



Telecom Order CRTC 2009-298

Ottawa, 21 May 2009

Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Service charges associated with Gateway Access Service

File number: Bell Aliant Tariff Notice 224
Bell Canada Tariff Notice 7167

1. The Commission received applications by Bell Aliant Regional Communications, Limited Partnership and Bell Canada (the Bell companies), dated 7 November 2008, requesting that the Commission approve an increase to certain service charges for General Tariff item 5410, Gateway Access Service (GAS).
2. There are currently three service charge payment options for the Bell companies' GAS:
 - i. a one-time service charge of \$50;
 - ii. a monthly payment of \$2.25 for a period of 24 months; or
 - iii. a monthly payment of \$1.25 for residential end-customer accesses or \$1.00 for business end-customer accesses, for the duration of the service.
3. In their applications the Bell companies proposed to modify service charge payment option (iii) by increasing the associated monthly rate to \$1.50 for both residential and business end-customers.
4. The Commission received submissions from Execulink Telecom Inc. (Execulink), MTS Allstream Inc., and Primus Telecommunications Canada Inc. (Primus). The public record of this proceeding, which closed on 7 January 2009, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file numbers provided above.
5. The Commission notes that it received additional submissions from Execulink and the Bell companies after the close of record of the proceeding.
6. The Commission has identified the following three issues to be addressed in its determinations:
 - i. Do the Bell companies' applications constitute a request to review and vary Telecom Order 2008-124?
 - ii. Should the option (iii) monthly rate for residential end-customer accesses be increased to \$1.50?
 - iii. Should the option (iii) monthly rate for business end-customer accesses be increased to \$1.50?

I. Do the Bell companies' applications constitute a request to review and vary Telecom Order 2008-124?

7. In the proceeding that led to Telecom Order 2008-124, the Commission approved an increase in the residential end-customer monthly rate for option (iii) from \$1.00 to \$1.25. The Bell companies had requested an increase to \$1.50 per month.
8. Execulink submitted that the current tariff applications requested the same rate that was denied in Telecom Order 2008-124. Execulink argued that the Bell companies' request should have been filed as, and should be treated as, an application to review and vary Telecom Order 2008-124.
9. In response, the Bell companies submitted that their tariff applications did not challenge the Commission's findings in Telecom Order 2008-124, but rather provided additional evidence to support a revised rate. Accordingly, the Bell companies argued that a review and vary application would neither be necessary nor appropriate.
10. The Commission notes that the Bell companies' current tariff applications request increases for both the residential and business end-customer monthly rates under option (iii). Only one of these rates, the residential monthly rate, was the subject of Telecom Order 2008-124.
11. The Commission also notes that the current proposal to increase the residential end-customer monthly rate under option (iii) includes additional information that was not on the record of the proceeding that resulted in Telecom Order 2008-124. Given the circumstances, the Commission considers that the Bell companies have provided new facts and thus, consistent with Telecom Public Notice 98-6, their applications should be treated as new applications.
12. In light of the above, the Commission concludes that the Bell companies' tariff applications should not be treated as applications to review and vary Telecom Order 2008-124.

II. Should the option (iii) monthly rate for residential end-customer accesses be increased to \$1.50?

13. The Bell companies submitted that based on their average service life information, provided in confidence to the Commission, the current rate levels are insufficient, on average, to recover the equivalent of the one-time service charge of \$50.
14. Execulink submitted that the average service life for its customers is longer than the estimate of 37 months that formed the basis for approval of the residential service charge rate of \$1.25 per month in Telecom Order 2008-124.
15. The Commission notes that the rates for the service, as well as the Bell companies' average service life evidence provided in this proceeding, apply to all competitor demand for the service, including Execulink's demand.

16. The Commission also notes that the average service life evidence filed in this proceeding is more detailed than the average service life evidence filed in the proceeding that led to Telecom Order 2008-124 and includes average service life estimates for each of the business and residential GAS accesses subject to option (iii).
17. With respect to residential service charge option (iii), based on the evidence provided by the Bell companies in this proceeding, the Commission considers that an increase from \$1.25 to \$1.50 would be a reasonable and appropriate way to recover the equivalent of \$50 from customers who have chosen this payment option.
18. Accordingly, the Commission **approves** a monthly rate of \$1.50 for the residential service charge of option (iii).

III. Should the option (iii) monthly rate for business end-customer accesses be increased to \$1.50?

19. Execulink submitted that the average service life for business subscribers is significantly longer than for residential subscribers, such that no increase is justified with respect to the business rate.
20. With respect to business service charge option (iii), the Commission considers that the Bell companies' evidence regarding the average service life of business GAS accesses does not support their proposed rate increase from \$1.00 to \$1.50. Rather, based on the evidence provided by the Bell companies, the Commission considers that the current rate of \$1.00 continues to be appropriate.
21. Accordingly, the Commission **denies** the Bell companies' proposed increase to the monthly rate for business end-customer accesses subject to option (iii).

Other matters

22. Execulink and Primus submitted that any increase in rates, if approved, should apply only to new installations. Primus argued that this would be a fair solution in recognition of the market power it considered that the Bell companies hold. Primus also argued that GAS is the only viable wholesale Internet access service available to Internet service providers (ISPs) at this time.
23. The Bell companies submitted that when rates of contracted services change from time to time, it is normal practice to apply such rate changes to both existing and new customers.
24. The Commission notes that the rate increase approved in this order is based on service life data applicable to all GAS accesses. The Commission considers that exempting existing GAS accesses from the rate increase while charging the increased rate for new GAS accesses would not result in an appropriate recovery of the service charge. Given this, the Commission concludes that the rate increase should not be limited to new GAS access installations, but should apply to all GAS accesses subject to service charge option (iii).

25. Execulink also argued that, if the Commission approved the Bell companies' proposed increases, ISPs should be allowed to retroactively switch existing GAS accesses to the option (i) one-time \$50 payment and that a credit for all monthly payments already remitted should be applied against the \$50 charge.
26. The Commission considers that Execulink's proposal would be impractical to implement given the large number of GAS accesses in place. Accordingly, the Commission **denies** Execulink's request.
27. Primus proposed that if the rate increases were approved, there should be a 34-month time limit for the payment of the rate so that the Bell companies do not collect more than the equivalent of the option (i) \$50 payment. Primus submitted that this would preclude the Bell companies from gaining an unreasonable windfall.
28. The Commission considers that this proposal is not appropriate because the equivalent of the \$50 charge would not be recovered with respect to the entire base of GAS accesses as some would be disconnected prior to any time limit that might be imposed. Accordingly, the Commission **denies** Primus's request.
29. The Bell companies proposed that ISPs be permitted to change their service charge payment option from option (iii) to option (i) for all future GAS installations or reinstallations. In order to do so, an ISP would be required to provide the Bell companies with formal notification within 30 days of the effective date of the requested tariff revisions. The Bell companies submitted that this proposal would adequately address its customers' concerns and that it was a practical solution that would ensure the recovery of the service charge.
30. The Commission notes that the Bell companies' proposal would allow ISPs to opt out of service charge option (iii) for future installations, thereby permitting ISPs to choose another option for new customers. In light of this, the Commission considers this proposal to be reasonable and appropriate.
31. Accordingly, the Commission **approves** the Bell companies' proposal to permit any ISP customer to change its service charge option from option (iii) to option (i) for all future GAS installations and reinstallations.
32. The Commission considers that its determinations in this order advance objectives 7(b), (f), and (h) of the *Telecommunications Act* and are otherwise consistent with the Governor in Council's *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006.

Secretary General

Related documents

- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Gateway Access Service*, Telecom Order CRTC 2008-124, 2 May 2008
- *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998

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>