



Telecom Order CRTC 2009-772

Ottawa, 11 December 2009

Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application to amend tariffs for Gateway Access Service and High Speed Access Service by including a provision for diagnostic maintenance charges

File numbers: Bell Aliant Tariff Notice 270
Bell Canada Tariff Notice 7206

Introduction

1. The Commission received applications by Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (collectively, the Bell companies), dated 3 June 2009, proposing changes to items 5410 – Gateway Access Service (GAS) and 5420 – High Speed Access (HSA) Service of their General Tariffs. Specifically, the Bell companies proposed to amend their GAS and HSA tariffs to include a charge for diagnostic maintenance.¹
2. The Bell companies also proposed certain minor housekeeping changes to their tariffs, including the removal of a reference to an expired HSA promotion and the correction of the Bell Aliant company name.
3. The Commission issued interrogatories to the Bell companies, dated 10 July 2009. The Commission also received comments from the Canadian Association of Internet Providers (CAIP). The public record of this proceeding, which closed on 17 August 2009, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file numbers provided above.

Should the Commission approve the Bell companies' proposal?

CAIP's position

4. CAIP requested that the Commission suspend its consideration of the Bell companies' applications until such time as the Bell companies and the industry can complete discussions on the proposed diagnostic maintenance charge and on the procedures for opening, resolving, and eventually closing trouble reports associated with the charge. CAIP also expressed concerns regarding various issues that it identified as being associated with the Bell companies' inappropriate assessment of diagnostic maintenance charges.

¹ Diagnostic maintenance is conducted at the request of an Internet service provider (ISP). When no fault or trouble is found in the Bell companies' GAS or HSA service facilities or equipment, the Bell companies would assess a diagnostic maintenance charge to the ISP. If a fault or trouble is found in the Bell companies' GAS or HSA service facilities or equipment, the facilities or equipment would be repaired and no diagnostic maintenance charge would apply.

5. CAIP submitted that the diagnostic maintenance of its end-customers' service should be provided on a “no fault” basis with no charges applied by either the Bell companies or the Internet service provider (ISP) for maintenance and repair, because both the ISP and the Bell companies use equipment to provision the end-customers' service and either party's equipment or facilities could be at fault. CAIP also submitted that to permit only the Bell companies to charge for diagnostic maintenance would amount to asymmetrical regulation that would be neither reasonable nor just.
6. CAIP provided a detailed list of examples where ISPs must open trouble tickets with the Bell companies for situations that are not the ISPs' responsibility. CAIP also acknowledged that some of these examples would not result in a diagnostic maintenance charge.

The Bell companies' position

7. The Bell companies argued that the application of diagnostic maintenance charges for GAS and HSA customers is sound in that the impact of applying a diagnostic maintenance charge to GAS and HSA customers is reasonable and is controllable by the ISPs. The Bell companies also argued that the charge was already included in their tariffs and that it applied to voice and data services.² However, the Bell companies submitted that because some GAS and HSA customers routinely dispute the charge, there is a requirement to clarify the matter by adding the description of it to their GAS and HSA tariffs.
8. The Bell companies provided on the record of the proceeding the guidelines that are provided to GAS and HSA customers for troubleshooting an end-customer's service to permit the ISP to determine whether it needs to request the Bell companies to conduct repairs to their facilities or equipment. The Bell companies submitted that by following these troubleshooting guidelines, ISPs could reduce the number of trouble reports that would require investigation.
9. In response to CAIP's list of examples, the Bell companies identified the cases where a request for diagnostic maintenance would lead to a diagnostic maintenance charge and acknowledged a number of other cases where a charge would not apply.
10. In response to a CAIP concern regarding dispute resolution, the Bell companies indicated that they would issue to the ISPs specific guidelines applicable to instances where an ISP might challenge the assessment of a diagnostic maintenance charge and identify the process to manage these disputes.

² See Bell Aliant's and Bell Canada's General Tariffs, item 4210 – Diagnostic Maintenance Charge.

Commission's analysis and determinations

11. The Commission notes that diagnostic maintenance charges are already included in the tariffs of the Bell companies as well as the tariffs of other incumbent local exchange carriers and cable carriers. The Commission considers that the diagnostic maintenance charges contained in the Bell companies' tariffs apply to both retail and wholesale customers for a number of voice and data services offered by these companies, including GAS and HSA services. In light of the fact that the charge already exists in the Bell companies' tariffs, the Commission finds no merit in CAIP's request that it suspend consideration of the Bell companies' applications.
12. With respect to the other submissions made by CAIP, the Commission considers that ISPs have the overall responsibility of maintaining their end-customer's end-to-end service. The Commission notes that a diagnostic maintenance charge can only apply where an ISP initiates a request to have the Bell companies perform diagnostic maintenance on GAS or HSA service facilities or equipment and where, upon investigation, no fault is found in the Bell companies' facilities or equipment.
13. The Commission considers it reasonable that an ISP is expected to exhaust all other possibilities before requesting the Bell companies to perform maintenance on their equipment and facilities. The Commission also considers that where a request for diagnostic maintenance is made and the Bell companies' equipment and facilities are found to be at fault, the customer should be advised that no diagnostic maintenance charge will apply.
14. In light of the foregoing, the Commission considers it reasonable that the Bell companies modify their GAS and HSA tariffs to clarify when a diagnostic maintenance charge may apply.
15. The Commission also notes that the following paragraph of the English version of the Bell companies' proposed tariffs³ should be amended to insert the missing word “and” (change is highlighted in bold italics):

. . . . When, as a result of a service issue raised by the customer to Bell and at the request of the customer to test the services provided by the Company, the Company completes testing activities ***and*** finds that there is no fault in the Company's facilities; or when a truck roll is required to an end-user's premises and no trouble is found in the Company's facilities and/or equipment but such trouble continues to be present when the customer-provided equipment is reconnected to the Company's facilities and/or equipment, a charge as specified in Item 4210.1.(b) – Diagnostic Maintenance Charge applies
16. In light of the above, the Commission **approves** the Bell companies' applications subject to the modification noted above, including the proposed minor housekeeping changes. The Commission also directs the Bell companies, within 30 days of the date of this order, to issue to all their customers the specific guidelines that would apply to any dispute resolution process regarding instances where an ISP might challenge the assessment of a diagnostic maintenance charge. Future ISP customers are also to be advised of these guidelines within 30 days of first receiving GAS or HSA services from the Bell companies.

³ Bell Aliant's and Bell Canada's GAS Tariffs, item 5410, paragraph 3.(u); and HSA Service Tariffs, item 5420, paragraph 2.(t)

17. 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 *Telecommunications Act*.⁴ The Commission further considers that its determinations are consistent with the Policy Direction⁵ requirements that (a) the measures in question are efficient and proportionate to their purpose, 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.

Secretary General

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⁴ The cited policy objectives of the *Telecommunications Act* are 7(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;

7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; and

7(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.

⁵ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006