



Telecom Order CRTC 2009-484

Ottawa, 12 August 2009

Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Applications to introduce usage-based billing and other changes to Gateway Access Services

File number: Bell Aliant Tariff Notice 242
Bell Canada Tariff Notice 7181

The Commission approves on an interim basis, with one change, Bell Aliant's and Bell Canada's requests to introduce, for Gateway Access Services, two new speed options, usage-based billing rates, and a charge for excessive usage.

Introduction

1. On 13 March 2009, Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (collectively, the Bell companies) applied to introduce, for their Gateway Access Services (GAS),¹ two new speed options, usage-based billing (UBB) rates, an excessive usage charge, and an uncorrelated usage charge.
2. The Commission received submissions from Acanac Inc., Accelerated Connections Inc., AOL Canada, Aventures en Excellence Inc., the Canadian Association of Internet Providers, the Coalition of Internet Service Providers inc., Cybersurf Corp., Distributel Communications Limited, EGATE Networks Inc., Electronic Box, Execulink Telecom Inc., l'Union des consommateurs, Managed Network Systems, Inc., MTS Allstream Inc., the Ontario Telecommunications Association, Primus Telecommunications Canada Inc., TekSavvy Solutions Inc., Telnet Communications, Vaxination Informatique, and Yak Communications (Canada) Corp. (collectively, the intervenors). The Commission also received a large number of comments, mostly from individuals; these submissions generally opposed the Bell companies' applications.
3. On 5 June 2009, the Bell companies provided reply comments. On 16 July 2009, they filed cost studies in support of their applications.²
4. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file numbers provided above.

Issues

5. The Commission has identified the following four issues to be addressed at this stage in the proceeding to consider the Bell companies' applications:

¹ GAS is a tariffed wholesale service provided by the Bell companies that is used by competitors to provide various services, including retail Internet service.

² The Bell companies' cost studies were filed pursuant to a request set out in a Commission staff letter dated 13 May 2009.

- I. Should the proposed additional GAS speed options be approved on an interim basis?
- II. Should the proposed UBB rating structure for GAS be approved on an interim basis?
- III. Should the proposed excessive usage charge for GAS be approved on an interim basis?
- IV. Should the proposed uncorrelated usage charge for GAS be approved on an interim basis?

I. Should the proposed additional GAS speed options be approved on an interim basis?

6. The Bell companies proposed to introduce a new speed option for GAS-Residence with speeds of up to 2 megabits per second (Mbps) downstream and up to 800 kilobits per second (Kbps) upstream. They also proposed to introduce a new speed option for GAS-Business with speeds of up to 1 Mbps downstream and up to 640 Kbps upstream. The Bell companies submitted that these new speed options will ensure that their retail Asymmetric Digital Subscriber Line (ADSL) speeds provided over their legacy Asynchronous Transfer Mode networks are available to wholesale customers, where there is wholesale demand for such speeds, consistent with Telecom Decision 2008-117 and Telecom Order 2009-111 (the matching speed decisions). Certain intervenors objected to the Bell companies' proposal to match only those retail service speeds provisioned on their legacy networks.
7. The Commission considers that the Bell companies' proposal to introduce the new GAS speed options under consideration is consistent with the matching speed decisions. Accordingly, the Commission **approves on an interim basis** the Bell companies' proposed new speed options and rates for each of GAS-Residence and GAS-Business.

II. Should the proposed UBB rating structure for GAS be approved on an interim basis?

8. The Bell companies submitted that, consistent with their three-pronged approach to managing the current significant increase in Internet usage,³ they began transitioning their retail Internet service customers to a form of UBB in 2006, and that a significant number of their retail customers were on UBB plans at the end of 2008.
9. The Bell companies submitted that their UBB proposal for GAS was consistent with the principle that the Commission established in Telecom Decision 2006-77 when it approved UBB for incumbent cable carriers' third-party Internet access (TPIA) service.⁴ The Bell companies also submitted that, because the Commission had approved UBB for TPIA service, considerations of regulatory symmetry between incumbent telephone carriers and incumbent cable carriers supported approval of their proposal.

³ The other two prongs of the Bell companies' approach are traffic shaping, and investing to increase capacity.

⁴ In Telecom Decision 2006-77, the Commission considered it appropriate that each cable carrier be provided the ability to manage the potential negative outcome of high-consuming bandwidth end-users in a manner that does not degrade the quality of service to all end-users, whether it is the cable carrier's end-user or the competitor's end-user. The Commission considered, however, regardless of the approach adopted to address this problem, that the approach must provide equivalent treatment with respect to high usage by both the carrier's own retail Internet access service end-users and TPIA end-users.

10. Intervenor made a number of submissions with respect to the Bell companies' UBB proposal, including that (a) current GAS rates already recover service costs and (b) the proposal is not revenue-neutral. Intervenor submitted that the UBB proposal should apply only with respect to GAS customers' new end-users. They submitted further that the proposal is anti-competitive and unduly preferential, contrary to subsection 27(2) of the *Telecommunications Act* (the Act).
11. Intervenor argued that (a) a preview UBB program for GAS customers conducted by the Bell companies in December 2008 provided inaccurate billing data, (b) GAS customers had difficulty reconciling the Bell companies' data with their data, and (c) the Bell companies should provide GAS customers with their end-users' log-in information (end-user name) to permit GAS customers to reconcile all of the Bell companies' UBB information with their information. Internet service providers (ISPs) also submitted that they did not know the specifics of the Bell companies' proposal regarding UBB for GAS until the companies had filed the tariff notices under consideration. Intervenor also submitted that it would be premature and inappropriate to dispose of the Bell companies' applications before decisions are made in various other ongoing proceedings, including the proceeding initiated by Telecom Public Notice 2008-19 (the Internet Traffic Management proceeding).
12. With respect to submissions made that their UBB proposal is anti-competitive and not revenue-neutral, the Bell companies replied that the GAS customers' retail rate structure does not have to replicate their GAS rate structure, that revenue neutrality is not required, and that the point of their UBB proposal is to encourage GAS customers' end-users to match their usage to their willingness to pay for that usage. The Bell companies also submitted that implementing their UBB proposal only for new end-users of GAS customers would require separate billing arrangements which would be costly to implement. The Bell companies submitted that any preference towards their own retail customers who remain on flat-rated billing plans is not substantial and undue, and that these plans are not available to new customers.
13. The Bell companies further replied that inaccurate data in preview billing would have been infrequent and that they had reviewed errors in order to prevent their reoccurrence. With respect to the reconciliation of the Bell companies' provided data and GAS customer data regarding GAS customers' end-users, the Bell companies submitted that they had always provided end-user data on a working telephone number (WTN) basis and that this had not presented a problem to date. They also submitted that it would be costly and complex for them to develop a way to associate log-in information with WTNs for UBB purposes, and that their GAS customers should be able to keep records of their end-users' WTNs. With respect to submissions regarding advance notice of their UBB proposal, the Bell companies replied that their GAS customers had advance notice of their proposal, and thus had time to prepare.
14. Subject to the consideration below, in the Commission's view, approving the Bell companies' proposal to introduce UBB for GAS would be consistent with Telecom Decision 2006-77 in that UBB would apply to both their retail Internet and wholesale GAS. Further, with respect to regulatory symmetry, in the Commission's view, approving the Bell companies' UBB proposal for GAS would be consistent with its approval of UBB for the incumbent cable carriers' TPIA services.

15. The Commission considers, however, that GAS customers would require time to prepare for the implementation of UBB, including time to adapt their business plans and billing systems and to manage their relationships with their end-customers. The Commission considers that a period of 90 days from the date of this order would be appropriate for this purpose.
16. The Commission notes the Bell companies' proposal that UBB would apply in relation to all GAS customers' end-users, both existing and new. The Commission also notes the Bell companies' submission that it would be costly and administratively cumbersome to apply UBB charges only in respect of new end-users of GAS customers, as intervenors requested. In the Commission's view, given the size and complexity of these services, it would be impractical for the Bell companies to implement separate billing arrangements for new and existing end-users' of GAS customers. The Commission finds that the Bell companies' UBB proposal, while discriminating against GAS customers because it would not apply to the Bell companies' retail customers who are not on UBB plans, is not unjustly discriminatory.
17. With respect to intervenors' other submissions, the Commission considers that the Bell companies have provided an adequate response at this time for the purpose of disposing of their applications on an interim basis.
18. Accordingly, the Commission **approves on an interim basis** the Bell companies' requests to introduce UBB for GAS, effective 90 days from the date of this order.

III. Should the proposed excessive usage charge for GAS be approved on an interim basis?

19. The Bell companies proposed an excessive usage charge of \$0.75 per additional gigabyte (GBs) in excess of 300 GB of monthly usage for a GAS customer's end-user if, and when, they introduce a corresponding \$1.00 charge per GB in excess of 300 GB for their retail customers on UBB plans. The Bell companies proposed to notify the Commission if, and when, they apply this proposed charge to their retail services. Intervenors submitted that such a charge would give the Bell companies an undue preference because it would not be applied to the Bell companies' retail customers who are not on UBB plans.
20. The Commission notes that the Bell companies would apply the proposed excessive usage charge to GAS customers in respect of their end-users only if, and when, the Bell companies apply this charge to their own retail customers who are on UBB plans. The proposed charge would therefore represent a new charge with respect to all customers who are on UBB plans, whether they are retail or wholesale customers of the Bell companies. The Commission finds that the Bell companies' excessive usage charge proposal, while discriminating against GAS customers because it would not apply to the Bell companies' retail customers who are not on UBB plans, is not unjustly discriminatory.
21. Accordingly, the Commission **approves on an interim basis** the Bell companies' proposed excessive usage charge, effective the date that the Bell companies notify the Commission in writing that they apply an excessive usage charge of \$1.00 per GB in excess of 300 GB to all their retail customers on UBB plans.

IV. Should the proposed uncorrelated usage charge for GAS be approved on an interim basis?

22. The Bell companies submitted that in some instances they cannot correlate Internet usage that has been authenticated by a particular GAS-ISP's end-user with a specific line to which that end-user subscribed. The Bell companies considered such actions as intentional measures undertaken by the end-user to evade payment for valid usage. They submitted that the ISP that authenticates such a session should be accountable for the usage, and proposed an uncorrelated usage charge for their GAS of \$1.875 per GB or portion thereof, to be applied on a monthly basis.
23. Intervenors submitted that uncorrelated usage can occur for various legitimate reasons, and argued that the proposed charge is too high. The Bell companies replied that, in their view, most if not all uncorrelated usage is a result of some GAS-ISPs' end-users attempting to evade payment for usage. They submitted that the charge will not affect most end-users of its GAS customers. The Bell companies submitted further that what they described as a premium rate is justified by the extra costs they incur to determine which GAS-ISP's end-users are responsible for uncorrelated usage.
24. Before making its decision on the proposed uncorrelated usage charge, the Commission requires further information (for example, the specifics of the circumstances in which uncorrelated usage occurs). Accordingly, the Commission intends to rule on this aspect of the Bell companies' proposal following further process.

Policy Direction

25. The Commission considers that its determinations in this order advance the telecommunications policy objectives set out in paragraphs 7(b), (c), and (f) of the Act.⁵ The Commission further considers that its determinations are consistent with the Policy Direction⁶ requirements that (a) the measures in question be efficient and proportionate to their purposes, and that they minimally interfere with competitive market forces to meet the above policy objectives, and (b) the measures neither deter economically efficient competitive entry into the market nor promote economically inefficient entry.

Conclusions

26. The Commission **approves on an interim basis** the Bell companies' proposed two new GAS speed options and rates. The Commission also **approves on an interim basis** their proposal to introduce UBB for GAS, effective 90 days from the date of this order. The Commission further **approves on an interim basis** their proposal to introduce an excessive usage charge

⁵ The cited policy objectives of the Act are (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; and (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective.

⁶ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

for GAS of \$0.75 per GB in excess of 300 GB, effective the date the Bell companies notify the Commission in writing that they apply an excessive usage charge of \$1.00 per GB in excess of 300 GB to all their retail customers on UBB plans.

27. Further, interrogatories will be addressed to the Bell companies and additional process will be established shortly.

Secretary General

Related documents

- *Cybersurf's application related to the implementation of Telecom Decision 2008-117 regarding the matching speed requirement*, Telecom Order CRTC 2009-111, 3 March 2009
- *Cybersurf Corp.'s application relating to matching service speed requirements for wholesale Internet services*, Telecom Decision CRTC 2008-117, 11 December 2008
- *Review of the Internet traffic management practices of Internet service providers*, Telecom Public Notice CRTC 2008-19, 20 November 2008, as amended by Telecom Public Notice CRTC 2008-19-1, 11 February 2009, Telecom Public Notice CRTC 2008-19-2, 12 February 2009, and Telecom Public Notice CRTC 2008-19-3, 18 March 2009
- *Cogeco, Rogers, Shaw, and Videotron – Third-party Internet access service rates*, Telecom Decision CRTC 2006-77, 21 December 2006

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>