profile, since removing this service would provide Bell Canada with an unfair advantage. MTS Allstream shared this view with MNSi.
22. With respect to TN 6972, Primus submitted that the proposed 512 Kbps competitor GAS Access Lite – Business service did not match Bell Canada's equivalent retail service speed of 1 Mbps. Primus requested that the competitor service be revised to provide the access service at 1 Mbps. Primus and MTS Allstream also requested that the download speeds of Bell Canada's GAS continue to be published in its tariff to provide assurance of the transmission speeds available.
23. MTS Allstream submitted that Bell Canada regularly changed the ADSL access speed options available to competitors, noting that this was the fourth time a speed change had occurred since August 2003. MTS Allstream also submitted that the lag in availability between a new Bell Canada retail offering and the comparable competitor offering constituted an anti-competitive flaw in the manner in which Bell Canada provided its retail and its competitor ADSL services.
24. MTS Allstream was of the view that there was a difference between the service quality that Bell Canada provided to its retail customers and that which it provided to MTS Allstream and other competitors. MTS Allstream submitted that Bell Canada had been offering a four-hour mean time to repair (MTTR) to its retail customers, while the standard MTTR it offered to customers of GAS and HSA service was 48 hours. MTS Allstream submitted that the MTTR for retail customers and competitors should be equivalent.

Reply comments

25. Regarding MTS Allstream's comments associated with the ADSL rate structure for competitors and the issue of margin squeeze, Bell Canada submitted that competitor ADSL services were deemed Category II competitor services, whereby rates were set on a case-by-case basis and reflected wholesale, rather than retail, market conditions. Bell Canada noted that the current rate structure for GAS had resulted from negotiations with industry participants in the autumn of 2004 and had culminated in widespread industry support for the GAS tariff.

26. With respect to comments made by MNSi about the lack of a 128 Kbps offering, Bell Canada noted that the speed upgrade from 128 Kbps to 256 Kbps provided increased download speed with no increase in rates. Bell Canada submitted that this improved the competitive positioning of MNSi compared to the previous offering.
27. Bell Canada submitted that the intent of its tariff revisions in TN 6972, as amended by TN 6972A, was not to create a new speed – such as a 1 Mbps service – but rather to simplify the product offering and upgrade the speeds of the current offerings, which would result in improving services for competitors without increasing their costs. Bell Canada submitted that providing a new 1 Mbps access speed was beyond the scope of TN 6972.
28. With respect to MTS Allstream's comments regarding the numerous speed changes put forth, Bell Canada noted that it was committed to continuing to provide competitors with services that allowed them to compete in the fast-paced retail Internet market. Bell Canada submitted that where there was demand from competitors for an offering comparable to the retail offering, it had been swift to make those offerings available to competitors as well.
29. Bell Canada noted that the 48-hour MTTR was its standard for ADSL service, for both retail customers and competitors. Bell Canada noted that the four-hour MTTR that MTS Allstream had referred to was for a fully managed Internet Protocol (IP) virtual private network (VPN) service, which was a different solution than that proposed in the GAS and HSA service tariffs.

Commission's analysis and determinations

30. The Commission addresses below the proposals by Bell Canada and Bell Aliant in Ontario and Quebec to introduce revisions to their GAS to reflect upgrades to GAS access speeds. As noted previously, the Commission has approved these proposals on an interim basis. The Commission also addresses issues related to the availability of appropriate lower-speed competitor ADSL services, MTTR, volume-based rates, non-contracted month-to-month rates, and automatic contract renewals.
31. The Commission notes that its determinations in this Order with respect to Bell Aliant apply only to Bell Aliant's competitor ADSL services provided in Ontario and Quebec, which were previously provided by Bell Canada.

Speed offerings and upgrades

32. The Commission notes MTS Allstream's comment that eliminating the price distinctions by access speed would be more reflective of costs since these costs do not vary significantly by speed. However, the Commission notes that the rates and tariff structure for this service were arrived at through industry negotiations, and received both industry support and final Commission approval. The Commission therefore does not consider it appropriate at this time to contemplate this fundamental change in tariff structure.
33. The Commission notes that Bell Canada's GAS speed upgrades, proposed under TNs 6972 and 6972A, were approved on an interim basis in Order 2006-258 and Bell Aliant's GAS speed upgrades, proposed under TNs 24 and 24A, were approved on an interim basis in

Order 2006-255. Under the revised GAS tariffs, competitors received upgrades for several GAS access speeds – for example, from 3 Mbps to 5 Mbps for residential end-users and from 256 Kbps to 512 Kbps for business end-users – at no extra charge.

34. The Commission notes that MNSi and Primus requested that Bell Canada and Bell Aliant also provide lower-speed GAS offerings, such as 128 Kbps for residential end-users and 1 Mbps for business end-users, which would match the speeds that Bell Canada and Bell Aliant offer to their retail customers.
35. The Commission notes that in the case of a 128 Kbps residential ADSL offering, competitors can make use of the 256 Kbps competitor ADSL service offering already available in the GAS tariff. The Commission further notes that in Bell Canada's reply comments, the company noted that it had upgraded the residential GAS 128 Kbps speed to 256 Kbps, with no corresponding increase in the service rate. In light of Bell Canada's response, the Commission considers that the concerns raised by competitors regarding Bell Canada's GAS in the lower-speed residential market are adequately addressed.
36. The Commission notes that parties submitted that for the business segment of the market, Bell Canada was not offering competitors a comparable service to the retail 1 Mbps business service, but was instead offering competitors a 512 Kbps service for business. In this scenario, competitors only have the option of using either a 512 Kbps service or a 6 Mbps service, whereas Bell Canada is offering its retail customers the option of a 1 Mbps service or a 6 Mbps service. In the Commission's view, this results in competitors facing significant restrictions with respect to the service offerings they may provide in Bell Canada's and Bell Aliant's lower-speed business retail markets.
37. Accordingly, the Commission directs Bell Canada and Bell Aliant to upgrade the minimum speed being offered to competitors for GAS Access Lite – Business Service to 1 Mbps, rather than 512 Kbps, without an increase in rates.
38. In light of the above comments, the Commission further determines that should Bell Canada and/or Bell Aliant introduce a speed upgrade to one of their retail Internet speed offerings with no corresponding price change, they are to issue, at the same time, revised GAS and/or HSA tariff pages that match this retail service speed change with no corresponding price change.
39. Similarly, the Commission determines that should Bell Canada and/or Bell Aliant introduce a new retail Internet service speed, they are to file, at the same time, proposed revisions to their GAS and/or HSA tariff to include this new speed offering, with a supporting cost study.

Volume-based rates

40. The Commission notes that Bell Canada's rate structure for its GAS and HSA services contains volume-based rates. 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 Canada's current competitor ADSL services are not cost-justified.

41. The Commission also notes that the competitor ADSL rates proposed by MTS Allstream and Saskatchewan Telecommunications, 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 services.
42. In light of the above, the Commission concludes that Bell Canada's current volume-based rate structure for the access component of its GAS and HSA services is not appropriate. The Commission therefore concludes that Bell Canada and Bell Aliant should show cause as to why they should not remove volume-based rates from the rate structure for the access component of their GAS and HSA services.

Month-to-month rates and automatic contract renewals

43. 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 Canada and Bell Aliant only offer 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.
44. In light of the above, the Commission concludes that Bell Canada and Bell Aliant should revise their GAS and HSA tariffs to include a month-to-month rate option associated with the ADSL access components of these tariffs.
45. The Commission notes that in their current tariff pages, Bell Canada and Bell Aliant require competitors to subscribe to MCPs of either one, two, 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.
46. With respect to the issue of contract renewals, the Commission considers that the practice of locking competitors into subsequent contracts for the same period of time upon the previous 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

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.

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.

47. Accordingly, the Commission concludes that Bell Canada and Bell Aliant should file proposed tariff revisions to modify their GAS and HSA services to include the option for competitors to renew their contracts using MCP-based rates, or optionally to transfer to the month-to-month rates.

MTTR

48. With respect to MTS Allstream's comments regarding the MTTR offered by Bell Canada and Bell Aliant for their competitor ADSL services, the Commission notes that Bell Canada identified that the four-hour MTTR referred to by MTS Allstream was for a fully managed IP VPN service, which was a different solution from that proposed in the GAS and HSA service tariffs. The Commission considers that the concerns expressed by MTS Allstream regarding MTTR have been satisfactorily addressed by Bell Canada in its reply comments. In this respect, the Commission expects that an ILEC's service levels that apply to competitor ADSL services will, at a minimum, equal the service levels that apply to that ILEC's retail customers.

Final approval and direction

49. In light of the above, the Commission **approves on a final basis** Bell Canada's TNs 6886 and 6904, TN 6972 as amended by TN 6972A, and Bell Aliant's TN 24 as amended by TN 24A, effective the date of this Order.
50. In addition, the Commission directs each of Bell Aliant in Ontario and Quebec and Bell Canada to
 - issue revised tariff pages for its General Tariff item 5410 – Gateway Access Service, within 30 days of the date of this Order, reflecting the Commission's determinations in this Order with respect to the minimum speed offering for GAS used by business end-users;
 - show cause, within 30 days of the date of this Order, why it should not file for approval, proposed revised rates for its General Tariff item 5410 – Gateway Access Service and General Tariff item 5420 – High Speed Access Service, that exclude volume-based rates; in the alternative, it can file for approval within 30 days of the date of this Order, proposed revised tariff pages that exclude volume-based rates;
 - file, within 30 days of the date of this Order, proposed tariff pages to introduce a month-to-month rate option for its ADSL access components for General Tariff item 5410 – Gateway Access Service, and General Tariff item 5420 – High Speed Access Service; and

- file, within 30 days of the date of this Order, proposed modifications to the wording in its tariff pages for General Tariff item 5410 – Gateway Access Service, and General Tariff item 5420 – High Speed 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.

Secretary General

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