

Application for Stay of Execution

Telecom Decision CRTC 2009-484

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

File numbers: Bell Aliant Tariff Notice 242

Bell Canada Tariff Notice 7181

Jean-Francois Mezei

Vaxination Informatique

Montréal, Québec

20-August-2009

jfmezei@vaxination.ca

Introduction

1. In December 2008, decision 2008-117 ruled that Bell Canada's GAS service must offer speeds matching Bell Canada's retail ("Sympatico") offering. On March 3rd, 2009, the Commission ordered Bell Canada, via order 2009-111, to file matching speeds tariffs within 10 days. 10 days later (march 13), Bell Canada filed tariff notice 7181 which failed to include matching ADSL speeds. This was preceded by Bell Canada filing a petition with the Governor in Council to reverse the decisions, as well as a request for stay of execution for implementation of 2008-117 and 2009-111.
2. On August 12th, 2009, the Commission rendered an interim decision 2009-484 granting Bell Canada's demand to implement TN-7181 which adds Usage Based Billing to a capacity based service. The decision set an implementation date of 90 days from August 12th, or roughly November 9th 2009.

Bell Canada has not complied with CRTC requirements

CRTC Rules and Procedures: 12. Where a party to a proceeding has not complied with any requirement of these Rules or any direction on procedure issued under section 8, the Commission may stay the proceeding until satisfied that such requirement has been complied with or take such other steps as it considers just and reasonable.

3. As the TN-7181 filing was in direct response to the 2008-117 decision and 2009-111 order, it clearly failed to comply with the Commission's requirements to file matching speeds tariffs. **The Commission should delay implementation of 2009-484 until Bell Canada is in full compliance with the requirements defined by 2008-117 and 2009-111.**
4. Since TN-7181 is a direct response to 2008-117 and 2009-111, both being the subject of a stay of execution request and petition to Governor in Council made by Bell Canada, **the Commission should suspend implementation of the 2009-484 decision until those issues are decided one way or the other.**

Since Bell Canada asked to suspend implementation of those decisions, it is only normal that implementation of the tariff linked to those decisions also be suspended.

ISPs need one clear and definitive path.

5. Considering that the 2009-484 decision is *interim*, and specifies that there are some unresolved issues to be discussed in a separate process (announced August 20th), **the Commission should delay implementation of TN-7181 until such a time as all unresolved issues in TN-7181 had been resolved.**
6. There are a number of outstanding issues related to the GAS service such as the 2008-108 throttling R&V, the 2008-19 public notice on ITMP, the matching speeds issue and a number of smaller issues. Because the UBB issue is a major change to the whole GAS paradigm, it is not reasonable to force ISPs to scramble to implement 2009-484 right away when there are many other possible changes coming.
7. It is not reasonable to force ISPs to start to announce new pricing and business practices to their own customers when there are significant changes still in the pipeline. It will be extremely confusing to end users if an ISP is forced to announce 5mbps throttled exorbitantly priced UBB billed services one week if the next week, new speeds and pricing are announced, a month later, the UBB pricing is adjusted, and the month later, throttling is removed, and a month later, whatever else Bell Canada's lawyers can think of.
8. **Therefore, the Commission should delay implementation of 2009-484 until the other major GAS issues are settled so that ISPs can combine all changes into one major restructuring of their offering.**

90 days is not enough for ISPs

9. The Commission grossly underestimated how long it will take for the GAS customers to update not only their billing software, but also install/test their own usage metering and customer portals to enable customers to monitor their consumption and compare against the unaudited numbers generated by Bell Canada.
10. It is unrealistic to expect all of this to work reliably right away and there needs to be a period where all parties can compare their own numbers to verify the accuracy of Bell's numbers and give sufficient time to correct any bugs in the systems. The Commission needs to note that some of the large ISPs such as Vidéotron took more than a year to deploy their UBB system to a point where it was reliable enough to be attached to the billing system.
11. Because Bell Canada is not providing an individual usage measurement portal for the wholesale GAS service, each GAS customer will need to implement one for its own end users. And because this is for billable use, it needs to be tested, debugged and reliable. Many ISPs may have primitive systems in place to detect abnormal usage patterns, but it will take a lot of work to make them reliable enough to be connected to a billing system as well as provide a customer portal to consult live numbers to help end users moderate their use to avoid excessive usage charges. Some ISPs have no such systems in place because they manage their networks based on capacity, which has been and continues to be the standard network management methodology on the Internet. (and which was also for GAS until now).
12. Many ISPs, especially the silent ones not represented by some of the more visible associations may be hit very hard by these drastic changes and be forced to completely re-evaluate their business plans, completely redesign their service offering/pricing or even contemplate getting out of the retail ISP business all together. Such decisions are not taken lightly and take time. And the independent ISPs cannot compete against Sympatico's new unregulated pricing of \$5.00 for 40 gigabytes (\$0.125/gig).
13. ISPs with the more generous offerings will be hit hardest, while those with more restrictive service plans not feeling the difference as much. It is therefore not possible to generalise the impact on ISPs based on some selective examples.
14. It must be noted that there is a strong disincentive for ISPs to inform their end users of new pricing and service limits/features because any ISP that is first to announce higher costs risks losing customers to others who have not yet announced the significant increase and decreased service levels forced by Bell Canada onto its competitors. This makes it harder for ISPs to inform customer in a timely fashion so that they would have time to adapt prior to UBB coming into effect.
15. ISPs who have many end users on contracts may be faced with legal issues in provinces where consumer protection laws allow customers to force the service provider to deliver the contracted service (such as unmetered service) until the end of the contract period. This would cause serious loss to the ISP who would be forced to pay the high UBB fees to Bell without being able to collect from their end users. Postponing the 2009-484 implementation date would greatly reduce the number of customers on such contracts and thus the ISP's exposure to significant losses, legal problems or even risk of bankruptcy.
16. While Bell claims it has told GAS customers of plans for UBB last year, ISPs could not seriously start work on implementing this until a decision (2009-484) was rendered.
17. **90 days is not enough for a business to develop and implement a new business plan, announce new service and pricing definitions as well as develop/implement the systems needed to implement TN-7181.**

90 days is not enough for end users.

18. The 2009-484 decision failed to consider the needs of end users when it comes to the implementation deadline. Because many ISPs require 30 days notice for service cancellation, this leaves very little time for end users to decide if they need to switch ISPs, and such decision is likely to be impossible because few ISPs will have announced their new pricing in time for end users to make a switch before UBB billing begins.
19. The original GAS tariff had allowed ISPs to serve many market niches which Sympatico was unwilling to serve. One of those was providing affordable enterprise features¹ to small home businesses. This has allowed developers to operate small servers with an affordable internet connection that allowed them to provide services and/or develop new internet enabled applications. The options are limited since TPIA expressly forbids servers. By the time ISPs will publish the new Bell-compliant service offerings, there will be too little time left to implement options which include moving their small server to a virtualised instance at a U.S.A. hosting company. And this may not always be possible if applications involve the management of various devices attached to the servers (cameras, telemetry/sensors, routers or other networking equipment for instance).
20. The TN-7181, as approved, allows Bell Canada to disconnect a user as soon as Bell thinks his usage rises above 300 gigs. And because Bell Canada has no communication with GAS end users, such disconnection would probably be without warning, and the end user would likely have no means to have service re-established. As approved, TN-7181 contains no description of the process of disconnection or reconnection. And since the Commission has, in its interrogatory for the follow-up to the TN-7181 process, asked for clarification on the need for disconnection, it would only cause confusion if TN-7181 were allowed to be implemented before the Commission is able to make a final ruling on the issue.
21. Families or students living together may have acceptable individual usage patterns, but the dwelling's internet connection which was previously perfectly acceptable to their independent ISP would now be unacceptable to Bell because it exceeds the 60 gig limit and be forced to pay the punitive UBB rates, and may even face disconnection should Bell think that they exceeded 300 gigs. They will need to wait for their ISP to have a working usage portal before they can assess their usage patterns and wait for ISPs to publish their new service plans before they can consider what their options are. By that time, it may be too late to make a switch or order additional lines be installed (to spread the load to under 60gigs per line) before the start of November when the Commission expects UBB rates come into effect.
22. The Commission needs to realise that for many customers, unchanged usage habits would result in extreme cost increases. For instance, an end user whose habitual consumption would be 80GB on a \$29,95 package would see a *minimum increase of 75% of his monthly bill*. Sufficient time must be given to ensure all customers are properly informed so that they can adapt their usage patterns and moderate their use of a competitor's Internet service to Bell-imposed standards.
23. While those who follow the CRTC would be aware of the 2009-484 decision, the vast majority of customers are not aware of this and the Commission must ensure there is sufficient time to inform all customers before the significantly more expensive and restrictive rates come into effect.
24. **Therefore, the Commission must postpone implementation of TN-7181.**

1 Fixed IP address, DNS services including reverse DNS and no blocked ports

The need for a proper implementation plan

25. Because the changes imposed on ISPs to comply with 2009-484 have very significant, visible and costly impacts on not only the ISPs but also end users, it is important to provide a well documented and fair implementation plan that will let the ISPs and end-users adjust and plan accordingly. To this end, the Commission should compel Bell Canada and the ISPs to publish a precise implementation plan and schedule which would include at least the following:

- a. Details of exactly what traffic is being counted and how it is counted (for instance, if rounded each night, and/or at end of each PPPoE session, or at end of month, if traffic retransmissions due to DPI actions are counted, whether ATM, and/or PPPoE and/or IP and/or TCP/UDP overhead is being counted, whether control traffic such as ICMP is counted etc.
- b. Precise date when traffic counting begins. This date must be far enough into the future to allow both ISPs and end users to setup their own traffic counting procedures that will be able cross reference against Bell's unaudited numbers. It may not cost the Commission anything when Bell routinely files inaccurate information, but it will cost end users dearly when Bell Canada generates inaccurate usage information.
- c. Bell Canada must publicly document the billing period for usage so that ISPs and end-users can generate their own statistics for the same period so that errors in Bell's billing can be spotted. The Commission must remember that end users will be the ones paying Bell's exorbitant UBB charges. However, those end-users have no business relationship with Bell Canada and no way to dispute errors in usage numbers. ISPs cannot absorb a \$22.50 billing error for an end user which generates only \$3 of gross profit each month.
- d. After a period of sufficient length to allow ISPs to develop/implement data collection/billing systems, there should be a minimum of 2 full billing cycles where usage will be transmitted from Bell to the ISP and from the ISP to the end user at zero cost to allow all parties to verify usage numbers as well as allow end users to adapt to the new restrictive environment.
- e. End users must be given sufficient time to examine their current usage patterns, and restrict/reduce/eliminate their use of current/modern applications before being made financially liable for the exorbitant UBB rates.

Bell's claims that it has been transmitting this data since late 2008 does not count since no end user has seen this data and few if any ISPs have systems in place to process it all the way to the billing cycle.

- f. Because the Commission now condones the use of DPI equipment to collect personal usage information on a wholesale service, full disclosure of what data is being collected for each individual is necessary, especially since it is possible for Bell to collect per-application data but only transmit to the ISP aggregated per-user data. Previous decisions affecting the use of DPI equipment had been made with the specific promise by Bell Canada that it did not collect nor store any individual information.
- g. A specific date when billable usage will begin.
- h. A specific date when the end users will receive their first bill containing payable UBB charges.

Conclusion

26. Implementation of TN-7181 cannot realistically happen within 90 days of August 12th when the decision 2009-484 was rendered.
27. TN-7181 represents far more than a rate increase because it involves complete paradigm shift requiring GAS customers process totally new types of billing data from Bell Canada and requiring GAS customers to restructure their own offering and billing to their end users. Therefore, the normal 180 days deadline between filing and implementation of rate increases as defined by paragraph 37.2.c of the *CRTC Telecommunications Rules of Procedure* should not apply.
28. The implementation of TN-7181 needs to be stayed until all of the following conditions have been met:
 1. At least 3 months have elapsed since the Commission has rendered a decision on the new process announced August 20th to further the study of TN-7181.
 2. Bell Canada has complied with 2008-117 and 2009-111 and filed new tariffs, or the Governor in Council has agreed to reverse/vary those 2 decisions.
 3. The Commission has disposed of Bell Canada's March 12th 2009 request for stay of execution for 2008-117 and 2009-111.
 4. A minimum of 6 months has elapsed since 2009-484 was rendered to allow sufficient time for proper implementation and testing of the systems/software, as well as end user education and time to choose their options.
 5. A minimum of 3 months has elapsed since the Commission has disposed of all the major files currently affecting GAS (R&V of 2008-108, PN 2008-19, PN 2009-261). This is to ensure that ISPs can combine all the changes to GAS service into a single restructuring of their own service definition and reduce confusion with their customers.
29. The implementation date would be defined as the start of the 2 month test period where usage data is processed by both Bell Canada and the ISPs and transmitted to end users, but not billed (as described in previous page of this document).

*** END OF DOCUMENT ***