



Telecom Decision CRTC 2010-805

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Ottawa, 29 October 2010

Bell Canada – Applications to review and vary certain determinations in Telecom Decision 2010-637 concerning the use of high-speed packet access wireless technology and the deferral account balance

File numbers: 8662-B2-201014638 and 8662-B2-201014646

In this decision, the Commission approves the use of deferral account funds by Bell Aliant and Bell Canada (the Bell companies) to expand broadband services to 112 communities in Ontario and Quebec using high-speed packet access (HSPA)+ wireless broadband technology. The Commission denies Bell Canada's proposed modifications to further reduce the Bell companies' deferral account balance.

Background

1. In Telecom Decision 2006-9, the Commission determined that incumbent local exchange carriers (ILECs) should predominantly use the funds in their deferral accounts¹ to expand broadband services to rural and remote communities in their territories.² The Commission also concluded that any accumulated balance remaining in an ILEC's deferral account after any approved initiatives would be rebated to the ILEC's residential local subscribers in non-high-cost serving areas (non-HCSAs).
2. In Telecom Decisions 2007-50 and 2008-1 (these two decisions and Telecom Decision 2006-9 are hereafter referred to collectively as the deferral account decisions), the Commission approved, among other things, a proposal by Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies) to expand broadband services to certain rural and remote communities in Ontario and Quebec (the approved communities) using funds from their deferral account. In Telecom Decision 2008-1, the Commission concluded that the funds remaining in the Bell companies' deferral account should be rebated to residential subscribers of record in non-HCSAs as of the date of that decision, 17 January 2008.

¹ In 2002, the Commission set out a price cap framework, which included, among other things, rules governing the rates charged to residential customers of the ILECs. One of the elements of the price cap regime was the deferral account. ILECs were requested to place into their respective deferral account amounts equal to the revenue reductions that would otherwise have resulted from an application of the price cap formula.

² The Commission also permitted the use of funds for initiatives to improve access to telecommunications services for persons with disabilities.

3. The implementation of the deferral account decisions was put on hold pending disposition of appeals before the Federal Court of Appeal and the Supreme Court of Canada related to the broadband expansion proposals and to the consumer rebates. Following the dismissal of the appeals to the Supreme Court of Canada, the Bell companies submitted revised plans to provide broadband service to 112 approved communities in the deferral account decisions and in related decisions.³
4. In Telecom Decision 2010-637, the Commission approved a drawdown of \$306.3 million from the Bell companies' deferral account to expand broadband services in the 112 approved communities using wireline digital subscriber line (DSL) technology, rather than the high-speed packet access (HSPA) wireless technology proposed by the Bell companies. The Commission also approved a rebate of \$251.6 million to the Bell companies' subscribers in non-HCSAs and set out the implementation details for the drawdown of their deferral account balance.

The applications

5. The Commission received two applications by Bell Canada, dated 12 September 2010, requesting that the Commission vary Telecom Decision 2010-637 by
 - i. allowing the Bell companies to use HSPA+ wireless broadband technology rather than wireline DSL technology in order to provide broadband services to communities previously approved by the Commission; and
 - ii. reducing the Bell companies' deferral account balance in order to reflect modified calculations pertaining to accumulated interest, rebate administration costs, and recurring amounts associated with forborne residential optional local services.
6. The Commission received comments from Barrett Xplore Inc. and Barrett Broadband Networks Inc. (collectively, Barrett); Bragg Communications Inc., operating as EastLink (EastLink); MTS Allstream Inc. (MTS Allstream); the Public Interest Advocacy Centre (PIAC); Quebecor Media Inc., on behalf of its affiliate Videotron Ltd. (Videotron); Rogers Communications Inc. (RCI); and TELUS Communications Company (TCC). The public record of this proceeding, which closed on 8 October 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file numbers provided above.

Issues

7. The Commission has identified the following issues to be addressed in this decision:
 - I. Is Bell Canada's HSPA+ wireless broadband proposal consistent with the Commission's criteria for use of funds to expand broadband services in rural and remote areas?

³ Other decisions relating to the approval of the 112 communities include Telecom Decisions 2008-13, 2008-21, 2008-88, 2009-763, and 2010-60.

- II. Are Bell Canada's proposals to modify the Bell companies' deferral account balance appropriate?

I. Is Bell Canada's HSPA+ wireless broadband proposal consistent with the Commission's criteria for use of funds to expand broadband services in rural and remote areas?

8. In the deferral account decisions, the Commission directed the Bell companies to deploy broadband services in the approved communities using least-cost technology, and to make services available that would be comparable to the services that they provide in urban areas in terms of rates, terms and conditions, upload and download speeds, and reliability. The Commission also considered that it would be in the public interest for ILECs to offer various speed levels.
9. In Telecom Decision 2010-637, the Commission indicated that the Bell companies' original proposal to use HSPA wireless technology to provide broadband services in the approved communities (the original proposal) did not satisfy the Commission's requirements as set out in the deferral account decisions. Specifically, the Commission indicated that the original proposal did not offer features comparable to broadband service in urban areas such as (i) a variety of service options, including various speeds and usage caps, (ii) an option for a greater than 2 gigabyte (GB) monthly usage allowance, and (iii) an insurance option that would provide an extra 40 GBs of usage for \$5 per month. The Commission also considered that the original proposal would not represent the use of least-cost technology. The Commission therefore approved the use of wireline DSL technology and fixed the amount of funds available for broadband expansion at \$306.3 million to serve all of the approved communities.
10. Bell Canada indicated that its HSPA+ wireless technology proposal (the revised proposal) would address the requirements identified by the Commission in Telecom Decision 2010-637, such that the approved communities in Ontario and Quebec would have access to a broadband service that was comparable, or in some cases superior, to what is available in urban areas.⁴ Bell Canada also indicated that, as the Bell companies' urban retail legacy DSL services changed, their HSPA+ service offering would change in lockstep within the approved communities.
11. Bell Canada indicated that it would also file a tariff to provide access to wholesale HSPA+ wireless broadband services under similar terms of service characteristics as the Bell companies' existing Gateway Access Service (GAS),⁵ in order to allow competitive providers the ability to offer retail broadband services to end-users.⁶

⁴ The features available with the revised proposal include (i) various retail service options (i.e. speeds and usage caps), (ii) monthly usage allowances greater than 2 GBs, and (iii) an insurance option providing an extra 40 GBs of usage for \$5 per month.

⁵ GAS is a wholesale service that the Bell companies are required to provide to Internet service providers (ISPs) so that those ISPs can provide retail Internet services to their own customers.

⁶ Pursuant to Telecom Decision 2006-9, ILECs were required to make the backbone facilities funded through the deferral accounts available to alternative broadband service providers at a minimal rate.

12. Bell Canada noted that it was not seeking additional funds for its revised proposal, indicating that it would utilize the \$306.3 million previously approved by the Commission in order to deploy the costlier HSPA+ technology.
13. Barrett, EastLink, RCI, and Videotron opposed the revised proposal. These parties submitted that, while they supported the principle of technological neutrality, the Bell companies should deploy a wireline DSL solution as originally directed by the Commission.
14. RCI and Videotron submitted that HSPA services are now, or are expected to be, available from Bell Canada, RCI, and Videotron in most of the approved communities. As such, they argued that it would be inconsistent with the deferral account decisions to approve the revised proposal in order to fund broadband service where such services are already offered.
15. Barrett also argued that the Bell companies should be required to provide access to individual components of the wholesale HSPA+ service, rather than the proposed aggregated solution.
16. EastLink and Videotron argued that approving the revised proposal would result in the subsidization of Bell Canada's mobile voice service. They indicated that it would be inconsistent with the Policy Direction⁷ to distort the competitive market for mobile voice services in the approved communities by funding a technology that could provide both voice and data services.
17. Barrett, RCI, and Videotron submitted that the revised proposal does not adhere to other principles in the deferral account decisions, as it does not represent the use of least-cost technology to deploy broadband services. These parties argued that alternative broadband service providers could provide a comparable service at significantly less cost than Bell Canada, and submitted that if the Commission approves the revised proposal, it should allow for competitive bidding to see whether other companies could provide the HSPA+ service at less cost.

Commission's analysis and determinations

18. The Commission notes that the primary objective of the deferral account decisions is to ensure that unserved communities have access to broadband services comparable to those available in urban areas. The Commission also notes that, pursuant to its determinations in Telecom Decision 2010-637, this objective was to be achieved through the implementation of wireline DSL technology.
19. The Commission considers that, consistent with the principle of technological neutrality, the Bell companies should be able to deploy the technology of their choice as long as its broadband service meets the required criteria and does not exceed the

⁷ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the Policy Direction)

\$306.3 million previously approved for wireline DSL technology. The Commission further considers that Bell Canada's revised proposal, which makes use of HSPA+ wireless technology instead of wireline DSL technology, would also achieve the stated objective, as it would provide broadband service comparable with, or superior to, urban broadband service.

20. Furthermore, the Commission considers that Bell Canada's commitment to maintain comparability as urban broadband service improves, as well as to make an appropriate wholesale service available, will ensure that consumers in the approved communities have access to high-quality broadband services over the long term.
21. With regard to the parties' submission that HSPA services are already available in some of the approved communities, the Commission notes that, in order to ensure a fair, predictable, and transparent process, it established 19 February 2007 as the cut-off date for alternative broadband service providers to verify that they were offering, or were planning to offer, broadband service in these communities. The Commission notes that broadband service was not available to the communities in question as of this cut-off date.⁸ Furthermore, the Commission notes that none of the carriers providing HSPA service in the approved communities demonstrated that their current service offerings are comparable to Bell Canada's revised proposal.
22. Regarding the parties' concerns that the revised proposal would distort the mobile voice market, the Commission notes that mobile voice services are already available in the vast majority of the 112 approved communities. Furthermore, the Commission considers that there are many economic and social benefits associated with access to broadband services in these communities, and that any associated market distortion would be minimal.
23. With respect to the proposals to allow for competitive bidding in order to ensure the use of least-cost technology, the Commission notes that it rejected this idea both in Telecom Decisions 2006-9 and 2007-50, since it would add a significant layer of complexity, delay the implementation of broadband expansion, and result in substantial administrative and regulatory burden. The Commission considers that these reasons continue to be valid.
24. In light of all of the above, the Commission finds that Bell Canada's HSPA+ wireless broadband proposal is consistent with its determinations in the deferral account decisions. The Commission therefore **approves** the revised proposal.
25. The Commission directs the Bell companies to file, within 30 days of the date of this decision, proposed tariffs to provide the competitor services using HSPA+ technology consistent with the wholesale wireless broadband service proposal included in its submission.

⁸ The Commission has denied similar requests from alternative broadband service providers in previous decisions, for example Telecom Decisions 2007-111, 2008-5, 2008-88, and 2008-110.

II. Are Bell Canada's proposals to modify the Bell companies' deferral account balance appropriate?

26. Bell Canada proposed three adjustments to the Bell companies' deferral account balance, prior to the issuance of any customer refunds. These modifications relate to (a) accumulated interest, (b) rebate administration costs, and (c) recurring amounts associated with forborne residential optional local services. Each issue will be addressed separately below.
27. Bell Canada also requested that the date for the Bell companies to fully rebate or credit subscribers be amended to six months from the date of this decision.

Accumulated interest

28. In Telecom Decision 2010-637, the Commission determined that the Bell companies' deferral account should accrue interest until 31 May 2010, in recognition of the full value of the funds in the account, and in order to avoid the Bell companies benefiting from interest-free loans.
29. Bell Canada submitted that the reason for the accumulation of interest in the deferral account was due to regulatory delays associated with the deferral account decisions (i.e. the disposition of appeals before the Federal Court of Appeal and the Supreme Court of Canada) for which the Bell companies were not wholly responsible. As such, Bell Canada requested that the Commission rescind the Bell companies' previous accumulated interest calculation, and proposed that the Commission restate the amount of interest accumulated in the Bell companies' deferral account to no more than 50 percent of the previous total.
30. EastLink, PIAC, RCI, and Videotron opposed Bell Canada's proposed reduction in accumulated interest. These parties generally argued that the funds in the deferral account belonged to consumers, and that the accumulated interest in the Bell companies' deferral account should be refunded to consumers, rather than maintained by the companies.
31. MTS Allstream and TCC supported Bell Canada's accumulated interest proposal.

Commission's analysis and determinations

32. The Commission considers that the deferral account funds generally represent monies that should be used to benefit subscribers.
33. The Commission does not consider Bell Canada's argument regarding the responsibility for regulatory delays to be relevant. Regardless of the reasons for the delays, the Bell companies' control over these funds has allowed them to invest or earn interest on these monies to which they would not have otherwise had access.
34. Accordingly, the Commission **denies** Bell Canada's request to modify the amount of accumulated interest identified in Telecom Decision 2010-637.

Rebate administration costs

35. In Telecom Decision 2010-637, the Commission considered it appropriate to allow deferral account funds to be used to recover rebate administration costs. However, in order to maximize the benefit to subscribers, the Commission indicated that it would only compensate the Bell companies for implementing a least-cost refund solution.
36. Bell Canada indicated that the amount set aside by the Commission for rebate administration costs was inadequate, as there would be additional implementation costs associated with customer rebates, such as building functionality into their interactive voice response (IVR) system and increased average call durations. Bell Canada therefore proposed to vary Telecom Decision 2010-637, in order to reflect a \$2.28 million increase in rebate administration costs.
37. EastLink and PIAC objected to Bell Canada's increased rebate administration costs, indicating that the company's estimates were unreasonable.

Commission's analysis and determinations

38. The Commission notes that the \$1.02 million allocated in Telecom Decision 2010-637 for rebate administration costs was intended to reasonably compensate the Bell companies for the costs associated with implementing a one-time billing credit.
39. The Commission considers that, while the costs directly attributable to the customer rebate are difficult to estimate, in particular since the Bell companies were given the flexibility to implement the customer rebate by various means, Bell Canada's proposed cost adjustments are not appropriate as they include unnecessary functionality or speculative assumptions which are not consistent with a least-cost refund solution.
40. Accordingly, the Commission **denies** Bell Canada's request to modify the rebate administration costs identified in Telecom Decision 2010-637.

Recurring amounts associated with forborne residential optional local services

41. In Telecom Decision 2006-9, the Commission directed the Bell companies and other ILECs to implement rate reductions to, among other things, optional local services effective 1 June 2006 in order to specifically eliminate any recurring amounts in their deferral accounts.
42. While other ILECs eliminated recurring amounts through rate decreases in 2007 (i.e. prior to local forbearance being granted), the Bell companies postponed implementing some of the required rate decreases in light of their proposals to use these funds for other purposes. After dealing with these proposals, an outstanding recurring amount remained in the Bell companies' deferral account.

43. In Telecom Decision 2009-213, the Commission approved a methodology for eliminating the recurring amounts in the Bell companies' deferral account through rate reductions beginning 1 June 2009. However, the Commission considered that, as of 1 June 2009, it would not be appropriate to require the reduction in rates for forborne residential optional local services.
44. In Telecom Decision 2010-637, the Commission determined that the Bell companies' deferral account should continue to reflect all recurring amounts, including those associated with forborne residential optional local services, which accrued prior to 1 June 2009.
45. Bell Canada submitted that recurring amounts associated with forborne residential optional local services should not accrue in deferral account balances in years after local service forbearance was granted (i.e. 2007 and 2008), given that the Bell companies could have neutralized any required rate reductions with equivalent rate increases. Bell Canada indicated that eliminating the identified recurring amounts in previous years would be consistent with the principles stated in Telecom Decision 2009-213.
46. PIAC disagreed with Bell Canada's proposal to eliminate recurring amounts associated with forborne residential optional local services.

Commission's analysis and determinations

47. Consistent with its views in Telecom Decision 2006-9, the Commission considers that amounts which have accrued in the deferral accounts, including recurring amounts that accrued in the past, generally represent monies that are due to residential customers.
48. The Commission notes that the determinations in Telecom Decision 2009-213 with respect to recurring amounts in the deferral accounts associated with forborne residential optional local services was intended to apply on a going-forward basis (i.e. as of 1 June 2009). The Commission considers that Bell Canada is essentially requesting to apply this determination on a retroactive basis to monies that have already accrued to the deferral account.
49. The Commission considers that, when the Bell companies chose not to implement the required rate decreases in 2006, they assumed the risk that their proposals to use the recurring amounts for other purposes could have been denied. Therefore, it would not be appropriate to allow the Bell companies to take funds from the deferral account which would not have accumulated had they taken steps to eliminate these recurring amounts when given the opportunity.
50. Accordingly, the Commission **denies** Bell Canada's proposed adjustment to the recurring amounts in the deferral account associated with forborne residential optional local services.

Implementation of rebates

51. The Commission finds it appropriate that the date for the Bell companies to fully rebate or credit subscribers be amended to five months from the date of this decision.

Secretary General

Related documents

- *Follow-up to Telecom Decision 2008-1 – Proposal by Bell Aliant Regional Communications, Limited Partnership and Bell Canada to dispose of the funds remaining in their deferral account*, Telecom Decision CRTC 2010-637, 31 August 2010
- *Follow-up to Telecom Decision 2008-1 – Requests by Bell Aliant Regional Communications, Limited Partnership and Bell Canada to expand broadband services to certain supplemental communities in Ontario and Quebec using deferral account funds*, Telecom Decision CRTC 2010-60, 5 February 2010
- *Follow-up to Telecom Decision 2008-1 – Late filed requests to exclude certain Ontario communities from the list of approved communities for broadband service expansion by Bell Aliant Regional Communications, Limited Partnership and Bell Canada*, Telecom Decision CRTC 2009-763, 9 December 2009, as amended by Telecom Decision CRTC 2009-763-1, 17 December 2009
- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application to review and vary portions of Telecom Order 2008-305 regarding the elimination of the recurring balance in Bell Canada's deferral account*, Telecom Decision CRTC 2009-213, 23 April 2009
- *Axis SuperNet Ltd. – Request to exclude certain Alberta communities from the approved list of communities for broadband service expansion by TELUS Communications Company in Telecom Decision 2008-1*, Telecom Decision CRTC 2008-110, 25 November 2008
- *Quebecor Media Inc. – Application to review and vary certain aspects of Telecom Decision 2008-1 related to the use of deferral account funds for broadband expansion*, Telecom Decision CRTC 2008-88, 9 September 2008
- *Follow-up to Mitchell Seaforth Cable T.V. Ltd. – Application to review and vary the determinations in Telecom Decision 2007-50 with respect to the community of Dublin, Ontario*, *Telecom Decision 2007-110*, Telecom Decision CRTC 2008-21, 6 March 2008
- *DERY Telecom – Application to review and vary certain determinations in Telecom Decision 2007-50*, Telecom Decision CRTC 2008-13, 21 February 2008

- *Andy Shadrack, Director, Area D, Regional District of Central Kootenay – Application to review and vary certain determinations in Telecom Decision 2007-50, Telecom Decision CRTC 2008-5, 25 January 2008*
- *Use of deferral account funds to improve access to telecommunications services for persons with disabilities and to expand broadband services to rural and remote communities, Telecom Decision CRTC 2008-1, 17 January 2008*
- *Barrett XPlore Inc. – Application to review and vary certain determinations in Telecom Decision 2007-50, Telecom Decision CRTC 2007-111, 22 November 2007*
- *Telecom Public Notice CRTC 2006-15 – Use of deferral account funds to expand broadband services to certain rural and remote communities, Telecom Decision CRTC 2007-50, 6 July 2007, as amended by Telecom Decision CRTC 2007-50-1, 27 July 2007*
- *Disposition of funds in the deferral accounts, Telecom Decision CRTC 2006-9, 16 February 2006*