



March 26, 2009

Mr. Robert A Morin  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, ON K1A 0N2

Dear Mr. Morin:

**Subject: Bell Aliant Tariff Notice 242 and Bell Canada Tariff Notice 7181 as required by Decision CRTC 2008-117 and Telecom Order CRTC 2009-111**

1. The signatories to this letter have significant concerns regarding Bell Aliant Tariff Notice 242 and Bell Canada Tariff Notice 7181 filed with the Commission on March 13, 2009. Those tariff notices stand to fundamentally change the way in which competitors purchase services from Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively "Bell") in Ontario and Quebec and as such require significant consideration by the Commission, the industry and consumers.
2. While many of the signatories to this letter will be filing more detailed comments within the timeframes usually applied to tariff filings of this type, we feel that it is important to bring some key issues to the Commissions attention to ensure that interim approval is not granted.
3. In Decision 2008-117 and Order 2009-111 Bell was ordered to file new speeds for its wholesale Gateway Access Service that matched those service speeds offered by its retail service. Bell has totally failed to do so and instead has introduced a radically new approach to its wholesale service, that of Usage Based Billing (UBB). This new element to the services which wholesale competitors purchase from Bell was not requested by the Commission as part of the above-noted Decision and Order.
4. Bell has asked that the Commission provide approval of Bell Aliant Tariff Notice 242 and Bell Canada Tariff Notice 7181 for implementation on May 31, 2009. We feel that this request for a fundamental change to wholesale services should not be approved on an interim or final basis; rather, any consideration of these tariff notices should be based on the outcome of a full tariff notice process.

#### **Other relevant proceedings**

5. There are currently no fewer than three regulatory initiatives underway, the outcomes of which may have an impact on the delivery of Gateway Access Service ("GAS"):
  - a. MTS Allstream's Petition to the Governor in Council concerning MTS Allstream Inc. – Application to review and vary certain determinations in Telecom Decision 2008-17 regarding the classification of wholesale Ethernet services, Request to Review and Vary Directives in Telecom Decision 2008-10 related to the Provision of Central-Office based Wholesale ADSL Access Service and Aggregated ADSL Access Service;
  - b. Bell and TELUS Part VII Applications for a Stay of Telecom Decision CRTC 2008-117 and Telecom Order CRTC 2009-111; Without a resolution of the stay in favor of speed

- matching, Bell will continue selling 10 Mbps DSL service with a 100 GB cap for \$42.95 per month while GAS customers under the proposed tariff notices will pay \$43.50 per month for 5 Mbps GAS service with 80 GB of monthly usage (based on a three year GAS term by the GAS customer). Independent ISPs using GAS will have no way to move high usage customers to a more appropriate grade of service;
- c. CRTC Public Notice 2008-19, Review of the Internet traffic management practices of Internet service providers

### Other relevant issues

6. **Cost Studies** - Bell has failed to provide any cost studies or tangible justification for asking for the additional revenue which would be generated by UBB. Indeed, any such additional revenue would not comply with the requirements of the current price cap regime established in CRTC Telecom Decision 2007-27 in that the specific rates proposed are not supported by any justification other than the fact that Bell claims the rates for usage above the caps is lower than applied to its own retail Internet customers.
7. **Anti-competitive** - Bell often argues that if they implement a service feature in their retail business they may also do so in their wholesale business without appearing anti-competitive. In the case of UBB this is pure fallacy. For wholesale services, it is the competitor who should be responsible for managing service relationships with its own end-user. In any event, the industry is already seeing evidence of Bell's retail division waiving UBB and caps for end users when the user attempts to cancel service and move to a competitor. If UBB is implemented on wholesale Gateway Access Service and Bell continues to waive UBB and bandwidth caps at retail, there will clearly be a competitive advantage conferred upon Bell.
8. **Accuracy of UBB data** – In the spring of 2008, during the now infamous implementation of traffic shaping on wholesale traffic, Bell gathered together a small sample of the ISP industry to discuss traffic shaping. During these discussions the idea of UBB was floated. At no time during or since those discussions did the industry at large have input into UBB. Moreover, Bell had no details, such as price, thresholds, caps, etc., concerning UBB. The only commitment made by Bell at that time was to make sample data available at a later date.
9. In late 2008 Bell finally made this sample data available to its wholesale customers. To say the data is flawed is an understatement. ISPs are reporting variances between Bell's data and the ISP's own data of as much as 800%. In one case Bell has provided data indicating a residential end user consumed 1 TB (terabyte) of data over 20 hours of use.
10. Given the inaccuracy of the sample data and the fact that ISPs were not aware of the pricing proposed by Bell until Tariff Notice 7181 was filed, we have not yet been able to determine the impact such a proposal would have on our varied business models.
11. **Implementation** – Not only have there been discrepancies in the sample data provided to competitors but Bell is unable to provide the data in a manner that ISPs can efficiently integrate into their billing systems. There also continues to be concern over double-dipping by Bell whereby more than one ISP could be billed for the same traffic should the end-user move from one ISP to another and fail to inform the original ISP in a timely manner.
12. **Competition** – Part of the Commission's mandate is to encourage and stimulate competition. The Bell tariff notices do exactly the opposite. By approving the Bell tariffs the Commission would succeed in imposing Bell's retail standards upon wholesale customers and their end-users. The result would be a reseller product that is the same as Bell's, not a wholesale product that offers customer choice in the market as a result of wholesale customers combining their own value-added services and Internet connections with Bell's wholesale Gateway Access Service.

## Impact on Canadian adoption of ICTs

13. Canada is already falling behind in many metrics used to monitor the adoption and implementation of Information & Communication Technologies. One element in this decline is cost. Canadians continue to pay some of the highest rates in the world for wired, wireless and Internet communications.
14. UBB has the very real possibility of adding 20% or more to the wholesale costs paid by competitive ISPs in Canada. In a market that is extremely price sensitive, and at a time when consumers are worried about the cost of living and indeed their jobs, the Commission would be doing Canadians a disservice in considering Tariff Notice 7181 in general and the UBB provisions of the Tariff Notice in particular.
15. For the above reasons we respectfully submit that Bell Aliant Tariff Notice 242 and Bell Canada Tariff Notice 7181 be rejected and that the Commission pursue other remedies at law to compel Bell to comply with Decision 2008-117 and Order 2009-111. UBB has no place in the current regulatory obligations required by this Decision and Order.

Yours truly,



Michael Garbe  
President  
Accelerated Communications



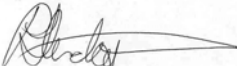
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