



Telecom Decision CRTC 2009-658

Ottawa, 21 October 2009

Applications by Teksavvy Solutions Inc. and MTS Allstream Inc. to review and vary portions of Telecom Order 2009-484 regarding usage-based billing for Bell Aliant Regional Communications, Limited Partnership's and Bell Canada's residential Gateway Access Services

File numbers: 8662-T117-200912635 and 8662-M59-200912825

The Commission confirms the interim approval granted in Telecom Order 2009-484 to proposals by Bell Aliant and Bell Canada to introduce usage-based billing for their wholesale residential Gateway Access Services. However, the implementation date established in that order is varied.

Introduction

1. The Commission granted interim approval in Telecom Order 2009-484 to Bell Aliant Regional Communications, Limited Partnership's (Bell Aliant) and Bell Canada's (collectively, the Bell companies) applications to introduce two new speed options for their Gateway Access Services (GAS)¹ and usage-based billing (UBB) rates and an excessive usage charge (together, UBB) for their residential GAS. Telecom Order 2009-484 approved, on an interim basis, the implementation of UBB on 10 November 2009.
2. On 11 and 18 September 2009, respectively, TekSavvy Solutions Inc. (TSI) and MTS Allstream Inc. (MTS Allstream) (collectively, the applicants) filed applications requesting that the Commission review and vary its interim approvals of UBB in paragraphs 18 and 21 of Telecom Order 2009-484. The flat monthly rates for the two GAS speed options approved on an interim basis in Telecom Order 2009-484 are not usage-sensitive and are not the subject of the applications. On 11 September 2009, TSI also filed a separate application requesting that the Commission stay implementation of the determinations in question pending its disposition of TSI's application to review and vary its interim approvals of UBB.
3. The Commission received submissions from: Accelerated Connections Inc., the Canadian Association of Internet Providers (CAIP), Distributel Communications Limited, eagle.ca, EGATE Networks Inc., Execulink Telecom Inc., Interlink Connectivity Inc., Managed Network Systems, Inc., Primus Telecommunications Canada Inc., Start Communications, Telnet Communications, and Vaxination Informatique (Vaxination) (collectively, the competitors) as well as from the Bell companies. TSI and MTS Allstream filed reply comments on 2 October 2009.

¹ GAS is a tariffed wholesale service provided by the Bell companies that competitors use to provide various services, including retail Internet service.

4. The public record of this proceeding 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 vary its interim approval of UBB for the Bell companies' residential GAS and the date for implementation of UBB rates, terms, and conditions?

5. The applicants submitted that UBB represents a radical change in the structure of residential GAS and that, for a variety of reasons, there is substantial doubt as to the correctness of the interim approvals granted to these charges in Telecom Order 2009-484.
6. All parties, except the Bell companies, submitted that the applicants' requests should be approved.
7. The applicants, supported generally by the competitors, submitted, among other things, that requiring implementation of UBB on an interim basis requires them to incur significant costs to implement proposals that may not be approved on the same terms on a final basis. They argued that competitors will incur significant labour and other start-up costs in a number of areas, including costs related to developing and implementing billing and other systems changes, the deployment of additional equipment and software, the redesign of retail services and marketing plans, consumer education, and responding to customer complaints.
8. The applicants, supported generally by the competitors, also argued that implementation of UBB on 10 November 2009, based on interim approval, would cause confusion in the retail market, would increase regulatory uncertainty, and would not represent effective and efficient regulation.
9. Vaxination submitted that there was substantial doubt as to the correctness of the disputed interim approvals because, among other things, the 90-day implementation period established in Telecom Order 2009-484 does not provide sufficient time for the Bell companies and their GAS customers to address the numerous implementation issues, including billing issues, raised by UBB.
10. The Bell companies submitted that the applications should be denied. The Bell companies submitted that, like the cable carriers' third-party Internet access services' UBB, their UBB proposals are intended to manage the potential negative outcome of high-consuming bandwidth end-users in a manner that does not degrade service to all end-users. Among other things, the Bell companies submitted that delay in implementing UBB would harm them because they have modified their business plans and incurred significant costs towards implementing UBB.
11. In reply, MTS Allstream and TSI submitted that, in light of the interim nature of the approval of UBB, in making the decision to modify their business plans and incur the expenditures in question, the Bell companies were, or should have been, aware of the possibility that the Commission could later modify or reject their proposals. MTS Allstream also submitted that an application by Vaxination to extend the implementation date for UBB, filed eight days after

Telecom Order 2009-484 was issued,² should have alerted the Bell companies to the possibility that the implementation date established by that order might change.

12. The Bell companies submitted that they provided adequate notice to their GAS customers regarding the implementation of UBB prior to the submission of their proposals to the Commission for approval. The Bell companies submitted that, although the specific framework and rates for UBB were not presented to their GAS customers before they filed their tariff notices, they met with many of their GAS customers in July 2008 to inform them of their plans to implement UBB for GAS. The Bell companies submitted that they provided further notice to GAS customers via a preview billing program implemented on 19 December 2008.
13. Competitors generally expressed concern with the accuracy of the Bell companies' billing data and the complexity of developing a billing system for UBB. CAIP submitted that the Bell companies have not alleviated these concerns or, to the best of its knowledge, offered to work with their GAS customers to ensure that these competitor Internet service providers (ISPs) and, ultimately, their end-users, are charged accurate amounts.

Commission's analysis and determinations

14. The Commission notes the applicants' and competitors' submissions that the Bell companies' UBB for residential GAS does not match in all respects UBB as applied to their retail Internet services, and that the Bell companies offer an insurance plan to their retail residential Internet service customers that they do not propose to make available to their GAS customers.
15. The Commission notes that UBB is a rating measure to address network capacity issues, and considers that interim approval of UBB continues to be appropriate. The Commission notes its view, set out in Telecom Regulatory Policy 2009-657, that economic measures are the most transparent Internet traffic management practices.
16. The Commission also notes that, because its approval of UBB is interim in nature, determinations in its final decision, based on the complete record of that proceeding, may be different. To the extent that the Commission's final decision approves the Bell companies' applications, but with approved rates, terms, and conditions that differ from those approved on an interim basis, competitor ISPs and the Bell companies would likely incur significant additional costs, time, and effort to comply with the final regime if the implementation date is not varied.
17. In the Commission's view, regardless of its final disposition, in the particular circumstances of this case, it would be more efficient from a regulatory standpoint for the Bell companies, their GAS customers, and retail Internet service end-users to be subject to a more predictable and certain regulatory environment with respect to the Bell companies' applications than that afforded by an interim regime. In light of the above, the Commission considers that implementing UBB on an interim basis on the date contemplated in Telecom Order 2009-484

² In light of TSI's 11 September 2009 applications, Vaxination withdrew its 20 August 2009 application on 18 September 2009. In that application, Vaxination had requested an extension of the implementation date of Telecom Order 2009-484.

would not be appropriate. Before the Commission issues its final decision, it also considers it appropriate that parties may comment on all aspects of the Bell companies' applications as part of the process set out in Commission staff's 1 September 2009 letter.

18. Accordingly, the Commission varies the implementation date for UBB established in Telecom Order 2009-484. The Commission's final decision will address implementation issues.
19. Given its determinations in this decision, the Commission considers that TSI's application for a stay of implementation of the UBB charges is moot.

Secretary General

Related documents

- *Review of the Internet traffic management practices of Internet service providers*, Telecom Regulatory Policy CRTC 2009-657, 21 October 2009
- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Applications to introduce usage-based billing and other changes to Gateway Access Services*, Telecom Order CRTC 2009-484, 12 August 2009

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